SUNTRUST BANKS INC
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PROSPECTUS SUPPLEMENT

(To Prospectus Dated September 3, 2009)

Global Medium-Term Notes, Series A

We may offer our SunTrust Banks, Inc. global medium-term notes, Series A, at one or more times. We describe the terms that will generally apply to those notes in this prospectus supplement and the attached prospectus. We will describe the specific terms of any particular notes we are offering in an attached product supplement, index supplement and/or pricing supplement, as the case may be. We refer to such product supplements, index supplements and pricing supplements, generally, as supplements.

The following terms may apply to particular notes we may offer:

MATURITY: Unless otherwise specified in the applicable supplement, the notes will mature more than nine months from the date of issue.

INTEREST: The notes will bear interest at either a fixed rate or a floating rate that varies during the lifetime of the relevant notes, which, in either case may be zero. Floating rates will be based on rates specified in the applicable supplement.

FLOATING RATES:

CD Rate	Treasury Rate	Prime Rate
Federal Funds Rate	Commercial Paper Rate	CMT Rate
EURIBOR	LIBOR	

Any floating interest rate may be adjusted by adding or subtracting a specified spread or margin or by applying a spread multiplier.

CURRENCIES: The applicable supplement will specify whether the notes will be denominated in U.S. dollars or some other currency.

REDEMPTION: The notes may be either callable by us or puttable by you.

EXCHANGEABLE: The notes may be optionally or mandatorily exchangeable for securities of an entity that is affiliated or not affiliated with us, for a basket or index of those securities, or for the cash value of those securities.

PAYMENTS: Payments on the notes may be linked to currency prices, commodities, rates, debt or equity securities or other debt or equity instruments of entities affiliated or not affiliated with us, baskets of those securities or an index or indices of those securities, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value. We refer to the asset to which payments on a note are linked as the Reference Asset for the note.

OTHER TERMS: As specified under Description of Notes and in the applicable supplement.

Investing in the notes involves risks. See Risk Factors beginning on page S-2.

Unless otherwise specified in the applicable supplement, the notes will not be listed on any securities exchange.

The notes are not deposits or other obligations of SunTrust Bank or any other bank and are not insured or guaranteed by the Federal Deposit Insurance Corporation or any other governmental agency. The notes are not secured. Our affiliates, including SunTrust Robinson Humphrey, Inc., may use this prospectus supplement and the attached prospectus in connection with offers and sales of notes offered hereby in the secondary market. These affiliates may act as principal or agent in those transactions. Secondary market sales will be made at prices related to market prices at the time of sale.

These notes have not been approved by the SEC or any state securities commission, nor have these organizations determined that this prospectus supplement is accurate or complete. Any representation to the contrary is a criminal offense.

SunTrust Robinson Humphrey, Inc. has agreed to use reasonable efforts to solicit offers to purchase these notes as our selling agent to the extent it is named in the applicable supplement. Certain other selling agents may also be used to solicit such offers on a reasonable efforts basis. The agents may also purchase these notes as principal at a discount to be agreed upon at the time of sale and may offer the notes it has purchased as principal to other dealers (including our affiliate SunTrust Investment Services, Inc.). The agents may resell any notes they purchase as principal at prevailing market prices, or at other prices, as the agents determine.

SunTrust Robinson Humphrey

September 10, 2010

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You should rely only on the information contained or incorporated by reference in this prospectus supplement, the prospectus, any additional prospectus supplement and any applicable supplement. We have not authorized anyone else to provide you with different or additional information. We are offering to sell these securities and seeking offers to buy these securities only in jurisdictions where offers and sales are permitted.

You should not assume that the information in this prospectus supplement, the prospectus, any applicable supplement or any document incorporated by reference is accurate as of any date other than its respective date.

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ABOUT THIS PROSPECTUS SUPPLEMENT

We may offer and sell, from time to time, medium-term notes as described in this prospectus supplement. We will sell the notes primarily in the United States, but we may also sell them outside the United States, or both in and outside the United States simultaneously. We refer to the notes offered under this prospectus supplement as our Series A medium-term notes or notes. We refer to the offering of the Series A medium-term notes as our MTN Program. As used in this prospectus supplement, the Company, we, us, or our refer to SunTrust Banks, Inc.

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RISK FACTORS

You may be subject to significant risks not associated with conventional fixed-rate or floating-rate debt securities. Prospective purchasers of the notes should understand the risks of investing in the notes and should reach their own investment decision, only after careful consideration, with their advisors, of the suitability of the notes in light of their particular financial circumstances, the following risk factors and the other information included or incorporated by reference in the applicable supplement, this prospectus supplement and the accompanying prospectus. We have no control over a number of matters, including economic, financial, regulatory, geographic, judicial and political events, that are important in determining the existence, magnitude, and longevity of these risks and their influence on the value of, or the payments made on, the notes. You should not purchase the notes unless you understand and can bear these investment risks.

Unless you are guaranteed the return of principal or a minimum return you may lose your entire investment.

Unless you are guaranteed the return of principal or a minimum guaranteed return under the applicable supplement, there can be no assurance of the receipt of any amount at maturity. The payment at maturity is based on changes in the value of the instruments comprising the Reference Asset, which fluctuate and cannot be predicted. Although historical data with respect to the Reference Asset may be available, the historical performance of the Reference Asset or any of the instruments comprising the Reference Asset should not be taken as an indication of future performance. No assurance can be given, and none is intended to be given, that any return will be achieved on the notes. In addition, even if the relevant supplement specifies a minimum guaranteed return on the notes or a guaranteed return of principal, the notes are unsecured obligations of SunTrust Banks, Inc. and payments on the notes will be subject to our credit risk.

The notes are subject to the credit risk of SunTrust Banks, Inc.

The notes are subject to the credit risk of SunTrust Banks, Inc. and our credit ratings and credit spreads may adversely affect the market value of the notes. Investors are dependent on SunTrust Banks, Inc. s ability to pay all amounts due on the notes at maturity or on any other relevant payment dates, and therefore investors are subject to our credit risk and to changes in the market s view of our creditworthiness. Any decline in our credit ratings or increase in the credit spreads charged by the market for taking our credit risk is likely to adversely affect the value of the notes.

There may not be any secondary market for your notes.

Upon issuance, the notes will not have an established trading market. We cannot assure you that a trading market for the notes will develop or, if one develops, that it will be maintained. Although we may apply to list certain issuances of notes on a national securities exchange, if stated in the relevant supplement, we are under no obligation to do so. In addition, in the event that we apply for listing, we may not meet the requirements for listing. We do not expect to announce, prior to the pricing of the notes, whether we will meet such requirements. Even if there is a secondary market, it may not provide significant liquidity and if you are able to sell your notes, you may be able to do so only at a significant discount. While we anticipate that the agent will act as a market maker for the notes, the agent is not required to do so. If the notes are not listed on any securities exchange and the agent were to cease acting as a market maker, it is likely that there would be no secondary market for the notes. You therefore must be willing and able to hold the notes until maturity.

You may be required to pay fees in connection with your investment in the notes.

You may be required to pay an additional amount per note (as specified in the applicable supplement) as a commission for services rendered by any of our agents in connection with your initial purchase of the notes. In addition, to the extent you request that our agent execute a secondary market-making transaction for any of your notes (and the agent agrees to do so), we and our agents may receive a fee in connection with such secondary

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market-making transaction in addition to any bid-ask spread. To the extent that the applicable supplement allows you to redeem the notes prior to maturity, you may be required to pay a fee in connection with your early redemption of the notes. In addition, the cost of the notes includes our cost of hedging our exposure under the notes. As a consequence of these fees and hedging expenses, you will likely receive, by executing a market-making transaction or an early redemption, less than the full performance of the Reference Asset.

Your yield may be lower than the yield on a standard debt security of comparable maturity.

Periodic payments of interest on the notes, if any, may be lower than interest payments you would receive by investing in a conventional fixed-rate or floating-rate debt security having the same maturity date and issuance date as the notes. The effective yield to maturity of the notes may be less than the yield of such a conventional fixed-rate or floating-rate debt security. Even considering a guaranteed minimum return, periodic interest payments or principal protection, if any is specified in the applicable supplement, any such return may not compensate the holder for any opportunity cost implied by inflation and other factors relating to the time value of money.

Price or other movements in the instrument or instruments comprising the Reference Asset are unpredictable.

Price or other movements in the instrument or instruments comprising the Reference Asset are unpredictable and volatile, and are influenced by complex and interrelated political, economic, financial, regulatory, geographic, judicial and other factors that can affect the particular instrument or instruments and/or the markets in which the relevant instrument or instruments are traded. It is impossible to predict whether the prices or levels of the instrument or instruments comprising the Reference Asset will rise or fall during the term of the notes. During the term of the notes, the price of the instrument or instruments comprising the Reference Asset may decrease below the initial level. We cannot guarantee that the price of the instrument or instruments comprising the Reference Asset will rise or fall over the life of the notes or, if the price of the instrument or instruments comprising the Reference Asset does rise or fall, what the level will be on the date or dates that the performance of the notes is determined. Even if the price of one instrument comprising the Reference Asset rises during the term of the notes, other instruments included in the Reference Asset may fall, resulting in a negative return on the Reference Asset.

The historical or pro forma performance of the Reference Asset is not an indication of future performance.

The historical or pro forma performance of the instrument or instruments comprising the Reference Asset, which may be included in the applicable supplement, should not be taken as an indication of the future performance of the instrument or instruments comprising the Reference Asset or the Reference Asset itself. It is impossible to predict whether the level of the Reference Asset will fall or rise over the term of the notes. The trading level or price of the Reference Asset will be influenced by the complex and interrelated economic, financial, regulatory, geographic, judicial, political and other factors that can affect the trading markets on which the instrument or instruments comprising the Reference Asset are traded and the value of the notes.

You must rely on your own evaluation of the merits of an investment in the notes.

In connection with your purchase of the notes, we urge you to consult your own financial, tax and legal advisors as to the risks entailed by an investment in notes and to investigate the Reference Asset and not rely on our views in any respect. We are not acting as your agent with respect to the purchase of the notes and we bear no fiduciary obligation to you with respect to the notes. You should make such investigation as you deem appropriate as to the merits of an investment in the notes.

The inclusion of the agent discount or commission and structuring and development costs in the original offering price of the notes and certain hedging costs are likely to adversely affect the price at which you can sell your notes.

The original issue price of the notes includes the agent s commission and the estimated cost of hedging our obligations under the notes. Such estimated cost includes our affiliates expected cost of providing such

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hedge and the profit our affiliate expects to realize in consideration for assuming the risks inherent in providing such hedge. As a result, assuming no change in market conditions or any other relevant factors, the price, if any, at which the agent may be willing to purchase notes from you in a secondary market transaction will likely be lower than the original issue price. In addition, such price is also likely to reflect dealer discounts, brokerage commissions, mark-ups and other transaction costs, such as a discount to account for costs associated with establishing or unwinding any related hedge transaction. Any such prices may differ from prices quoted to you by the agent or others by reference to pricing models, due to such compensation or other transaction costs. The price at which the agent or any other potential buyer may be willing to buy your notes will also be affected by the market and other factors discussed in the next risk factor under The price at which you will be able to sell your notes prior to maturity will depend on a number of factors, and may be substantially less than the amount you had originally invested.

The price at which you will be able to sell your notes prior to maturity will depend on a number of factors, and may be substantially less than the amount you had originally invested.

If you wish to liquidate your investment in the notes prior to maturity, your only alternative would be to sell the notes. 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 your control that may affect the value that you could realize from such a sale. We believe that the value of your notes will be affected by the value and volatility of the instrument or instruments comprising the Reference Asset, whether or not the trading level or price of the Reference Asset is greater than or equal to the initial level, changes in interest rates, the supply of and demand for the notes and a number of other factors. These factors are interrelated in complex ways; as a result, the effect of any one factor may be offset or magnified by the effect of another factor. The price, if any, at which you will be able to sell your notes prior to maturity may be substantially less than the amount you originally invested. In addition, the cost of the notes includes our cost of hedging our exposure with respect to the notes and certain fees paid to our affiliates. If you sell your notes prior to maturity, the price at which you will be able to sell your notes is unlikely to compensate you for this hedging cost. As a result, regardless of any change in the Reference Asset, the price an investor is willing to pay for your notes is likely to be lower than the price you paid for your notes. The following paragraphs describe the manner in which we expect the trading value of the notes will be affected in the event of a change in a specific factor, assuming all other conditions remain constant.

Reference Asset performance. We expect that the value of the notes prior to maturity will depend substantially on the relationship between the trading level or price of the Reference Asset and its initial level. If you decide to sell your notes when the trading level or price differs from the initial level, you may receive substantially less than the amount that would be payable at maturity based on that trading level or price because of expectations that the trading level or price will continue to fluctuate until the date or dates that the performance of the notes is determined.

Volatility of the Reference Asset. Volatility is the term used to describe the size and frequency of market fluctuations. If the volatility of the Reference Asset increases or decreases, the trading value of the notes may be adversely affected.

Interest rates. We expect that the trading value of the notes will be affected by changes in interest rates. In general, if interest rates increase, the value of the notes may decrease. Interest rates also may affect the economy and, in turn, the value of the Reference Asset, which would affect the value of the notes.

Our credit ratings, financial condition and results of operations. Actual or anticipated changes in our current credit ratings, as well as our financial condition or results of operations may significantly affect the trading value of the notes. However, because the return on the notes is dependent upon factors in addition to our ability to pay our obligations under the notes, such as the trading level or price of the Reference Asset, an improvement in our credit ratings, financial condition or results of operations is not expected to have a positive effect on the trading value of the notes.

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Time remaining to maturity. A time premium results from expectations concerning the value of the Reference Asset during the period prior to the maturity of the notes. As the time remaining to the maturity of the notes decreases, this time premium will likely decrease, potentially adversely affecting the trading value of the notes. As the time remaining to maturity decreases, the trading value of the notes may be less sensitive to the price volatility of the instrument or instruments comprising the Reference Asset.

Dividend yield, if any. The value of the notes also may be affected by the dividend yields, if any, on the instrument or instruments comprising the Reference Asset. In general, because the payment at maturity does not incorporate the value of dividend payments, an increase in dividend yields on the Reference Asset is likely to reduce the trading value of the notes. Conversely, a decrease in dividend yields may increase the trading value of the notes.

Events affecting or involving the Reference Asset. Economic, financial, regulatory, geographic, judicial, political and other developments that affect the level of the instruments comprising a Reference Asset, and real or anticipated changes in those factors, also may affect the trading value of the notes. For example, earnings results of the issuer of the instrument or instruments comprising a Reference Asset that is or relates to one or more equity securities, and real or anticipated changes in those conditions or results, may affect the trading value of the notes. Reference Assets relating to equity securities also may be affected by mergers and acquisitions, which can contribute to volatility of the Reference Asset. As a result of a merger or acquisition involving the issuer of the Reference Asset, the Reference Asset may be replaced with a surviving or acquiring entity s securities. The surviving or acquiring entity s securities may not have the same characteristics as the issuer or issuers of the securities previously comprising the Reference Asset.

We want you to understand that the effect of one of the factors specified above, such as an increase in interest rates, may offset some or all of any change in the value of the notes attributable to another factor, such as an increase in the level or value of the Reference Asset. In addition, any decrease in the value of your notes due to one factor, such as a decrease in the level or value of the Reference Asset, may be compounded by a decrease in the value of your notes due to another factor, such as a rise in interest rates.

The notes are not insured against loss by any third parties; you can depend only on our earnings and assets for payment and interest, if any, on the notes.

The notes will be solely our obligations, and no other entity will have any obligation, contingent or otherwise, to make any payments in respect of the notes. In addition, because we are a holding company whose primary assets consist of shares of stock or other equity interests in our subsidiaries, almost all of our income is derived from those subsidiaries. Our subsidiaries will have no obligation to pay any amount in respect of the notes or to make any funds available for payment of the notes. Accordingly, we will be dependent on dividends and other distributions or loans from our subsidiaries to generate the funds necessary to meet our obligations with respect to the notes, including the payment of principal and any interest. The notes also will be effectively subordinated to the claims of creditors of our subsidiaries with respect to their assets. If funds from dividends, other distributions or loans from our subsidiaries are not adequate, we may be unable to make payments of principal or interest, if any, in respect of the notes and you could lose all or a part of your investment.

We may choose to redeem the notes when prevailing interest rates or the return on your investment are relatively low.

If your notes are redeemable at our option, this means that we have the right, without your consent, to redeem or call all or a portion of your notes at any time, or at a specific point in time, as specified in the applicable supplement. This does not mean that you have a similar right to require us to repay your notes. Where such a redemption right exists, you may not be able to reinvest the redemption proceeds in a comparable security with a similar maturity at an effective interest rate or with an effective return as high as the interest rate or return on the notes being redeemed. Any such redemption right of ours also may adversely impact your ability to sell your notes, and/or the price at which you could sell your notes, as the redemption date approaches.

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The amount you receive at maturity may be delayed or reduced upon the occurrence of an event of default.

If the calculation agent determines that the notes have become immediately due and payable following an event of default with respect to the notes, you may not be entitled to the entire principal amount of the notes, but only to that portion of the principal amount specified in the applicable supplement, together with accrued but unpaid interest, if any. For more information, see Description of Notes Events of Default, Waiver and Notice.

The calculation agent could be us or one of our affiliates and the calculation agent may have an adverse economic interest.

The calculation agent will make certain determinations and judgments in connection with various calculations in connection with the notes, including, without limitation, the return with respect to the Reference Asset, and determining whether a market disruption event has occurred. Because the calculation agent could be us or one of our affiliates, the calculation agent may have economic interests that are adverse to the interests of the note holders.

Trading and other transactions by us or our affiliates could affect the trading level or price and/or level of the Reference Asset, the trading value of the notes or the amount you may receive at maturity.

In connection with our normal business practices or in connection with hedging our obligations under the notes, we and our affiliates may from time to time buy or sell the instrument or instruments comprising a Reference Asset, similar instruments, other securities of an issuer of an instrument comprising a Reference Asset or derivative instruments relating to such instruments. These trading activities may occur in our proprietary accounts, in facilitating transactions, including block trades, for our other customers and in accounts under our management. We are under no obligation to consider the effect of these actions on the value of your notes and will take these actions without considering the effect on your notes. In connection with these trading activities, we may take actions that will have an adverse effect on the value of your notes. These trading activities could affect the price of an instrument comprising any Reference Asset in a manner that would decrease the trading value of the notes prior to maturity or the amount you would receive at maturity. To the extent that we or any of our affiliates have a hedge position in an instrument or instruments comprising the Reference Asset, or in a derivative or synthetic instrument related to such an instrument, we or any of our affiliates may liquidate a portion of such holdings at or about the time of the maturity of the notes. This liquidation activity may affect the value of the Reference Asset in a manner that would adversely affect your investment in the notes. Depending on, among other things, future market conditions, the aggregate amount and the composition of such hedge positions are likely to vary over time.

In addition, we or any of our affiliates may purchase or otherwise acquire a long or short position in the notes. We or any of our affiliates may hold or resell any such position in the notes.

Research reports and other transactions may create conflicts of interest between you and us.

We or one or more of our affiliates may have published, and may in the future publish, research reports relating to the instrument or instruments comprising certain Reference Assets or the issuers of certain such instruments. The views expressed in this research may be modified from time to time without notice and may express opinions or provide recommendations that are inconsistent with purchasing or holding the notes. Any of these activities may affect negatively the trading level or price of an instrument comprising the Reference Asset and, therefore, the value of the notes. Moreover, other professionals who deal in these markets may at any time have views that differ significantly from ours. In connection with your purchase of the notes, you should investigate the Reference Asset and not rely on our views with respect to future movements in the Reference Asset.

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We or any of our affiliates also may issue, underwrite or assist unaffiliated entities in the issuance or underwriting of other securities or financial instruments with returns indexed to the instrument or instruments comprising the Reference Asset. By introducing competing products into the marketplace in this manner, we or our affiliates could adversely affect the value of the notes.

We and our affiliates, at present or in the future, may engage in business relating to the sponsor or issuer of any instrument or instruments comprising the Reference Asset, including making loans to, equity investments in, or providing investment banking, asset management or other financial or advisory services to such a sponsor or issuer. In connection with these activities, we may receive information pertinent to the Reference Asset that we will not divulge to you.

We cannot control actions by the sponsors or issuers of the instrument or instruments comprising the Reference Asset.

Actions by any sponsor or issuer of the instrument or instruments comprising the Reference Asset may have an adverse effect on the trading level or price of any instrument comprising the Reference Asset and therefore on the value of the notes. No sponsor or issuer of a Reference Asset will be involved with the administration, marketing or trading of the notes and no sponsor or issuer will have any obligations with respect to the amounts to be paid to you on any applicable interest payment date or on the maturity date, or to consider your interests as an owner of notes when it takes any actions that might affect the value of the notes. No sponsor or issuer of a Reference Asset will receive any of the proceeds of any note offering and no sponsor or issuer will be responsible for, or have participated in, the determination of the timing of, prices for, or quantities of, the notes to be issued.

We are not affiliated with any sponsor or issuer of any instrument or instruments comprising the Reference Asset (except for the licensing arrangements, if any, discussed in the applicable supplement and except that our securities may be a component of an index or indices that are a Reference Asset), and we have no ability to control or predict their actions, including any errors in information disclosed by them or any discontinuance by them of such disclosure. However, we may currently, or in the future, engage in business with such sponsors or issuers. Neither we, nor any of our affiliates, including the agent, assumes any responsibility for the adequacy or accuracy of any publicly available information about the sponsor or issuer of any instrument or instruments comprising the Reference Asset, whether such information is contained in the supplement or otherwise. You should make your own investigation into the Reference Asset, the instrument or instruments comprising the Reference Asset, and the sponsor or issuer of any instrument or instruments comprising the Reference Asset.

You have no recourse to the sponsor or issuer of any instrument or instruments comprising the Reference Asset.

Your investment in the notes will not give you any rights against any sponsor or issuer, including any sponsor or issuer that may determine or publish the level of any instrument or instruments comprising the Reference Asset. The notes are not sponsored, endorsed, sold or promoted by the sponsor or issuer of any instrument or instruments comprising the Reference Asset. The sponsor or issuer of any instrument comprising the Reference Asset may take actions with respect to such instrument that will negatively affect the price or level of such instrument and may negatively affect the value of your notes. The sponsor or issuer of an instrument included in the Reference Asset is likely to take such actions without regard for any negative effect on the value of the Reference Asset or the return with respect to your notes.

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Changes in methodology of the sponsor or issuer of certain Reference Assets or changes in laws or regulations may affect the value of and payment, if any, on the notes prior to maturity and the amount you receive at maturity.

The sponsor or issuer of certain Reference Assets, or instruments comprising such Reference Assets, may have the ability from time to time to change any of its rules or bylaws or historical practices and procedures or take emergency action under its rules, any of which could affect the trading level or price of the instrument or instruments comprising the Reference Asset. Any such change which causes a decrease in such trading level or price could adversely affect the level or price of the Reference Asset, the instrument or instruments comprising such Reference Asset, and the value of the notes.

In addition, the level or price of a Reference Asset could be adversely affected by the promulgation of new laws or regulations or by the reinterpretation of existing laws or regulations (including, without limitation, those relating to taxes and duties on any Reference Asset) by one or more governments, governmental agencies or instrumentalities, courts or other official bodies. Any such event could adversely affect the level of the Reference Asset and could adversely affect the value of the notes.

The sponsor may change the instruments underlying the Reference Assets that are indices in a way that adversely affects the Reference Asset level and consequently the value of the notes.

The sponsors of Reference Assets that are indices can add, delete or substitute the instruments comprising such indices or make other methodological changes that could adversely change the level of the Reference Asset and the value of the notes. You should realize that changes in the instrument or instruments underlying the Reference Asset may affect the Reference Asset, as a newly added instrument or instruments may perform significantly better or worse than the instrument or instruments it replaces.

Any discontinuance or suspension of calculation or publication of the trading levels or prices of the instrument or instruments comprising the Reference Asset may adversely affect the trading value of the notes and the amount you will receive at maturity.

If the calculation or publication of the trading levels or prices of the instrument or instruments comprising the Reference Asset is discontinued or suspended, it may become difficult to determine the trading value of the notes or, if such discontinuance or suspension is continuing on the observation date, the amount you will receive at maturity. In such event, subject to the terms of the relevant supplement, the calculation agent may determine the level of the Reference Asset or the amount you will receive at maturity and these determinations may have a negative impact on the value of your notes or the amount you will receive at maturity.

Time differences between the domestic and foreign markets and New York City may create discrepancies in the trading level or price of the notes if the Reference Assets are comprised of instruments that primarily trade on foreign markets.

In the event that the instrument or instruments comprising a Reference Asset trade primarily on a foreign market, time differences between the domestic and foreign markets may result in discrepancies between the level of the instrument or instruments comprising the Reference Asset and the value of the notes. To the extent that U.S. markets are closed while markets for the instrument or instruments comprising the Reference Asset remain open, significant price or rate movements may take place in the instrument or instruments comprising the Reference Asset that will not be reflected immediately in the value of the notes. In addition, there may be periods when the relevant foreign markets are closed for trading, causing the level of the Reference Asset to remain unchanged for multiple trading days in New York City. In addition, there may not be any systematic reporting of last-sale or similar information for the Reference Asset. The absence of last-sale or similar information and the limited availability of quotations would make it difficult for many investors to obtain timely, accurate data about the state of the market for the Reference Asset.

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The U.S. federal income tax consequences of an investment in some types of notes are uncertain.

There is no direct legal authority as to the proper tax treatment of some types of notes, and therefore significant aspects of the tax treatment of some types of notes are uncertain, as to both the timing and character of income and gain in respect of your note. The applicable supplement will provide further detailed information as to the tax treatment of your notes. We urge you to consult your tax advisor as to the tax consequences of your investment in a note. For a more complete discussion of the U.S. federal income tax consequences of your investment in a note, please see the discussion under United States Federal Taxation.

Additional risks specific to particular notes issued under our MTN Program will be detailed in the applicable supplements.

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DESCRIPTION OF NOTES

Investors should carefully read the general terms and provisions of our notes in this section. The applicable supplements will add specific terms for each issuance of notes and may modify or replace any of the information in this section.

General Terms of Notes

We may issue notes under an Indenture dated September 10, 2007, between us and U.S. Bank National Association, as trustee (as may be supplemented from time to time). We refer to the Indenture, as may be supplemented from time to time, as the Indenture. The Series A medium-term notes issued under the Indenture will constitute a single series under the Indenture, together with any medium-term notes we issue in the future under the Indenture that we designate as being part of that series. We may create and issue additional notes with the same terms as previous issuances of Series A medium-term notes, so that the additional notes will be considered as part of the same issuance as the earlier notes.

Outstanding Indebtedness of the Company. The Indenture does not limit the amount of additional indebtedness that we may incur.

Terms May be Specified in One or More Supplements. One or more product supplements, index supplements and/or pricing supplements (together referred to herein as a supplement) will specify the following terms of any issuance of our Series A medium-term notes to the extent applicable:

- the specific designation of the notes;
- the issue price (price to public);
- the aggregate principal amount;
- the denominations or minimum denominations;
- the original issue date;
- the stated maturity date and any terms related to any extension of the maturity date;
- whether the notes are fixed rate notes, floating rate notes or notes with original issue discount;
- for fixed rate notes, the rate per year at which the notes will bear interest, if any, or the method of calculating that rate and the dates on which interest will be payable;
- for floating rate notes, any or all of the base rate, the index maturity, the spread, the spread multiplier, the initial interest rate, the interest reset periods, the interest payment dates, the maximum interest rate, the minimum interest rate and any other terms relating to the particular method of calculating the interest rate for the note;

whether the notes may be redeemed, in whole or in part, at our option or repurchased at your option, prior to the stated maturity date, and the terms of any redemption or repurchase;

whether the notes are currency-linked notes and/or notes linked to commodities, rates, debt or equity securities or other debt or equity instruments of entities affiliated or not affiliated with us, baskets of those securities or an index or indices of those securities, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

the terms on which holders of the notes may convert or exchange them into, or for, stock or other securities of entities affiliated or not affiliated with us, or for the cash value of any of these securities or for any other property, any specific terms relating to the adjustment of the conversion or exchange feature and the period during which the holders may effect the conversion or exchange;

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if any note is not denominated and payable in U.S. dollars, the currency or currencies in which the principal, premium, if any, and interest, if any, will be paid, which we refer to as the specified currency, along with any other terms relating to the non-U.S. dollar denomination, including exchange rates as against the U.S. dollar at selected times during the last five years and any exchange controls affecting that specified currency;

whether and under what circumstances we will pay additional amounts on the notes for any tax, assessment or governmental charge withheld or deducted and, if so, whether we will have the option to redeem those debt securities rather than pay the additional amounts;

whether the notes will be listed on any stock exchange;

whether the notes will be issued in book-entry form, which we sometimes refer to in this prospectus as global notes, or in certificated form;

if the notes are in book-entry form, whether the notes will be offered on a global basis (outside the United States) to investors through Euroclear and Clearstream, Luxembourg as well as through the Depositary (each as defined below See Notes Offered on a Global Basis); and

any other terms on which we will issue the notes.

Some Definitions. We have defined some of the terms that we use frequently in this prospectus supplement below:

A business day means any day, other than a Saturday or Sunday, (i) that is neither a legal holiday nor a day on which banking institutions are authorized or required by law or regulation to close (a) for all notes, in The City of New York or Atlanta, Georgia, (b) for notes denominated in a specified currency other than U.S. dollars, European Union euro or Australian dollars, in the principal financial center of the country of the specified currency or (c) for notes denominated in Australian dollars, in Sydney; and (ii) for notes denominated in European Union euro, a day that is also a TARGET Settlement Day.

Clearstream, Luxembourg means Clearstream Banking, société anonyme, Luxembourg.

Depositary means The Depository Trust Company, New York.

Euro LIBOR notes means LIBOR notes for which the index currency is European Union euros.

Euroclear operator means Euroclear Bank S.A./N.V., as operator of the Euroclear System.

An interest payment date for any note means a date on which, under the terms of that note, regularly scheduled interest is payable.

London banking day means any day on which dealings in deposits in the relevant index currency are transacted in the London interbank market.

The record date for any interest payment date is the last day of the month immediately preceding the month in which such interest payment date falls, whether or not that date is a business day, unless another date is specified in the applicable supplement.

TARGET Settlement Day means any day on which the Trans-European Automated Real-Time Gross Settlement Express Transfer System (TARGET2) is open.

References in this prospectus supplement to U.S. dollar, or U.S.$ or $ are to the currency of the United States of America.

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References in this prospectus supplement or in a supplement to a guaranteed return of principal or principal protection mean that holders of the applicable note will be entitled to receive a return of their principal on the notes regardless of the performance of the Reference Asset; however, payment of principal on such notes is subject to the credit risk of SunTrust Banks, Inc. See Risk Factors.

Forms of Notes

We will offer the notes on a continuing basis and will issue notes only in fully registered form either as book-entry notes or as certificated notes. References to holders mean those who own notes registered in their own names, on the books that we or the trustee maintain for this purpose, and not those who own beneficial interests in notes registered in street name or in notes issued in book-entry form through one or more depositaries.

Book-Entry Notes. For notes in book-entry form, we will issue one or more global certificates representing the entire issue of notes. Except as set forth in under The Depositary, you may not exchange book-entry notes or interests in book-entry notes for certificated notes.

Each global note certificate representing book-entry notes will be deposited with, or on behalf of, the Depositary and registered in the name of the Depositary or nominee of the Depositary. These certificates name the Depositary or its nominee as the owner of the notes. The Depositary maintains a computerized system that will reflect the interests held by its participants in the global notes. An investor s beneficial interest will be reflected in the records of the Depositary s direct or indirect participants through an account maintained by the investor with its broker/dealer, bank, trust company or other representative. A further description of the Depositary s procedures for global notes representing book-entry notes is set forth under The Depositary. The Depositary has confirmed to us, the agents and the trustee that it intends to follow these procedures.

Certificated Notes. If we issue notes in certificated form, the certificate will name the investor or the investor s nominee as the owner of the note. The person named in the note register will be considered the owner of the note for all purposes under the Indenture. For example, if we need to ask the holders of the notes to vote on a proposed amendment to the notes, the person named in the note register will be asked to cast any vote regarding that note. If you have chosen to have some other entity hold the certificates for you, that entity will be considered the owner of your note in our records and will be entitled to cast the vote regarding your note. You may not exchange certificated notes for book-entry notes or interests in book-entry notes.

Denominations. We will issue the notes:

- for U.S. dollar-denominated notes, unless otherwise specified in the applicable supplement, in denominations of $1,000 or any amount greater than $1,000 that is an integral multiple of $1,000; or

- for notes denominated in a specified currency other than U.S. dollars, unless other specified in the applicable supplement, in denominations of the equivalent of $1,000, rounded to an integral multiple of 1,000 units of the specified currency, or any larger integral multiple of 1,000 units of the specified currency, as determined by reference to the market exchange rate, as defined under Interest and Principal Payments Unavailability of Foreign Currency below, on the business day immediately preceding the date of issuance.

Interest and Principal Payments

Payments, Exchanges and Transfers. Holders may present notes for payment of principal, premium, if any, and interest, if any, register the transfer of the notes, and exchange the notes at U.S. Bank National Association, acting through its corporate trust office at 100 Wall Street, 16th Floor, New York, New York 10005 as our current agent for the payment, transfer and exchange of the notes. We refer to U.S. Bank National Association, acting in this capacity, as the paying agent. However, holders of global notes may transfer and exchange global notes only in the manner and to the extent set forth under The Depositary.

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We will not be required to:

- register the transfer or exchange of any note if the holder has exercised the holder s right, if any, to require us to repurchase the note, in whole or in part, except the portion of the note not required to be repurchased;
- register the transfer or exchange of notes to be redeemed for a period of fifteen calendar days preceding the mailing of the relevant notice of redemption; or
- register the transfer or exchange of any registered note selected for redemption in whole or in part, except the unredeemed or unpaid portion of that registered note being redeemed in part.

No service charge will be made for any registration of transfer or exchange of notes, but we may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection with the registration of transfer or exchange of notes.

Although we anticipate making payments of principal, premium, if any, and interest, if any, on most notes in U.S. dollars, some notes may be payable in foreign currencies as specified in the applicable supplement. Currently, few facilities exist in the United States to convert U.S. dollars into foreign currencies and vice versa. In addition, most U.S. banks do not offer non-U.S. dollar denominated checking or savings account facilities. Accordingly, unless alternative arrangements are made, we will pay principal, premium, if any, and interest, if any, on notes that are payable in a foreign currency to an account at a bank outside the United States, which, in the case of a note payable in European Union euro, will be made by credit or transfer to a European Union euro account specified by the payee in a country for which the European Union euro is the lawful currency.

Recipients of Payments. The paying agent will pay interest to the person in whose name the note is registered at the close of business on the applicable record date. However, upon maturity, redemption or repurchase, the paying agent will pay any interest due to the person to whom it pays the principal of the note. The paying agent will make the payment of interest, if any, on the date of maturity, redemption or repurchase, whether or not that date is an interest payment date. The paying agent will make the initial interest payment on a note on the first interest payment date falling after the date of issuance, unless the date of issuance is less than 15 calendar days before an interest payment date. In that case, the paying agent will pay interest on the next succeeding interest payment date to the holder of record on the record date corresponding to the succeeding interest payment date.

Book-Entry Notes. The paying agent will make payments of principal, premium, if any, and interest, if any, to the account of the Depositary, as holder of book-entry notes, by wire transfer of immediately available funds. We expect that the Depositary, upon receipt of any payment, will immediately credit its participants accounts in amounts proportionate to their respective beneficial interests in the book-entry notes as shown on the records of the Depositary. We also expect that payments by the Depositary s participants to owners of beneficial interests in the book-entry notes will be governed by standing customer instructions and customary practices and will be the responsibility of those participants.

Certificated Notes. Except as indicated below for payments of interest at maturity, redemption or repurchase, the paying agent will make U.S. dollar payments of interest either:

- by check mailed to the address of the person entitled to payment as shown on the note register; or
- by wire transfer of immediately available funds, if the holder has given written notice to the paying agent not later than 10 calendar days prior to the applicable interest payment date.

U.S. dollar payments of principal, premium, if any, and interest, if any, upon maturity, redemption or repurchase on a note will be made in immediately available funds against presentation and surrender of the note.

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Payment Procedures for Book-Entry Notes Denominated in a Foreign Currency. Book-entry notes payable in a specified currency other than U.S. dollars will provide that a beneficial owner of interests in those notes may elect to receive all or a portion of the payments of principal, premium, if any, or interest, if any, in U.S. dollars. In those cases, the Depositary will elect to receive all payments with respect to the beneficial owner s interest in the notes in U.S. dollars, unless the beneficial owner takes the following steps:

The beneficial owner must give complete instructions to the direct or indirect participant through which it holds the book-entry notes of its election to receive those payments in the specified currency other than U.S. dollars by wire transfer to an account specified by the beneficial owner with a bank located outside the United States. In the case of a note payable in European Union euro, the account must be a European Union euro account in a country for which the European Union euro is the lawful currency.

The participant must notify the Depositary of the beneficial owner s election on or prior to the third business day after the applicable record date, for payments of interest, and on or prior to the twelfth business day prior to the maturity date or any redemption or repurchase date, for payment of principal or premium.

The Depositary will notify the paying agent of the beneficial owner s election on or prior to the fifth business day after the applicable record date, for payments of interest, and on or prior to the tenth business day prior to the maturity date or any redemption or repurchase date, for payment of principal or premium.

Beneficial owners should consult their participants in order to ascertain the deadline for giving instructions to participants in order to ensure that timely notice will be delivered to the Depositary.

Payment Procedures for Certificated Notes Denominated in a Foreign Currency. For certificated notes payable in a specified currency other than U.S. dollars, the notes may provide that the holder may elect to receive all or a portion of the payments on those notes in U.S. dollars. To do so, the holder must send a written request to the paying agent:

for payments of interest, on or prior to the fifth business day after the applicable record date; or

for payments of principal, at least ten business days prior to the maturity date or any redemption or repurchase date.

To revoke this election for all or a portion of the payments on the certificated notes, the holder must send written notice to the paying agent:

at least five business days prior to the applicable record date, for payment of interest; or

at least ten calendar days prior to the maturity date or any redemption or repurchase date, for payments of principal.

If the holder does not elect to be paid in U.S. dollars, the paying agent will pay the principal, premium, if any, or interest, if any, on the certificated notes:

by wire transfer of immediately available funds in the specified currency to the holder s account at a bank located outside the United States, and in the case of a note payable in European Union euro, in a country for which the European Union euro is the lawful currency, if the paying agent has received the holder s written wire transfer instructions not less than 15 calendar days prior to the applicable payment date; or

by check payable in the specified currency mailed to the address of the person entitled to payment that is specified in the note register, if the holder has not provided wire instructions.

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However, the paying agent will pay only the principal of the certificated notes, any premium and interest, if any, due at maturity, or on any redemption or repurchase date, upon surrender of the certificated notes at the office or agency of the paying agent.

Determination of Exchange Rate for Payments in U.S. Dollars for Notes Denominated in a Foreign Currency. The exchange rate agent identified in the relevant supplement will convert the specified currency into U.S. dollars for holders who elect to receive payments in U.S. dollars and for beneficial owners of book-entry notes that do not follow the procedures we have described immediately above. The conversion will be based on the highest bid quotation in The City of New York received by the exchange rate agent at approximately 11:00 a.m., New York City time, on the second business day preceding the applicable payment date from three recognized foreign exchange dealers for the purchase by the quoting dealer:

of the specified currency for U.S. dollars for settlement on the payment date;

in the aggregate amount of the specified currency payable to those holders or beneficial owners of notes; and

at which the applicable dealer commits to execute a contract.

One of the dealers providing quotations may be the exchange rate agent unless the exchange rate agent is our affiliate. If those bid quotations are not available, payments will be made in the specified currency. The holders or beneficial owners of notes will pay all currency exchange costs by deductions from the amounts payable on the notes.

Unavailability of Foreign Currency. The relevant specified currency may not be available to us for making payments of principal of, premium, if any, or interest, if any, on any note. This could occur due to the imposition of exchange controls or other circumstances beyond our control or if the specified currency is no longer used by the government of the country issuing that currency or by public institutions within the international banking community for the settlement of transactions. If the specified currency is unavailable, we may satisfy our obligations to holders of the notes by making those payments on the date of payment in U.S. dollars on the basis of the noon dollar buying rate in The City of New York for cable transfers of the currency or currencies in which a payment on any note was to be made, published by the Federal Reserve Bank of New York, which we refer to as the market exchange rate. If that rate of exchange is not then available or is not published for a particular payment currency, the market exchange rate will be based on the highest bid quotation in The City of New York received by the exchange rate agent at approximately 11:00 a.m., New York City time, on the second business day preceding the applicable payment date from three recognized foreign exchange dealers for the purchase by the quoting dealer:

of the specified currency for U.S. dollars for settlement on the payment date;

in the aggregate amount of the specified currency payable to those holders or beneficial owners of notes; and

at which the applicable dealer commits to execute a contract.

One of the dealers providing quotations may be the exchange rate agent unless the exchange rate agent is our affiliate. If those bid quotations are not available, the exchange rate agent will determine the market exchange rate at its sole discretion.

These provisions do not apply if a specified currency is unavailable because it has been replaced by the European Union euro. If the European Union euro has been substituted for a specified currency, we may at our option, or will, if required by applicable law, without the consent of the holders of the affected notes, pay the principal of, premium, if any, or interest, if any, on any note denominated in the specified currency in European Union euro instead of the specified currency, in conformity with legally applicable measures taken pursuant to,

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or by virtue of, the Treaty establishing the European Community, as amended by the treaty on European Union. Any payment made in U.S. dollars or in European Union euro as described above where the required payment is in an unavailable specified currency will not constitute an event of default.

Discount Notes. Some notes may be considered to be issued with original issue discount. If the principal of any note that is considered to be issued with original issue discount is declared to be due and payable immediately as described under Events of Default, Waiver and Notice, the amount of principal due and payable on that note will be limited to:

the aggregate principal amount of the note multiplied by the sum of

its issue price, expressed as a percentage of the aggregate principal amount, plus

the original issue discount amortized from the date of issue to the date of declaration, expressed as a percentage of the aggregate principal amount.

The amortization will be calculated using the interest method, computed in accordance with generally accepted accounting principles in effect on the date of declaration. See the applicable supplement for any special considerations applicable to these notes.

The above discussion of notes issued with original issue discount does not apply for U.S. federal income tax purposes. See United States Federal Taxation Tax Consequences to U.S. Holders Original Issue Discount for a discussion of the original issue discount rules under the Internal Revenue Code.

Fixed Rate Notes

Each fixed rate note will mature on the date specified in the applicable supplement.

Each fixed rate note will bear interest from the date of issuance at the annual rate stated on its face until the principal is paid or made available for payment.

How Interest Is Calculated. Interest on fixed rate notes will be computed on the basis of a 360-day year of twelve 30-day months.

How Interest Accrues. Interest on fixed rate notes will accrue from and including the most recent interest payment date to which interest has been paid or duly provided for, or, if no interest has been paid or duly provided for, from and including the issue date or any other date specified in a supplement on which interest begins to accrue. Interest will accrue to but excluding the next interest payment date, or, if earlier, the date on which the principal has been paid or duly made available for payment, except as described below under If a Payment Date Is Not a Business Day.

When Interest Is Paid. Payments of interest on fixed rate notes will be made on the interest payment dates specified in the applicable supplement. However, if the first interest payment date is less than 15 days after the date of issuance, interest will not be paid on the first interest payment date, but will be paid on the second interest payment date.

Amount of Interest Payable. Interest payments for fixed rate notes will include accrued interest from and including the date of issue or from and including the last date in respect of which interest has been paid, as the case may be, to but excluding the relevant interest payment date or date of maturity or earlier redemption or repurchase, as the case may be.

If a Payment Date Is Not a Business Day. If any scheduled interest payment date is not a business day, we will pay interest on the next business day, but interest on that payment will not accrue during the period from and

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after the scheduled interest payment date. If the scheduled maturity date or date of redemption or repurchase is not a business day, we may pay interest, if any, and principal and premium, if any, on the next succeeding business day, but interest on that payment will not accrue during the period from and after the scheduled maturity date or date of redemption or repurchase.

Floating Rate Notes

Each floating rate note will mature on the date specified in the applicable supplement.

Each floating rate note will bear interest at a floating rate determined by reference to an interest rate or interest rate formula, which we refer to as the base rate. The base rate may be one or more of the following:

- the CD rate,
- the commercial paper rate,
- EURIBOR,
- the federal funds rate,
- LIBOR,
- the prime rate,
- the Treasury rate,
- the CMT rate, or
- any other rate or interest rate formula specified in the applicable supplement and in the floating rate note.

Formula for Interest Rates. The interest rate on each floating rate note will be calculated by reference to:

- the specified base rate based on the index maturity,
- plus or minus the spread, if any, and/or
- multiplied by the spread multiplier, if any.

For any floating rate note, index maturity means the period of maturity of the instrument or obligation from which the base rate is calculated and will be specified in the applicable supplement. The spread is the number of basis points (one one-hundredth of a percentage point) specified in the applicable supplement to be added to or subtracted from the base rate for a floating rate note. The spread multiplier is the percentage

specified in the applicable supplement to be applied to the base rate for a floating rate note. The interest rate on any inverse floating rate note will also be calculated by reference to a fixed rate.

Limitations on Interest Rate. A floating rate note may also have either or both of the following limitations on the interest rate:

- a maximum limitation, or ceiling, on the rate of interest which may accrue during any interest period, which we refer to as the maximum interest rate ; and/or

- a minimum limitation, or floor, on the rate of interest that may accrue during any interest period, which we refer to as the minimum interest rate.

Any applicable maximum interest rate or minimum interest rate will be set forth in the applicable supplement.

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In addition, the interest rate on a floating rate note may not be higher than the maximum rate permitted by New York law, as that rate may be modified by United States law of general application. Under current New York law, the maximum rate of interest, subject to some exceptions, for any loan in an amount less than $250,000 is 16% and for any loan in the amount of $250,000 or more but less than $2,500,000 is 25% per annum on a simple interest basis. These limits do not apply to loans of $2,500,000 or more.

How Floating Interest Rates Are Reset. The interest rate in effect from the date of issue to the first interest reset date for a floating rate note will be the initial interest rate specified in the applicable supplement. We refer to this rate as the initial interest rate. The interest rate on each floating rate note may be reset daily, weekly, monthly, quarterly, semiannually or annually. This period is the interest reset period and the first day of each interest reset period is the interest reset date. The interest determination date for any interest reset date is the day the calculation agent identified in the applicable supplement will refer to when determining the new interest rate at which a floating rate will reset, and is applicable as follows:

- for federal funds rate notes and prime rate notes, the interest determination date will be on the business day prior to the interest rate reset date;

- for CD rate notes, commercial paper rate notes, prime rate notes and CMT rate notes, the interest determination date will be the second business day prior to the interest reset date;

- for EURIBOR notes or Euro LIBOR notes, the interest determination date will be the second TARGET Settlement Day, as defined above under General Terms of Notes Some Definitions, prior to the interest reset date;

- for LIBOR notes (other than Euro LIBOR notes), the interest determination date will be the second London banking day prior to the interest reset date, except that the interest determination date pertaining to an interest reset date for a LIBOR note for which the index currency is British pounds sterling will be the interest reset date; and

- for Treasury rate notes, the interest determination date will be the day of the week in which the interest reset date falls on which Treasury bills would normally be auctioned.

Treasury bills are normally sold at auction on Monday of each week, unless that day is a legal holiday, in which case the auction is normally held on the following Tuesday, but the auction may be held on the preceding Friday. If, as the result of a legal holiday, the auction is held on the preceding Friday, that Friday will be the interest determination date pertaining to the interest reset date occurring in the next succeeding week. If an auction falls on a day that is an interest reset date, that interest reset date will be the next following business day.

The interest reset dates will be specified in the applicable supplement. If an interest reset date for any floating rate note falls on a day that is not a business day, it will be postponed to the following business day, except that, in the case of a EURIBOR note or a LIBOR note, if that business day is in the next calendar month, the interest reset date will be the immediately preceding business day. The interest rate in effect for the ten calendar days immediately prior to maturity, redemption or repurchase will be the one in effect on the tenth calendar day preceding the maturity, redemption or repurchase date.

In the detailed descriptions of the various base rates which follow, the calculation date pertaining to an interest determination date means the earlier of (i) the tenth calendar day after that interest determination date, or, if that day is not a business day, the next succeeding business day, and (ii) the business day immediately preceding the applicable interest payment date or maturity date or, for any principal amount to be redeemed or repaid, any redemption or repurchase date.

How Interest Is Calculated. Interest on floating rate notes will accrue from and including the most recent interest payment date to which interest has been paid or duly provided for, or, if no interest has been paid or duly provided for, from and including the issue date or any other date specified in a supplement on which interest

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begins to accrue. Interest will accrue to but excluding the next interest payment date or, if earlier, the date on which the principal has been paid or duly made available for payment, except as described below under If a Payment Date Is Not a Business Day.

The applicable supplement will specify a calculation agent for any issue of floating rate notes. Upon the request by the holder of any floating rate note, the calculation agent will provide the interest rate then in effect and, if determined, the interest rate that will become effective on the next interest reset date for that floating rate note.

For a floating rate note, accrued interest will be calculated by multiplying the principal amount of the floating rate note by an accrued interest factor. This accrued interest factor will be computed by adding the interest factors calculated for each day in the period for which interest is being paid. The interest factor for each day is computed by dividing the interest rate applicable to that day:

- by 360, in the case of CD rate notes, commercial paper rate notes, EURIBOR notes, federal funds rate notes, LIBOR notes (except for LIBOR notes denominated in British pounds sterling) and prime rate notes;

- by 365, in the case of LIBOR notes denominated in British pounds sterling; or

- by the actual number of days in the year, in the case of Treasury rate notes and CMT rate notes.

For these calculations, the interest rate in effect on any interest reset date will be the applicable rate as reset on that date. The interest rate applicable to any other day is the interest rate from the immediately preceding interest reset date or, if none, the initial interest rate.

All percentages used in or resulting from any calculation of the rate of interest on a floating rate note will be rounded, if necessary, to the nearest one hundred-thousandth of a percentage point (with 0.000005% rounded up to 0.00001%), and all U.S. dollar amounts used in or resulting from these calculations on floating rate notes will be rounded to the nearest cent (with one-half cent rounded upward). All Japanese yen amounts used in or resulting from these calculations will be rounded downward to the next lower whole Japanese yen amount. All amounts denominated in any other currency used in or resulting from these calculations will be rounded to the nearest two decimal places in that currency with 0.005 being rounded upward to 0.01.

When Interest Is Paid. We will pay interest on floating rate notes on the interest payment dates specified in the applicable supplement. However, if the first interest payment date is less than 15 days after the date of issuance, interest will not be paid on the first interest payment date, but will be paid on the second interest payment date.

If a Payment Date Is Not a Business Day. If any scheduled interest payment date, other than the maturity date or any earlier redemption or repurchase date, for any floating rate note falls on a day that is not a business day, it will be postponed to the following business day, except that, in the case of a EURIBOR note or a LIBOR note, if that business day would fall in the next calendar month, the interest payment date will be the immediately preceding business day. If the scheduled maturity date or any earlier redemption or repurchase date of a floating rate note falls on a day that is not a business day, the payment of principal, premium, if any, and interest, if any, will be made on the next succeeding business day, but interest on that payment will not accrue during the period from and after the maturity, redemption or repurchase date.

CD Rate Notes

CD rate notes will bear interest at the interest rates specified in the CD rate notes and in the applicable supplement. Those interest rates will be based on the CD rate and any spread and/or spread multiplier and may be subject to the minimum interest rate or the maximum interest rate, if any.

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The CD rate means, for any interest determination date, the rate on that date for negotiable U.S. dollar certificates of deposit having the index maturity specified in H.15(519) (as defined below) under the heading CDs (Secondary Market).

The following procedures will be followed if the CD rate cannot be determined as described above:

If the above rate is not published in H.15(519) by 3:00 p.m., New York City time, on the calculation date, the CD rate will be the rate on that interest determination date set forth in the daily update of H.15(519), available through the world wide website of the Board of Governors of the Federal Reserve System, or any successor site or publication, which is commonly referred to as the H.15 Daily Update, for the interest determination date for certificates of deposit having the index maturity specified in the applicable supplement, under the caption CDs (Secondary Market).

If the above rate is not yet published in either H.15(519) or the H.15 Daily Update by 3:00 p.m., New York City time, on the calculation date, the calculation agent will determine the CD rate to be the arithmetic mean of the secondary market offered rates as of 10:00 a.m., New York City time, on that interest determination date of three leading nonbank dealers in negotiable U.S. dollar certificates of deposit in The City of New York, selected by the calculation agent, after consultation with us, for negotiable U.S. dollar certificates of deposit of major U.S. money center banks of the highest credit standing in the market for negotiable certificates of deposit with a remaining maturity closest to the index maturity specified in the applicable supplement in an amount that is representative for a single transaction in that market at that time.

If the dealers selected by the calculation agent are not quoting as set forth above, the CD rate for that interest determination date will remain the CD rate for the immediately preceding interest reset period, or, if there was no interest reset period, the rate of interest payable will be the initial interest rate.

H.15(519) means the weekly statistical release designated as such, or any successor publication, published by the Board of Governors of the Federal Reserve System, available through the world-wide-web site of the Board of Governors of the Federal Reserve System at http://www.federalreserve.gov/releases/H15/ or any successor site or publication. We make no representation or warranty as to the accuracy or completeness of the information displayed on such website, and such information is not incorporated by reference herein and should not be considered a part of this prospectus supplement.

Commercial Paper Rate Notes

Commercial paper rate notes will bear interest at the interest rates specified in the commercial paper rate notes and in the applicable supplement. Those interest rates will be based on the commercial paper rate and any spread and/or spread multiplier and may be subject to the minimum interest rate or the maximum interest rate, if any. The commercial paper rate means, for any interest determination date, the money market yield, calculated as described below, of the rate on that date for commercial paper having the index maturity specified in the applicable supplement, as that rate is published in H.15(519), under the heading Commercial Paper Nonfinancial. The following procedures will be followed if the commercial paper rate cannot be determined as described above:

If the above rate is not published by 3:00 p.m., New York City time, on the calculation date, then the commercial paper rate will be the money market yield of the rate on that interest determination date for commercial paper of the index maturity specified in the applicable supplement as published in the H.15 Daily Update, or other recognized electronic source used for the purpose of displaying the applicable rate, under the heading Commercial Paper Nonfinancial.

If by 3:00 p.m., New York City time, on that calculation date the rate is not yet published in either H.15(519) or the H.15 Daily Update, then the calculation agent will determine the commercial paper rate to be the money market yield of the arithmetic mean of the offered rates as of 11:00 a.m., New York City

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time, on that interest determination date of three leading dealers of U.S. dollar commercial paper in The City of New York, selected by the calculation agent, after consultation with us, for commercial paper of the index maturity specified in the applicable supplement, placed for an industrial issuer whose bond rating is AA, or the equivalent, from a nationally recognized statistical rating agency.

If the dealers selected by the calculation agent are not quoting as set forth above, the commercial paper rate for that interest determination date will remain the commercial paper rate for the immediately preceding interest reset period, or, if there was no interest reset period, the rate of interest payable will be the initial interest rate.

The money market yield will be a yield calculated in accordance with the following formula:

$$\text{money market yield} = \frac{D \times 360}{360-(D \times M)} \times 100$$

where D refers to the applicable per year rate for commercial paper quoted on a bank discount basis and expressed as a decimal and M refers to the actual number of days in the interest periodfor which interest is being calculated.

EURIBOR Notes

EURIBOR notes will bear interest at the interest rates specified in the EURIBOR notes and in the applicable supplement. That interest rate will be based on EURIBOR and any spread and/or spread multiplier and may be subject to the minimum interest rate or the maximum interest rate, if any.

EURIBOR means, for any interest determination date, the rate for deposits in European Union euros as sponsored, calculated and published jointly by the European Banking Federation and ACI The Financial Market Association, or any company established by the joint sponsors for purposes of compiling and publishing those rates, for the index maturity specified in the applicable supplement as that rate appears on the display on Reuters Monitor Money Rate Service, or any successor service, on page EURIBOR01 or any other page as may replace page EURIBOR01 on that service, which is commonly referred to as Reuters Screen EURIBOR01, as of 11:00 a.m. (Brussels time).

The following procedures will be followed if the rate cannot be determined as described above:

If the above rate does not appear, the calculation agent will request the principal Euro-zone office of each of four major banks in the Euro-zone interbank market, as selected by the calculation agent, after consultation with us, to provide the calculation agent with its offered rate for deposits in European Union euros, at approximately 11:00 a.m. (Brussels time) on the interest determination date, to prime banks in the Euro-zone interbank market for the index maturity specified in the applicable supplement commencing on the applicable interest reset date, and in a principal amount not less than the equivalent of U.S.$1 million in European Union euro that is representative of a single transaction in European Union euro, in that market at that time. If at least two quotations are provided, EURIBOR will be the arithmetic mean of those quotations.

If fewer than two quotations are provided, EURIBOR will be the arithmetic mean of the rates quoted by four major banks in the Euro-zone interbank market, as selected by the calculation agent, after consultation with us, at approximately 11:00 a.m. (Brussels time), on the applicable interest reset date for loans in European Union euro to leading European banks for a period of time equivalent to the index maturity specified in the applicable supplement commencing on that interest reset date in a principal amount not less than the equivalent of U.S. $1 million in European Union euro.

If the banks so selected by the calculation agent are not quoting as set forth above, EURIBOR for that interest determination date will remain EURIBOR for the immediately preceding interest reset period, or, if there was no interest reset period, the rate of interest payable will be the initial interest rate.

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Euro-zone means the region comprising member states of the European Union that have adopted the single currency in accordance with the relevant treaty of the European Union, as amended.

Federal Funds Rate Notes

Federal funds rate notes will bear interest at the interest rates specified in the federal funds rate notes and in the applicable supplement. Those interest rates will be based on the federal funds rate and any spread and/or spread multiplier and may be subject to the minimum interest rate or the maximum interest rate, if any.

The federal funds rate means, for any interest determination date, the rate on that date for federal funds as published in H.15(519) under Federal Funds (Effective) as displayed on Reuters Monitor Money Rate Service, or any successor service, on page FEDFUNDS1 or any other page as may replace page FEDFUNDS1 on that service, which is commonly referred to as Reuters Screen FEDFUNDS1.

The following procedures will be followed if the federal funds rate cannot be determined as described above:

If the above rate is not published by 3:00 p.m., New York City time, on the calculation date, the federal funds rate will be the rate on that interest determination date as published in the H.15 Daily Update, or other recognized electronic source used for the purpose of displaying the applicable rate, under the heading Federal Funds/Effective Rate.

If the above rate is not yet published in either H.15(519) or the H.15 Daily Update by 3:00 p.m., New York City time, on the calculation date, the calculation agent will determine the federal funds rate to be the arithmetic mean of the rates for the last transaction in overnight U.S. dollar federal funds by each of three leading brokers of U.S. dollar federal funds transactions in The City of New York, selected by the calculation agent, after consultation with us, prior to 9:00 a.m., New York City time, on that interest determination date.

If the brokers selected by the calculation agent are not quoting as set forth above, the federal funds rate for that interest determination date will remain the federal funds rate for the immediately preceding interest reset period, or, if there was no interest reset period, the rate of interest payable will be the initial interest rate.

LIBOR Notes

LIBOR notes will bear interest at the interest rate specified in the LIBOR notes and in the applicable supplement. That interest rate will be based on London Interbank Offered Rate, which is commonly referred to as LIBOR, and any spread and/or spread multiplier and may be subject to the minimum interest rate or the maximum interest rate, if any. The calculation agent will determine LIBOR for each interest determination date as follows:

Unless otherwise specified in the applicable supplement, as of the interest determination date, LIBOR will be the arithmetic mean of the offered rates for deposits in the index currency having the index maturity designated in the applicable supplement, commencing on the second London banking day immediately following that interest determination date, that appear on the Designated LIBOR Page, as defined below, as of 11:00 a.m., London time, on that interest determination date, if at least two offered rates appear on the Designated LIBOR Page; except that if the specified Designated LIBOR Page, by its terms provides only for a single rate, that single rate will be used.

If (i) fewer than two offered rates appear or (ii) no rate appears and the Designated LIBOR Page by its terms provides only for a single rate, then the calculation agent will request the principal London offices of each of four major reference banks in the London interbank market, as selected by the calculation agent after consultation with us, to provide the calculation agent with its offered quotation for deposits in

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the index currency for the period of the index maturity specified in the applicable supplement commencing on the second London banking day immediately following the interest determination date or, if British pounds sterling is the index currency, commencing on that interest determination date, to prime banks in the London interbank market at approximately 11:00 a.m., London time, on that interest determination date and in a principal amount that is representative of a single transaction in that index currency in that market at that time.

If at least two quotations are provided, LIBOR determined on that interest determination date will be the arithmetic mean of those quotations. If fewer than two quotations are provided, LIBOR will be determined for the applicable interest reset date as the arithmetic mean of the rates quoted at approximately 11:00 a.m., London time, or some other time specified in the applicable supplement, in the applicable principal financial center for the country of the index currency on that interest reset date, by three major banks in that principal financial center selected by the calculation agent, after consultation with us, for loans in the index currency to leading European banks, having the index maturity specified in the applicable supplement and in a principal amount that is representative of a single transaction in that index currency in that market at that time.

If the banks so selected by the calculation agent are not quoting as set forth above, LIBOR for that interest determination date will remain LIBOR for the immediately preceding interest reset period, or, if there was no interest reset period, the rate of interest payable will be the initial interest rate.

The index currency means the currency specified in the applicable supplement as the currency for which LIBOR will be calculated, or, if the European Union euro is substituted for that currency, the index currency will be the European Union euro. If that currency is not specified in the applicable supplement, the index currency will be U.S. dollars.

Designated LIBOR Page means the display on the Reuters Monitor Money Rates Service for the purpose of displaying the London interbank rates of major banks for the applicable index currency or its designated successor.

Prime Rate Notes

Prime rate notes will bear interest at the interest rates specified in the prime rate notes and in the applicable supplement. That interest rate will be based on the prime rate and any spread and/or spread multiplier, and may be subject to the minimum interest rate or the maximum interest rate, if any.

The prime rate means, for any interest determination date, the rate on that date as published in H.15(519) under the heading Bank Prime Loan.

The following procedures will be followed if the prime rate cannot be determined as described above:

If the above rate is not published prior to 3:00 p.m., New York City time, on the calculation date, then the prime rate will be the rate on that interest determination date as published in H.15 Daily Update under the heading Bank Prime Loan.

If the rate is not published in either H.15(519) or the H.15 Daily Update by 3:00 p.m., New York City time, on the calculation date, then the calculation agent will determine the prime rate to be the arithmetic mean of the rates of interest publicly announced by each bank that appears on the Reuters Screen USPRIME 1 Page, as defined below, as that bank s prime rate or base lending rate as in effect for that interest determination date.

If fewer than four rates appear on the Reuters Screen USPRIME 1 Page by 3:00 p.m., New York City time, for that interest determination date, the calculation agent will determine the prime rate to be the arithmetic mean of the prime rates quoted on the basis of the actual number of days in the year divided by

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360 as of the close of business on that interest determination date by at least three major banks in The City of New York, which may include affiliates of the agent, selected by the calculation agent, after consultation with us.

If the banks selected by the calculation agent are not quoting as set forth above, the prime rate for that interest determination date will remain the prime rate for the immediately preceding interest reset period, or, if there was no interest reset period, the rate of interest payable will be the initial interest rate.

Reuters Screen USPRIME 1 Page means the display designated as page USPRIME 1 on the Reuters Monitor Money Rates Service, or any successor service, or any other page as may replace the USPRIME 1 Page on that service for the purpose of displaying prime rates or base lending rates of major U.S. banks.

Treasury Rate Notes

Treasury rate notes will bear interest at the interest rates specified in the Treasury rate notes and in the applicable supplement. That interest rate will be based on the Treasury rate and any spread and/or spread multiplier and may be subject to the minimum interest rate or the maximum interest rate, if any.

The Treasury rate means:

the rate from the auction held on the applicable interest determination date, which we refer to as the auction, of direct obligations of the United States, which are commonly referred to as Treasury Bills, having the index maturity specified in the applicable supplement as that rate appears under the caption INVESTMENT RATE on the display on Reuters Monitor Money Rates Service, or any successor service, on page 500 or any other page as may replace page 500 on that service, which we refer to as Reuters Screen 500, ; or

if the rate described in the first bullet point is not published by 3:00 p.m., New York City time, on the calculation date, the bond equivalent yield of the rate for the applicable Treasury Bills as published in the H.15 Daily Update, or other recognized electronic source used for the purpose of displaying the applicable rate, under the caption U.S. Government Securities/Treasury Bills/Auction High ; or

if the rate described in the second bullet point is not published by 3:00 p.m., New York City time, on the related calculation date, the bond equivalent yield of the auction rate of the applicable Treasury Bills, announced by the United States Department of the Treasury; or

if the rate referred to in the third bullet point is not announced by the United States Department of the Treasury, or if the auction is not held, the bond equivalent yield of the rate on the applicable interest determination date of Treasury Bills having the index maturity specified in the applicable supplement published in H.15(519) under the caption U.S. Government Securities/Treasury Bills/ Secondary Market ; or

if the rate referred to in the fourth bullet point is not so published by 3:00 p.m., New York City time, on the related calculation date, the rate on the applicable interest determination date of the applicable Treasury Bills as published in H.15 Daily Update, or other recognized electronic source used for the purpose of displaying the applicable rate, under the caption U.S. Government Securities/Treasury Bills/Secondary Market ; or

if the rate referred to in the fifth bullet point is not so published by 3:00 p.m., New York City time, on the related calculation date, the rate on the applicable interest determination date calculated by the calculation agent as the bond equivalent yield of the arithmetic mean of the secondary market bid rates, as of approximately 3:30 p.m., New York City time, on the applicable interest determination date, of three primary U.S. government securities dealers, selected by the calculation agent, for the issue of Treasury Bills with a remaining

maturity closest to the index maturity specified in the applicable supplement; or

if the dealers selected by the calculation agent are not quoting as set forth above, the Treasury rate for that interest determination date will remain the Treasury rate for the immediately preceding interest reset period, or, if there was no interest reset period, the rate of interest payable will be the initial interest rate.

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The bond equivalent yield means a yield calculated in accordance with the following formula and expressed as a percentage:

$$\text{bond equivalent yield} = \frac{D \times N}{360-(D \times M)} \times 100$$

In this formula, D refers to the applicable per annum rate for Treasury Bills quoted on a bank discount basis, N refers to 365 or 366, as the case may be, and M refers to the actual number of days in the interest period for which interest is being calculated.

CMT Rate Notes

CMT rate notes will bear interest at the interest rate specified in the CMT rate notes and in the applicable supplement. That interest rate will be based on the CMT rate and any spread and/or spread multiplier and may be subject to the minimum interest rate or the maximum interest rate, if any.

The CMT rate means, for any interest determination date, the rate as set forth in H.15(519) as defined below, under the caption Treasury constant maturities , for:

the rate on that interest determination date, if the Designated CMT Reuters Page, as defined below, is page FRBCMT; and

the week or the month, as applicable, ended immediately preceding the week in which the related interest determination date occurs, if the Designated CMT Reuters Page is page FEDCMT.

The following procedures will be followed if the CMT rate cannot be determined as described above:

If the CMT rate is not displayed on the relevant page by 3:30 p.m., New York City time on the related calculation date, then the CMT rate will be a percentage equal to the yield for United States Treasury securities at constant maturity for the Designated CMT Maturity Index on the related calculation date as set forth in H.15(519) under the caption Treasury constant maturities .

If the applicable rate described above does not appear in H.15(519) then the CMT rate on the related calculation date will be the rate for the Designated CMT Maturity Index as may then be published by either the Board of Governors of the Federal Reserve System or the United States Department of the Treasury that the calculation agent determines, in its sole and absolute discretion, to be comparable to the rate formerly displayed on the Designated CMT Reuters Page and published in the relevant H.15(519).

If on the related calculation date, neither the Board of Governors of the Federal Reserve System nor the United States Department of the Treasury publishes a yield on United States Treasury securities at a constant maturity for the Designated CMT Maturity Index, the CMT rate on the related calculation date will be calculated by the calculation agent and will be a yield-to-maturity based on the arithmetic mean of the secondary market bid prices at approximately 3:30 p.m., New York City time, on the related calculation date, of three leading primary United States government securities dealers in New York City. The calculation agent will select five such securities dealers, and will eliminate the highest quotation (or, in the event of equality, one of the highest) and the lowest quotation (or, in the event of equality, one of the lowest), for United States Treasury securities with an original maturity equal to the Designated CMT Maturity Index, a remaining term to maturity of no more than one year shorter than that Designated CMT Maturity Index and in a principal amount equal to the Representative Amount. If two bid prices with an original maturity as described above have remaining terms to maturity equally close to the Designated CMT Maturity Index, the quotes for the United States Treasury security with the shorter remaining term to maturity will be used. The Representative Amount means an amount equal to the outstanding principal amount of the notes.

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If fewer than five but more than two such prices are provided as requested, the CMT rate for the related calculation date will be based on the arithmetic mean of the bid prices obtained and neither the highest nor the lowest of such quotations will be eliminated.

If the calculation agent cannot obtain three United States Treasury securities quotations of the kind requested in the prior two paragraphs, the calculation agent will determine the CMT rate to be the yield to maturity based on the arithmetic mean of the secondary market bid prices for United States Treasury securities, at approximately 3:30 p.m., New York City time, on the related calculation date of three leading primary United States government securities dealers in New York City. In selecting these bid prices, the calculation agent will request quotations from at least five such securities dealers and will disregard the highest quotation (or if there is equality, one of the highest) and the lowest quotation (or if there is equality, one of the lowest) for United States Treasury securities with an original maturity greater than the Designated CMT Maturity Index, a remaining term to maturity closest to the Designated CMT Maturity Index and in a Representative Amount. If two United States Treasury securities with an original maturity longer than the Designated CMT Maturity Index have remaining terms to maturity that are equally close to the Designated CMT Maturity Index, the calculation agent will obtain quotations for the United States Treasury security with the shorter remaining term to maturity.

If fewer than five but more than two of the leading primary United States government securities dealers provide quotes as described in the prior paragraph, then the CMT rate will be based on the arithmetic mean of the bid prices obtained, and neither the highest nor the lowest of those quotations will be eliminated.

If fewer than three leading primary United States government securities reference dealers selected by the calculation agent provide quotes as described above, the CMT rate will be determined by the calculation agent acting in a commercially reasonable manner.

Designated CMT Reuters Page means the display on Reuters Monitor Money Rate Service, or any successor service, on the page designated in the applicable supplement or any other page as may replace that page on that service for the purpose of displaying Treasury Constant Maturities as reported in H.15(519). If no page is specified in the applicable supplement the Designated CMT Reuters Page will be Reuters Screen FEDCMT, for the most recent week.

Designated CMT Maturity Index means the original period to maturity of the U.S. Treasury securities, which is either 1, 2, 3, 5, 7, 10, 20 or 30 years, specified in the applicable supplement for which the CMT rate will be calculated. If no maturity is specified in the applicable supplement the Designated CMT Maturity Index will be two years.

Exchangeable Notes

We may issue notes, which we refer to as exchangeable notes, that are optionally or mandatorily exchangeable into:

the securities of an entity affiliated or not affiliated with us;

a basket of those securities;

an index or indices of those securities; or

any combination of, or the cash value of, the above.

The exchangeable notes may or may not bear interest or be issued with original issue discount or at a premium. The general terms of the exchangeable notes are described below.

Optionally Exchangeable Notes. The holder of an optionally exchangeable note may, during a period, or at a specific time or times, exchange the note for the underlying property at a specified rate of exchange. If

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specified in the applicable supplement, we will have the option to redeem the optionally exchangeable note prior to maturity. If the holder of an optionally exchangeable note does not elect to exchange the note prior to maturity or any applicable redemption date, the holder will receive the principal amount of the note plus any accrued interest at maturity or upon redemption, unless otherwise specified in the applicable supplement.

Mandatorily Exchangeable Notes. At maturity, the holder of a mandatorily exchangeable note must exchange the note for the underlying property at a specified rate of exchange, and, therefore, depending upon the value of the underlying property at maturity, the holder of a mandatorily exchangeable note may receive less than the principal amount of the note at maturity. If so indicated in the applicable supplement, the specified rate at which a mandatorily exchangeable note may be exchanged may vary depending on the value of the underlying property so that, upon exchange, the holder participates in a percentage, which may be less than, equal to, or greater than 100% of the change in value of the underlying property. Mandatorily exchangeable notes may include notes where we have the right, but not the obligation, to require holders of notes to exchange their notes for the underlying property.

Payments upon Exchange. The applicable supplement will specify whether upon exchange, at maturity or otherwise, the holder of an exchangeable note may receive, at the specified exchange rate, either the underlying property or the cash value of the underlying property. The underlying property may be the securities of either U.S. entities or foreign entities or both. The exchangeable notes may or may not provide for protection against fluctuations in the exchange rate between the currency in which that note is denominated and the currency or currencies in which the market prices of the underlying security or securities are quoted. Exchangeable notes may have other terms, which will be specified in the applicable supplement.

Special Requirements for Exchange of Global Notes. If an optionally exchangeable note is represented by a global note, the Depositary s nominee will be the holder of that note and therefore will be the only entity that can exercise a right to exchange. In order to ensure that the Depositary s nominee will timely exercise a right to exchange a particular note or any portion of a particular note, the beneficial owner of the note must instruct the broker or other direct or indirect participant through which it holds an interest in that note to notify the Depositary of its desire to exercise a right to exchange. Different firms have different deadlines for accepting instructions from their customers. Each beneficial owner should consult the broker or other participant through which it holds an interest in a note in order to ascertain the deadline for ensuring that timely notice will be delivered to the Depositary.

Payments upon Acceleration of Maturity. If the principal amount payable at maturity of any exchangeable note is declared due and payable prior to maturity, the amount payable on:

an optionally exchangeable note will equal the face amount of the note plus accrued interest, if any, to but excluding the date of payment, except that if a holder has exchanged an optionally exchangeable note prior to the date of acceleration without having received the amount due upon exchange, the amount payable will be an amount in cash equal to the amount due upon exchange and will not include any accrued but unpaid interest; and

a mandatorily exchangeable note will equal an amount determined as if the date of acceleration were the maturity date plus accrued interest, if any, to but excluding the date of payment.

Notes Linked to Commodities, Rates, Single Securities, Baskets of Securities, Indices and other Quantitative Measures

We may issue notes where the principal amount payable on any principal payment date and/or the amount of interest payable on any interest payment date is determined by reference to one or more commodities, rates, debt or equity securities, or other debt or equity instruments of entities affiliated or not affiliated with us, baskets of those securities or an index or indices of those securities, quantitative measures associated with an occurrence,

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extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value. We may also issue notes whose return is determined by reference to a combination or basket of such Reference Assets, including combinations of (i) equity indices or securities and commodities, (ii) equity indices or securities, currencies and commodities and (iii) commodities and currencies. All such notes may include other terms, which will be specified in the relevant supplement.

Currency-Linked Notes

We may issue notes with the principal amount payable on any principal payment date and/or the amount of interest payable on any interest payment date to be determined by reference to the value of one or more currencies as compared to the value of one or more other currencies, which we refer to as currency-linked notes. The supplement will specify the following:

- information as to the one or more currencies to which the principal amount payable on any principal payment date or the amount of interest payable on any interest payment date is linked or indexed;
- the currency in which the face amount of the currency-linked note is denominated, which we refer to as the denominated currency;
- the currency in which principal on the currency-linked note will be paid, which we refer to as the payment currency;
- the interest rate per annum and the dates on which we will make interest payments, if any;
- specific historic exchange rate information and certain currency risks relating to the specific currencies selected; and
- additional tax considerations, if any.

The denominated currency and the payment currency may be the same currency or different currencies. Interest on currency-linked notes, if any, will be paid in the denominated currency.

Redemptions and Repurchases of Notes

Optional Redemption. The supplement will indicate the terms of our option to redeem the notes, if any. We will mail a notice of redemption to each holder or, in the case of global notes, to the Depositary, as holder of the global notes, by first-class mail, postage prepaid, at least 30 days and not more than 60 days prior to the date fixed for redemption, or within the redemption notice period designated in the applicable supplement, to the address of each holder as that address appears upon the books maintained by the paying agent. The notes will not be subject to any sinking fund.

Repurchase at Option of Holder. If applicable, the supplement relating to each note will indicate that the holder has the option to have us repurchase the note on a date or dates specified prior to its maturity date. Unless otherwise specified in the applicable supplement, the repurchase price will be equal to 100% of the principal amount of the note, together with accrued interest to the date of repurchase. For notes issued with original issue discount, the supplement will specify the amount payable upon repurchase. Minimum notice and confirmation of the holder s exercise of the repurchase option must be given in the manner and at the time specified in the applicable supplement.

Exercise of the repurchase option by the holder of a note will be irrevocable. The holder may exercise the repurchase option for less than the entire principal amount of the note but, in that event, the principal amount of the note remaining outstanding after repurchase must be an authorized denomination.

Special Requirements for Optional Repurchase of Global Notes. If a note is represented by a global note, the Depositary or the Depositary s nominee will be the holder of the note and therefore will be the only entity

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that can exercise a right to repurchase. In order to ensure that the Depositary s nominee will timely exercise a right to repurchase of a particular note, the beneficial owner of the note must instruct the broker or other direct or indirect participant through which it holds an interest in the note to notify the Depositary of its desire to exercise a right to repurchase. Different firms have different cut-off times for accepting instructions from their customers and, accordingly, each beneficial owner should consult the broker or other direct or indirect participant through which it holds an interest in a note in order to ascertain the cut-off time by which an instruction must be given in order for timely notice to be delivered to the Depositary.

Open Market Purchases. We or our affiliates may purchase the notes at any price in the open market, by tender offer or by private agreement. Notes so purchased by us may, at our discretion, be held or resold or surrendered to the trustee for cancellation.

Ranking

The notes will be senior unsecured indebtedness of SunTrust Banks, Inc. and rank equally with our other senior unsecured indebtedness and will be effectively subordinate to our secured indebtedness. Because we are a holding company, our right to participate in any distribution of the assets of our banking or nonbanking subsidiaries, upon a subsidiary s dissolution, winding-up, liquidation or reorganization or otherwise, and thus the ability of a holder of notes to benefit indirectly from such distribution, is subject to the prior claims of creditors of any such subsidiary, except to the extent that we may be a creditor of that subsidiary and our claims are recognized. There are legal limitations on the extent to which some of our subsidiaries may extend credit, pay dividends or otherwise supply funds to, or engage in transactions with, us or some of our other subsidiaries. Our subsidiaries are separate and distinct legal entities and have no obligation, contingent or otherwise, to pay amounts due under our contracts or otherwise to make any funds available to us. Accordingly, the notes effectively will be subordinated to all existing and future liabilities of our subsidiaries.

Events of Default, Waiver and Notice

An event of default, when used in the Indenture, means any of the following:

- non-payment of interest on the notes for 30 days after such payment becomes due;
- non-payment of the principal on the notes when due;
- our failure for 90 days after notice in performing any other covenant or warranty in the Indenture;
- bankruptcy of us; or
- receivership of our subsidiary SunTrust Bank.

If an event of default under the Indenture occurs and continues with respect to the Series A medium-term notes, the trustee or the holders of at least 25% in aggregate principal amount of the outstanding Series A medium-term notes may declare the entire principal and all accrued but unpaid interest of all Series A medium-term notes to be due and payable immediately. If such a declaration occurs, the holders of a majority of the aggregate principal amount of the outstanding Series A medium-term notes can, subject to certain conditions, rescind the declaration.

The holders of a majority in aggregate principal amount of the outstanding Series A medium-term notes may waive any past default with respect to the Series A medium-term notes, except:

- a default in payment of principal or interest; or

a default under any provision of the Indenture that itself cannot be modified or amended without the consent of the holder of each outstanding note.

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The holders of a majority in principal amount of the Series A medium-term notes shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee with respect to the Series A medium-term notes.

We are required to file an officers certificate with the trustee each year that states, to the knowledge of the certifying officer, whether or not any defaults exist under the terms of the Indenture.

Limitations on Mergers and Sales of Assets

The Indenture generally permits a consolidation or merger between us and another entity. It also permits the sale or transfer by us of all or substantially all of our property and assets. These transactions are permitted if:

- the resulting or acquiring entity, if other than us, is organized and existing under the laws of a domestic jurisdiction and assumes all of our responsibilities and liabilities under the Indenture, including the payment of all amounts due on the notes and performance of the covenants in the Indenture;
- immediately after the transaction, and giving effect to the transaction, no event of default under the Indenture exists; and
- certain other conditions as prescribed in the Indenture are met.

If we consolidate or merge with or into any other entity or sell or lease all or substantially all of our assets according to the terms and conditions of the Indenture, the resulting or acquiring entity will be substituted for us in such Indenture with the same effect as if it had been an original party to the Indenture. As a result, such successor entity may exercise our rights and powers under the Indenture, in our name and, except in the case of a lease of all or substantially all of our properties and assets, we will be released from all our liabilities and obligations under the Indenture and under the notes.

Covenants

The Indenture contains a covenant that if there shall have occurred any event of which we have actual knowledge that (1) with the giving of notice or the lapse of time or both, would constitute an event of default with respect to the notes and (2) in respect of which we have not taken reasonable steps to cure, we shall not, and shall not permit any of our subsidiaries to:

- declare or pay any dividends or distributions on any shares of our capital stock, or redeem, purchase, acquire or make a liquidation payment with respect to, any shares of our preferred stock;
- make any payment of principal or interest or premium, if any, on or repay, repurchase or redeem any of our debt securities that rank pari passu in all respects with or junior in interest to the notes (except for partial payments of interest with respect to the notes); or
- make any guarantee payments with respect to any guarantee by us of the debt securities of any of our subsidiaries that by their terms rank pari passu in all respects with or junior in interest to the notes.

This covenant is subject to certain exceptions described in the Indenture.

Restriction on Disposition of Voting Stock of Certain Subsidiaries

Under the Indenture, we have agreed not to sell, assign, pledge, transfer or otherwise dispose of any shares of capital stock of any principal subsidiary bank or any securities convertible into or rights to subscribe to such capital stock unless after giving effect to such transaction we would own, directly or indirectly, at least 80% of the outstanding shares of capital stock of each class of capital stock of such principal subsidiary bank. We additionally agreed not to pay any dividend or distribution in capital stock of any principal subsidiary bank unless such

principal subsidiary bank unconditionally guarantees payment of principal and interest on the notes.

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The indenture defines a principal subsidiary bank as any subsidiary bank, the consolidated assets of which constitute 50% or more of our consolidated assets. As of the date of this prospectus supplement, SunTrust Bank was the only subsidiary bank that is a principal subsidiary bank under the Indenture.

Notwithstanding the foregoing, this covenant does not prohibit:

- any dispositions made by us or any subsidiary (a) acting in a fiduciary capacity for any person other than us or any subsidiary or (b) to us or any of our wholly-owned subsidiaries; or
- the merger or consolidation of a principal subsidiary bank with and into another principal subsidiary bank.

This covenant also does not prohibit sales, assignments, pledges, transfers or other dispositions of voting stock of a principal subsidiary bank where:

- the sale, assignment, pledge, transfer or other disposition is made, in the minimum amount required by law, to any person for the purpose of the qualification of such person to serve as a director; or
- the sale, assignment, pledge, transfer or other disposition is made in compliance with an order of a court or regulatory authority of competent jurisdiction or as a condition imposed by any such court or regulatory authority to the acquisition by us, directly or indirectly, of any other corporation or entity; or
- the sale, assignment, pledge, transfer or other disposition of voting stock or any other securities convertible into or rights to subscribe to voting stock of a principal subsidiary bank as long as (a) such transaction is made for fair market value as determined by our board of directors or the board of directors of the subsidiary disposing of such voting stock or securities and (b) after giving effect to such transaction and to any potential dilution, we and our directly or indirectly wholly owned subsidiaries will own, directly or indirectly, at least 80% of the voting stock of such principal subsidiary bank; or
- any principal subsidiary bank sells additional shares of its voting stock to shareholders at any price, so long as immediately after such sale we will own, directly or indirectly, at least as great a percentage of the voting stock of such principal subsidiary bank as we owned prior to the sale of such additional shares; or
- a pledge is made or a lien is created to secure loans or other extensions of credit by a principal subsidiary bank subject to Section 23A of the Federal Reserve Act.

Defeasance and Covenant Defeasance; Discharge

The Indenture provides that we may deposit in trust with the trustee cash and/or government securities in an amount sufficient, without reinvestment, to pay all sums due on the notes. If we make this deposit, then, at our option, we:

- will be deemed to have satisfied and paid all of our obligations in respect of the notes; or
- will not need to comply with certain restrictive covenants contained in the Indenture and the occurrence of a covenant default will no longer be an event of default with respect to the notes, which we refer to as covenant defeasance.

Such a trust may only be established if, among other things,

- no event of default exists or occurs as a result of such deposit; and
- we deliver an opinion of counsel to the effect that the holders will not recognize income, gain or loss for federal income tax purposes as a result of such deposit.

If we exercise our covenant defeasance option with respect to the notes and the maturity of the notes is accelerated upon an event of default, the amount of cash and government securities on deposit with the trustee may not be sufficient to pay amounts due on the notes at the time of the acceleration. However, we will remain liable with respect to such payments.

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In addition, the Indenture will cease to be of further effect with respect to the notes, except as to rights of registration of transfer and exchange, substitution of mutilated or defaced notes, rights of holders to receive principal, interest or other amounts payable under the notes, rights and immunities of the trustee and rights of holders with respect to property deposited pursuant to the following provisions, if at any time:

- we have paid the principal, interest or other amounts payable under the Series A medium-term notes;
- we have delivered to the trustee for cancellation all Series A medium-term notes; or
- the Series A medium-term notes not delivered to the trustee for cancellation have become due and payable, or will become due and payable within one year, or are to be called for redemption within one year under arrangements satisfactory to the trustee, and we have irrevocably deposited with the trustee as trust funds the entire amount in cash or U.S. government obligations sufficient to pay all amounts due with respect to such debt securities on or after the date of such deposit, including at maturity or upon redemption of all such Series A medium-term notes, including principal, interest and other amounts.

Modification of the Indenture

Under the Indenture, certain of our rights and obligations and certain of the rights of holders of the notes may be modified or amended with the consent of the holders of at least a majority of the aggregate principal amount of the outstanding notes. However, the following modifications and amendments will not be effective against any holder without its consent:

- a change in the stated maturity date of any payment of principal or interest, including any additional interest;
- a reduction in or change in the manner of calculating payments due on the notes;
- a change in the place of payment or currency in which any payment on the notes is payable;
- a limitation of a holder s right to sue us for the enforcement of payments due on the notes;
- a reduction in the percentage of outstanding notes required to consent to a modification or amendment of the Indenture or required to consent to a waiver of compliance with certain provisions of the Indenture or certain defaults under the Indenture;
- a reduction in the requirements contained in the Indenture for quorum or voting; and
- a modification of any of the foregoing requirements contained in the Indenture.

Under the Indenture, the holders of at least a majority of the aggregate principal amount of the outstanding notes may waive compliance by us with any covenant or condition contained in the Indenture.

We and the trustee may execute, without the consent of any holder of notes, any supplemental indenture for the purposes of:

evidencing the succession of another corporation to us, and the assumption by such successor of our covenants contained in the Indenture and the notes;

adding covenants by us for the benefit of the holders of the notes, transferring any property to or with the trustee or surrendering any of our rights or powers under the Indenture;

adding any additional events of default for the notes;

changing or eliminating any restrictions on the payment of principal or premium, if any, on notes in registered form, provided that any such action shall not adversely affect the interests of the holders of the notes of any series in any material respect;

evidencing and providing for the acceptance of appointment under the Indenture by a successor trustee with respect to the notes;

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curing any ambiguity, correcting or supplementing any provision in the Indenture that may be defective or inconsistent with any other provision therein or making any other provisions with respect to matters or questions arising under the Indenture that shall not be inconsistent with any provision therein, provided that such other provisions shall not adversely affect the interests of the holders of the notes in any material respect;

adding to, changing or eliminating any provision of the Indenture as shall be necessary or desirable in accordance with any amendments to the Trust Indenture Act;

supplementing any provision of the Indenture as shall be necessary to permit or facilitate the defeasance and discharge of the notes in accordance with the Indenture, provided that such action shall not adversely affect the interests of any of the holders of the notes in any material respect; or

conforming the terms of the Indenture and the notes to the description of the notes in this prospectus supplement or any supplement, in the manner provided in the Indenture.

Replacement of Notes

At the expense of the holder, we may, in our discretion replace any notes that become mutilated, destroyed, lost or stolen or are apparently destroyed, lost or stolen. The mutilated notes must be delivered to the trustee, the paying agent and the registrar, in the case of registered notes, or satisfactory evidence of the destruction, loss or theft of the notes must be delivered to us, the paying agent, the registrar, in the case of registered notes, and the trustee. At the expense of the holder, an indemnity that is satisfactory to us, the paying agent, the registrar, in the case of registered notes, and the trustee may be required before a replacement note will be issued.

Governing Law

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

The Trustee

U.S. Bank National Association will act as trustee for the notes. The trustee will have all of the duties and responsibilities specified under the Trust Indenture Act. Other than its duties in a case of default, the trustee is under no obligation to exercise any of the powers under the Indenture at the request, order or direction of any holders of notes unless offered reasonable indemnification.

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THE DEPOSITARY

We and the agent will agree on the form of notes to be issued in respect of any tranche of notes. We may elect to issue notes in the form of one or more master global notes. A master global note will evidence the indebtedness of SunTrust Banks, Inc. under one or more notes issued or to be issued under the indenture. The terms of each note evidenced by a master global note shall be identified on the records of SunTrust Banks, Inc maintained by the paying agent. At the request of the registered owner of a master global note, we shall promptly issue and deliver one or more separate note certificates evidencing each note evidenced by the master global note.

The Depository Trust Company will be designated as the depositary for any registered global note. Each registered global note will be registered in the name of Cede & Co., the Depositary s nominee.

The Depositary has advised us as follows: the Depositary is a limited-purpose trust company organized under the New York Banking Law, a banking organization within the meaning of the New York Banking Law, a member of the Federal Reserve System, a clearing corporation within the meaning of the New York Uniform Commercial Code and a clearing agency registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, as amended. The Depositary holds securities deposited with it by its participants, and it facilitates the settlement of transactions among its participants in those securities through electronic computerized book-entry changes in participants accounts, eliminating the need for physical movement of securities certificates. The Depositary s direct participants include both U.S. and non-U.S. securities brokers and dealers (including the agents), banks, trust companies, clearing corporations and other organizations, some of whom and/or their representatives own the Depositary. Access to the Depositary s book-entry system is also available to others, such as banks, both U.S. and non-U.S. brokers, dealers, trust companies and clearing corporations that clear through or maintain a custodial relationship with a participant, either directly or indirectly. The rules applicable to the Depositary and its participants are on file with the SEC. Purchases of the securities under the Depositary s system must be made by or through its direct participants, which will receive a credit for the securities on the Depositary s records. The ownership interest of each actual purchaser of each security (the beneficial owner) is in turn to be recorded on the records of direct and indirect participants. Beneficial owners will not receive written confirmation from the Depositary of their purchase, but beneficial owners are expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the direct or indirect participants through which the beneficial owner entered into the transaction. Transfers of ownership interests in the securities are to be made by entries on the books of direct and indirect participants acting on behalf of beneficial owners. Beneficial owners will not receive certificates representing their ownership interests in securities, except in the event that use of the book-entry system for the securities is discontinued.

To facilitate subsequent transfers, all securities deposited with the Depositary are registered in the name of the Depositary s partnership nominee, Cede & Co, or such other nominee as may be requested by the Depositary. The deposit of securities with the Depositary and their registration in the name of Cede & Co. or such other nominee of the Depositary do not effect any change in beneficial ownership.

The Depositary has no knowledge of the actual beneficial owners of the securities; the Depositary s records reflect only the identity of the direct participants to whose accounts the securities are credited, which may or may not be the beneficial owners. The participants will remain responsible for keeping account of their holdings on behalf of their customers. Conveyance of notices and other communications by the Depositary to direct participants, by direct participants to indirect participants, and by direct participants and indirect participants to beneficial owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Neither the Depositary nor Cede & Co. (nor such other nominee of the Depositary) will consent or vote with respect to the securities unless authorized by a direct participant in accordance with the Depositary s procedures. Under its usual procedures, the Depositary mails an omnibus proxy to us as soon as possible after the

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applicable record date. The omnibus proxy assigns Cede & Co. s consenting or voting rights to those direct participants identified in a listing attached to the omnibus proxy to whose accounts the securities are credited on the record date.

Redemption proceeds, distributions, and dividend payments on the securities will be made to Cede & Co. or such other nominee as may be requested by the Depositary. The Depositary s practice is to credit direct participants accounts upon the Depositary s receipt of funds and corresponding detail information from us or any agent of ours, on the date payable in accordance with their respective holdings shown on the Depositary s records. Payments by participants to beneficial owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in street name, and will be the responsibility of such participant and not of the Depositary or its nominee, the trustee, any agent of ours, or us, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. or such other nominee as may be requested by the Depositary is our responsibility or the responsibility of any paying agent of ours, disbursement of such payments to direct participants will be the responsibility of the Depositary, and disbursement of such payments to the beneficial owners will be the responsibility of direct and indirect participants.

If the Depositary for any of these securities represented by a registered global security is at any time unwilling or unable to continue as depositary or ceases to be a clearing agency registered under the Securities Exchange Act of 1934, and a successor depositary registered as a clearing agency under the Securities Exchange Act of 1934 is not appointed by us within 90 days, we will issue securities in definitive form in exchange for the registered global security that had been held by the Depositary. In addition, the Indenture permits us at any time and in our sole discretion to decide not to have any of the securities represented by one or more registered global securities. DTC has advised us that, under its current practices, it would notify its participants of our request, but will only withdraw beneficial interests from the global note at the request of each DTC participant. We would issue definitive certificates in exchange for any such interests withdrawn. Any securities issued in definitive form in exchange for global security will be registered in the name or names that the Depositary gives to the trustee or other relevant agent of ours or theirs. It is expected that the Depositary s instructions will be based upon directions received by the Depositary from participants with respect to ownership of beneficial interests in the registered global security that had been held by the Depositary.

According to the Depositary, the foregoing information relating to the Depositary has been provided to the financial community for informational purposes only and is not intended to serve as a representation, warranty or contract modification of any kind.

The information in this section concerning the Depositary and Depositary s book-entry system has been obtained from sources we believe to be reliable, but we take no responsibility for the accuracy thereof. The Depositary may change or discontinue the foregoing procedures at any time.

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NOTES OFFERED ON A GLOBAL BASIS

If we offer any of the notes under our MTN Program on a global basis, we will so specify in the applicable supplement. The additional information contained in this section under Book Entry, Delivery and Form and Global Clearance and Settlement Procedures will apply to every offering on a global basis.

Book-Entry, Delivery and Form

The notes will be issued in the form of one or more fully registered global notes which will be deposited with, or on behalf of, the Depositary and registered in the name of Cede & Co., the Depositary s nominee. Beneficial interests in the registered global notes will be represented through book-entry accounts of financial institutions acting on behalf of beneficial owners as direct and indirect participants in the Depositary. Investors may elect to hold interests in the registered global notes held by the Depositary through Clearstream Banking, société anonyme, Luxembourg, known as Clearstream, or the Euroclear Bank S.A./N.V., as operator of the Euroclear system, known as Euroclear operator, if they are participants in those systems, or indirectly through organizations which are participants in those systems. Clearstream, Luxembourg and the Euroclear operator will hold interests on behalf of their participants through customers securities accounts in Clearstream, Luxembourg s and the Euroclear operator s names on the books of their respective depositaries, which in turn will hold such interests in the registered global notes in customers securities accounts in the depositaries names on the books of the Depositary. Citibank, N.A. will act as depositary for Clearstream, Luxembourg and JPMorgan Chase Bank will act as depositary for the Euroclear operator. We refer to each of Citibank, N.A. and JPMorgan Chase Bank, acting in this depositary capacity, as the U.S. depositary for the relevant clearing system. Except as set forth below, the registered global notes may be transferred, in whole but not in part, only to the Depositary, another nominee of the Depositary or to a successor of the Depositary or its nominee.

Clearstream, Luxembourg advises that it is incorporated under the laws of Luxembourg as a bank. Clearstream, Luxembourg holds securities for its customers, Clearstream, Luxembourg customers, and facilitates the clearance and settlement of securities transactions between Clearstream, Luxembourg customers through electronic book-entry transfers between their accounts, thereby eliminating the need for physical movement of securities. Clearstream, Luxembourg provides to Clearstream, Luxembourg customers, among other things, services for safekeeping, administration, clearance and settlement of internationally traded securities and securities lending and borrowing. Clearstream, Luxembourg interfaces with domestic securities markets in over 39 countries through established depository and custodial relationships. As a bank, Clearstream, Luxembourg is subject to regulation by the Luxembourg Commission for the Supervision of the Financial Sector (Commission de Surveillance du Secteur Financier). Clearstream, Luxembourg customers are world-wide financial institutions, including underwriters, securities brokers and dealers, banks, trust companies and clearing corporations. Clearstream, Luxembourg s U.S. customers are limited to securities brokers and dealers and banks. Indirect access to Clearstream, Luxembourg is also available to other institutions such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a Clearstream, Luxembourg customer. Clearstream, Luxembourg has established an electronic bridge with the Euroclear operator to facilitate settlement of trades between Clearstream, Luxembourg and the Euroclear operator.

Distribution with respect to the notes held through Clearstream, Luxembourg will be credited to cash accounts of Clearstream, Luxembourg customers in accordance with its rules and procedures, to the extent received by the U.S. depositary for Clearstream, Luxembourg.

The Euroclear operator advises that the Euroclear System was created in 1968 to hold securities for its participants, Euroclear participants, and to clear and settle transactions between Euroclear participants through simultaneous electronic book-entry delivery against payment, thereby eliminating the need for physical movement of certificates and any risk from lack of simultaneous transfers of securities and cash. The Euroclear System provides various other services, including securities lending and borrowing and interfaces with domestic markets in several countries. The Euroclear System is operated by the Euroclear operator, under contract with

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Euroclear Clearance Systems S.C., a Belgian cooperative corporation, which we refer to as the cooperative. All operations are conducted by the Euroclear operator, and all Euroclear securities clearance accounts and Euroclear cash accounts are accounts maintained with the Euroclear operator, not the cooperative. The cooperative establishes policy for the Euroclear System on behalf of Euroclear participants. Euroclear participants include banks (including central banks), securities brokers and dealers and other professional financial intermediaries. Indirect access to the Euroclear System is also available to other firms that clear through or maintain a custodial relationship with a Euroclear participant, either directly or indirectly. The Euroclear operator is a Belgian banking corporation which is regulated and examined by the Belgian Banking and Finance Commission and the National Bank of Belgium. Securities clearance accounts and cash accounts with the Euroclear operator are governed by the Terms and Conditions Governing Use of Euroclear and the related Operating Procedures of the Euroclear System, and applicable Belgian law, collectively, the terms and conditions. The terms and conditions govern transfers of securities and cash within the Euroclear System, withdrawals of securities and cash from the Euroclear System, and receipts of payments with respect to securities in the Euroclear System. All securities in the Euroclear System are held on a fungible basis without attribution of specific certificates to specific securities clearance accounts. The Euroclear operator acts under the terms and conditions only on behalf of Euroclear participants and has no record of or relationship with persons holding through Euroclear participants.

Distributions with respect to the notes held beneficially through the Euroclear System will be credited to the cash accounts of Euroclear participants in accordance with the terms and conditions, to the extent received by the U.S. depositary for the Euroclear operator.

The Euroclear operator further advises that investors that acquire, hold and transfer interests in the notes by book-entry through accounts with the Euroclear operator or any other securities intermediary are subject to the laws and contractual provisions governing their relationship with their intermediary, as well as the laws and contractual provisions governing the relationship between their intermediary and each other intermediary, if any, standing between themselves and the registered global notes.

The Euroclear operator advises that, under Belgian law, investors that are credited with securities on the records of the Euroclear operator have a co-property right in the fungible pool of interests in securities on deposit with the Euroclear operator in an amount equal to the amount of interests in securities credited to their accounts. In the event of the insolvency of the Euroclear operator, Euroclear participants would have a right under Belgian law to the return of the amount and type of interests in securities credited to their accounts with the Euroclear operator. If the Euroclear operator does not have a sufficient amount of interests in securities on deposit of a particular type to cover the claims of all participants credited with interests in securities of that type on the Euroclear operator s records, all participants having an amount of interests in securities of that type credited to their accounts with the Euroclear operator will have the right under Belgian law to the return of their pro-rata share of the amount of interests in securities actually on deposit.

Under Belgian law, the Euroclear operator is required to pass on the benefits of ownership in any interests in securities on deposit with it (such as dividends, voting rights and other entitlements) to any person credited with those interests in securities on its records.

If Euroclear or Clearstream, Luxembourg is at any time unwilling or unable to continue as depositary with respect to the notes, and a successor depositary is not appointed by us within 90 days, we will issue notes in definitive form in exchange for the registered global notes that had been held by the Euroclear operator and Clearstream, Luxembourg. In addition, we may decide not to have the notes represented by one or more global notes. Euroclear and Clearstream, Luxembourg have advised us that, under their current practices, they would notify their participants of our request, but will only withdraw beneficial interests from the global notes at the request of each Euroclear and Clearstream, Luxembourg participant. We would issue definitive certificates in exchange for any such interests withdrawn. Any notes issued in definitive form in exchange for a global note will be registered in the name or names that Euroclear and Clearstream, Luxembourg give to the trustee or other relevant agent of ours or theirs. It is expected that Euroclear s and Clearstream, Luxembourg s instructions will

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be based upon directions received by Euroclear and Clearstream, Luxembourg from participants with respect to ownership of beneficial interests in the registered global note that had been held by Euroclear and Clearstream, Luxembourg. Title to book-entry interests in the notes will pass by book-entry registration of the transfer within the records of Clearstream, Luxembourg, the Euroclear operator or the Depositary, as the case may be, in accordance with their respective procedures. Book-entry interests in the notes may be transferred within Clearstream, Luxembourg and within the Euroclear System and between Clearstream, Luxembourg and the Euroclear System in accordance with procedures established for these purposes by Clearstream, Luxembourg and the Euroclear operator. Book-entry interests in the notes may be transferred within the Depositary in accordance with procedures established for this purpose by the Depositary. Transfers of book-entry interests in the notes among Clearstream, Luxembourg and the Euroclear operator and the Depositary may be effected in accordance with procedures established for this purpose by Clearstream, Luxembourg, the Euroclear operator and the Depositary.

A further description of the Depositary s procedures with respect to the registered global notes is set forth under The Depositary. The Depositary has confirmed to us and the trustee that it intends to follow these procedures.

Global Clearance and Settlement Procedures

Initial settlement for the notes offered on a global basis will be made in immediately available funds. Secondary market trading between the Depositary s participants will occur in the ordinary way in accordance with the Depositary s rules and will be settled in immediately available funds using the Depositary s Same-Day Funds Settlement System. Secondary market trading between Clearstream, Luxembourg customers and/or Euroclear participants will occur in the ordinary way in accordance with the applicable rules and operating procedures of Clearstream, Luxembourg and the Euroclear System and will be settled using the procedures applicable to conventional Eurobonds in immediately available funds.

Cross-market transfers between persons holding directly or indirectly through the Depositary on the one hand, and directly or indirectly through Clearstream, Luxembourg customers or Euroclear participants, on the other, will be effected through the Depositary in accordance with the Depositary s rules on behalf of the relevant European international clearing system by its U.S. depositary; however, these cross-market transactions will require delivery of instructions to the relevant European international clearing system by the counterparty in the clearing system in accordance with its rules and procedures and within its established deadlines (European time). The relevant European international clearing system will, if the transaction meets its settlement requirements, deliver instructions to its U.S. depositary to take action to effect final settlement on its behalf by delivering interests in the notes to or receiving interests in the notes from the Depositary, and making or receiving payment in accordance with normal procedures for same-day funds settlement applicable to the Depositary. Clearstream, Luxembourg customers and Euroclear participants may not deliver instructions directly to their respective U.S. depositaries. Because of time-zone differences, credits of interests in the securities received in Clearstream, Luxembourg or the Euroclear System as a result of a transaction with a Depositary participant will be made during subsequent securities settlement processing and dated the business day following the Depositary settlement date. Credits of interests or any transactions involving interests in the notes received in Clearstream, Luxembourg or the Euroclear System as a result of a transaction with a Depositary participant and settled during subsequent securities settlement processing will be reported to the relevant Clearstream, Luxembourg customers or Euroclear participants on the business day following the Depositary settlement date. Cash received in Clearstream, Luxembourg or the Euroclear System as a result of sales of interests in the notes by or through a Clearstream, Luxembourg customer or a Euroclear participant to a Depositary participant will be received with value on the Depositary settlement date but will be available in the relevant Clearstream, Luxembourg or Euroclear cash account only as of the business day following settlement in the Depositary.

Although the Depositary, Clearstream, Luxembourg and the Euroclear operator have agreed to the foregoing procedures in order to facilitate transfers of interests in the notes among participants of the Depositary,

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Clearstream, Luxembourg and Euroclear, they are under no obligation to perform or continue to perform the foregoing procedures and these procedures may be changed or discontinued at any time.

Notices

Notices to holders of the notes will be given by mailing such notices to each holder by first class mail, postage prepaid, at the respective address of each holder as that address appears upon our books. Notices given to the Depositary, as holder of the registered global securities, will be passed on to the beneficial owners of the notes in accordance with the standard rules and procedures of the Depositary and its direct and indirect participants, including Clearstream, Luxembourg and the Euroclear operator.

See also Plan of Distribution Notes Offered on a Global Basis.

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SPONSORS OR ISSUERS AND REFERENCE ASSET

The notes have not been passed on by the sponsor or issuer of the instrument or instruments underlying the Reference Asset as to their legality or suitability. The notes are not issued by and are not financial or legal obligations of the sponsor or issuer of the instrument or instruments underlying the Reference Asset. The sponsor or issuer of the instrument or instruments underlying the Reference Asset makes no warranties and bears no liabilities with respect to the notes. This prospectus supplement relates only to the notes offered by the applicable pricing supplement and does not relate to any security of an underlying issuer.

If the Reference Asset is one or more U.S. equity securities, note that companies with securities registered under the Securities Exchange Act of 1934, as amended (the Exchange Act) are required to file periodically certain financial and other information specified by the SEC. Information provided to or filed with the SEC can be inspected and copied at the public reference facilities maintained by the SEC at Room 1580, 100 F Street, N.E., Washington, D.C. 20549, and copies of such material can be obtained from the Public Reference Section of the SEC, 100 F Street, N.E., Washington, D.C. 20549, at prescribed rates. You may obtain information on the operation of the public reference room by calling the SEC at l-800-SEC-0330. In addition, information provided to or filed with the SEC electronically can be accessed through a website maintained by the SEC. The address of the SEC s website is http://www.sec.gov. Information provided to or filed with the SEC pursuant to the Exchange Act by a company issuing a Reference Asset can be located by reference to the SEC file number provided in the applicable pricing supplement. In addition, information regarding such a company may be obtained from other sources including, but not limited to, press releases, newspaper articles and other publicly disseminated documents. We make no representation or warranty as to the accuracy or completeness of such information.

We do not make any representation or warranty as to the accuracy or completeness of any materials referred to above, including any filings made by the issuer of the Reference Asset with the SEC. In connection with any issuance of notes under this prospectus supplement, neither we nor the agent has participated in the preparation of the above-described documents or made any due diligence inquiry with respect to the sponsor or issuer of the Reference Asset. Neither we nor the agent makes any representation that such publicly available documents or any other publicly available information regarding the sponsor or issuer of the Reference Asset is accurate or complete. Furthermore, we cannot give any assurance that all events occurring prior to the date hereof (including events that would affect the accuracy or completeness of the publicly available documents described herein) that would affect the trading level or price of the Reference Asset (and therefore the price of such Reference Asset at the time we price the notes) have been publicly disclosed. Subsequent disclosure of any such events or the disclosure of or failure to disclose material future events concerning the sponsor or issuer of the Reference Asset could affect the value received at maturity with respect to the notes and therefore the price of the notes.

USE OF PROCEEDS AND HEDGING

The net proceeds we receive from the sale of the notes will be used for general corporate purposes and, in part, in connection with hedging our obligations under the notes through one or more of our subsidiaries. The original public offering price of the notes will include the agent discount or commission and structuring and development costs indicated in the applicable supplement. The original public offering price of the notes will also include the estimated cost of hedging our obligations under the notes. The cost of hedging includes the projected profit that our affiliates expect to realize in consideration for assuming the risks inherent in managing the hedging transactions. Because hedging our obligations entails risk and may be influenced by market forces beyond our or our affiliates control, such hedging may result in a profit that is more or less than initially projected, or could result in a loss.

On or prior to the pricing date, we, through our affiliates or others, expect to hedge our anticipated exposure in connection with the notes by taking positions in the instrument or instruments comprising the

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Reference Asset, in option or futures contracts relating to such instrument or instruments listed on major securities or futures markets, in other types of derivative instruments relating to such instrument or instruments, or in any other available securities, commodities or instruments that we may wish to use in connection with such hedging. Such purchase activity could affect the initial level of the Reference Asset, and, accordingly, the level at which the Reference Asset must close to surpass the initial level. In addition, through our affiliates, we are likely to modify our hedge position throughout the life of the notes by purchasing and selling the instrument or instruments comprising the Reference Asset, options or futures contracts relating to such instrument or instruments listed on major securities or futures markets, other types of derivative instruments relating to such instrument or instruments or positions in any other available securities, commodities or instruments that we may wish to use in connection with such hedging activities. Although we have no reason to believe that any of these activities will have a material impact on the level of the Reference Asset or the value of the notes, we cannot give any assurance that our hedging activities will not affect the price of the instrument or instruments comprising the Reference Asset and, therefore, adversely affect the value of the notes or the payment that you will receive at maturity or upon any acceleration of the notes.

We have no obligation to engage in any manner of hedging activity and will do so solely at our discretion and for our own account. No note holder will have any rights or interest in our hedging activity or any positions we or any unaffiliated counterparties may take in connection with our hedging activity.

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UNITED STATES FEDERAL TAXATION

In the opinion of King & Spalding LLP, our special tax counsel, the following is a summary of the material U.S. federal income tax consequences of the ownership and disposition of the notes. This summary applies only to notes that are held as capital assets within the meaning of Section 1221 of the Internal Revenue Code of 1986, as amended (the Code).

This summary does not address all aspects of U.S. federal income and estate taxation of the notes that may be relevant to the holders in light of their particular circumstances, nor does it address all of the tax consequences to a holder of notes who is subject to special treatment under the U.S. federal income tax laws, such as:

- a bank or other financial institutions;
- a tax-exempt entity, including an individual retirement account or Roth IRA as defined in Code Section 408 or 408A, respectively;
- a dealer in securities or currencies;
- a regulated investment company as defined in Code Section 851;
- a real estate investment trust as defined in Code Section 856;
- a person holding the notes as part of a hedging transaction, straddle, conversion transaction, or integrated transaction, or entering into a constructive sale with respect to the notes;
- a U.S. Holder (as defined below) whose functional currency is not the U.S. dollar;
- a trader in securities who elects to use a mark-to-market method of tax accounting for its securities holdings; or
- a partnership or other entity classified as a partnership for U.S. federal income tax purposes.

This summary is based on the Code, administrative pronouncements, judicial decisions and final, temporary and proposed Treasury regulations as of the date of this prospectus supplement, changes to any of which, subsequent to the date of this prospectus supplement, may affect the tax consequences described herein. **Prospective purchasers should consult their tax advisers concerning the application of U.S. federal income tax laws to their particular situations (including the possibility of alternative characterizations of the notes), as well as any tax consequences arising under the laws of any state, local or foreign jurisdictions.**

Except to the extent specified in an applicable supplement, this discussion does not apply to mandatorily exchangeable notes, currency-linked notes or notes (other than optionally exchangeable notes) that are linked to commodities, rates, securities, indices or other quantitative measures. The tax treatment of these instruments will be specified in the applicable supplement and prospective purchasers should review the applicable supplement and consult their tax advisers concerning the application of U.S. federal income and estate tax laws to their particular situations, as well as any tax consequences arising under the laws of any state, local or foreign jurisdictions.

Tax Consequences to U.S. Holders

The term U.S. Holder means a beneficial owner of notes that is, for U.S. federal income tax purposes:

a citizen or resident of the United States;

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

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

a trust if a United States court can exercise primary supervision over the trust s administration and one or more United States persons are authorized to control all substantial decisions of the trust.

If an entity that is classified as a partnership for U.S. federal income tax purposes holds notes, the U.S. federal income tax treatment of a partner will generally depend on the status of the partner and the activities of the partnership. Partners of partnerships holding notes should consult their tax advisers.

Payments of Interest

Interest on the notes will be taxable to a U.S. Holder as ordinary income at the time it accrues or is received in accordance with the holder s method of accounting for federal income tax purposes, provided that the interest is qualified stated interest (as defined below). Special rules apply to the treatment of interest paid or accrued with respect to certain notes, as described under Original Issue Discount, Optionally Exchangeable Notes and Foreign Currency Notes below.

Original Issue Discount

A note that has an issue price that is less than its stated redemption price at maturity will be considered to have been issued with original issue discount (OID) for federal income tax purposes (and will be referred to as an OID note) unless the note satisfies a de minimis OID threshold (as described below) or is a short-term note (as defined below). The issue price of a note will be the first price at which a substantial amount of the notes are sold to the public (not including sales to bond houses, brokers or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers). The stated redemption price at maturity of a note generally will equal the sum of all payments required to be made under the note other than payments of qualified stated interest. Qualified stated interest is stated interest that is unconditionally payable in cash or in property (other than in debt instruments of the issuer) at least annually during the entire term of the note at a single fixed rate. In addition, qualified stated interest includes, among other things, stated interest on a variable rate debt instrument that is unconditionally payable at least annually at a single qualified floating rate of interest or at a rate that is (among other things) determined pursuant to a single fixed formula based on objective financial or economic information. A rate generally is a qualified floating rate if variations in the rate can reasonably be expected to measure contemporaneous fluctuations in the cost of newly borrowed funds in the currency in which the note is denominated.

If the amount by which a note s stated redemption price at maturity exceeds its issue price is less than a de minimis amount, i.e., generally, 1/4 of 1% of the stated redemption price at maturity multiplied by the number of complete years from issuance to maturity, the note will not be considered to have OID. A U.S. Holders of notes with a de minimis amount of OID will include this OID in income, as capital gain, on a pro rata basis as principal payments are made on the notes, unless the holder make a constant-yield election (as defined below).

A U.S. Holder of OID notes will be required to include any qualified stated interest payments in income in accordance with the holder s method of accounting for federal income tax purposes. U.S. Holders of OID notes that mature more than one year from their date of issuance (including either the issue date or last possible date that the notes could be outstanding, but not both) will be required to include OID in income for federal income tax purposes as it accrues in accordance with a constant-yield method based on a compounding of interest, regardless of whether cash attributable to this income is received. Under this method, U.S. Holders of OID notes generally will be required to include in income increasingly greater amounts of OID in successive accrual periods.

A U.S. Holder may make an election to include in gross income all interest that accrues on any note (including stated interest, OID, de minimis OID, market discount, de minimis market discount and unstated interest, as adjusted by any amortizable bond premium or acquisition premium) in accordance with a constant-yield method based on a compounding of interest (a constant-yield election).

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A note that matures one year or less from its date of issuance (a short-term note) will be treated as being issued at a discount, and none of the interest payable on the note will be treated as qualified stated interest. In general, a cash-method U.S. Holder of a short-term note is not required to accrue the discount for U.S. federal income tax purposes unless it elects to do so. Holders who so elect and certain other U.S. Holders, including those who report income on the accrual method of accounting for federal income tax purposes, are required to include the discount in income as it accrues on a straight-line basis, unless an election is made to accrue the discount according to a constant-yield method based on daily compounding. In the case of a U.S. Holder who is not required and who does not elect to include the discount in income currently, any gain realized on the sale, exchange or redemption of the short-term note will be ordinary income to the extent of the discount that would have accrued on a straight-line basis (or, if elected, according to a constant-yield method based on daily compounding) through the date of sale, exchange or redemption. Unless a U.S. Holder elects to include discount in income as it accrues, the U.S. Holder generally will be required to defer deductions with regard to any interest paid on indebtedness incurred to purchase or carry the short-term notes in an amount not exceeding the accrued discount that has not yet been included in income.

We may have an unconditional option to redeem, or holders may have an unconditional option to require us to redeem, a note prior to its stated maturity date. Under applicable regulations, if we have an unconditional option, or holders have an unconditional option to require us, to redeem a note prior to its stated maturity date, this option will be presumed to be exercised or not exercised if, by utilizing any date on which the note may be redeemed as the maturity date and the amount payable on that date in accordance with the terms of the note, the yield on the note would be lower (in case of our option) or higher (in case of a holder s option) than its yield to maturity (computed without regard to any option to redeem). If an option is exercised (or not exercised) contrary to the above-described assumptions, the note will be treated solely for purposes of calculating OID as if it were redeemed, and a new note will be treated as issued, on the presumed exercise (or non-exercise) date for an amount equal to the note s adjusted issue price on that date. The adjusted issue price of the note would equal the sum of the issue price of the note and the aggregate amount of previously accrued OID, less any prior payments on the note other than payments of qualified stated interest.

Market Discount

If a U.S. Holder purchases a note (other than a short-term note) for an amount that is less than its stated redemption price at maturity or, in the case of an OID note, its adjusted issue price, the amount of the difference will be treated as market discount for federal income tax purposes, unless this difference is less than a specified de minimis amount.

A U.S. Holder will be required to treat any principal payment (or, in the case of an OID note, any payment that does not constitute qualified stated interest) on, or any gain on the sale, exchange or redemption, of a note, including disposition in certain nontaxable transactions, as ordinary income to the extent of the market discount accrued on the note at the time of the payment, sale, exchange or redemption unless this market discount has been previously included in income by the U.S Holder pursuant to an election to include market discount in income as it accrues, or pursuant to a constant-yield election as described under Original Issue Discount above. If the note is disposed of in one of certain nontaxable transactions, accrued market discount will be includible as ordinary income to the holder as if the holder had sold the note in a taxable transaction at its then fair market value. Unless a U.S. Holder elects to include market discount in income as it accrues, the U.S. Holder generally will be required to defer deductions with regard to any interest paid on indebtedness incurred to purchase or carry the notes in an amount not exceeding the accrued market discount that has not yet been included in income.

If a U.S. Holder makes a constant-yield election for a note with market discount, that election will result in a deemed election for all market discount bonds acquired by the holder on or after the first day of the first taxable year to which that election applies.

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Acquisition Premium and Amortizable Bond Premium

A U.S. Holder who purchases a note for an amount that is greater than the note s adjusted issue price but less than or equal to the sum of all amounts payable on the note after the purchase date, other than payments of qualified stated interest, will be considered to have purchased the note at an acquisition premium. Under the acquisition premium rules, the amount of OID that the U.S. Holder must include in its gross income with respect to the note for any taxable year will be reduced by the portion of acquisition premium properly allocable to that year.

If a U.S. Holder purchases a note for an amount that exceeds its principal amount, the sum of all the holder may elect to treat the excess as amortizable bond premium. If a holder makes this election, the amount of interest required to be included in income by the holder each year with respect to the note will be reduced by the amount of amortizable bond premium allocable to that year (calculated using a constant-yield method based on the note s yield-to-maturity). An election to amortize bond premium applies to all taxable debt obligations then owned and thereafter acquired by the holder and may be revoked only with the consent of the Internal Revenue Service (the IRS).

If a U.S. Holder makes a constant-yield election (as described under Original Issue Discount above) for a note with amortizable bond premium, that election will result in a deemed election to amortize bond premium for all of the holder s debt instruments with amortizable bond premium.

Sale, Exchange or Redemption of the Notes

Upon a sale or exchange of a note (including redemption of a note at maturity), a U.S. Holder will recognize taxable gain or loss equal to the difference between the amount realized on the sale, exchange or redemption and the holder s adjusted tax basis in the note. For these purposes, the amount realized does not include any amount attributable to accrued interest on the note. Amounts attributable to accrued interest are treated as interest as described under Payments of Interest above. A U.S. Holder s tax basis in a note generally will equal the price paid for the note, increased by the amount of any OID, market discount, de minimis OID, and de minimis market discount previously included income with respect to the note, and decreased by any payments on the notes (other than payments of qualified stated interest) and any amortizable bond premium applied to reduce interest on the note. For a discussion of special rules that apply to the determination of basis for optionally exchangeable notes and notes denominated in foreign currency, see Foreign Currency Notes and Optionally Exchangeable Notes below.

Except as described below, gain or loss realized on the sale, exchange or redemption of a note will generally be capital gain or loss and will be long-term capital gain or loss if at the time of sale, exchange or redemption the note has been held for more than one year. Exceptions to this general rule apply to the extent of any accrued market discount or, in the case of a short-term note, to the extent of any accrued discount not previously included in the holder s taxable income. See Original Issue Discount and Market Discount above. In addition, other exceptions to this general rule apply in the case of foreign currency notes and optionally exchangeable notes. See Foreign Currency Notes and Optionally Exchangeable Notes below. Long-term capital gain of non-corporate U.S. Holders is subject to U.S. federal income tax at reduced rates. The ability of U.S. Holders to deduct capital losses is subject to limitations under the Code.

Optionally Exchangeable Notes

Unless otherwise noted in the applicable supplement, optionally exchangeable notes with a term of more than one year will be treated as contingent payment debt instruments for U.S. federal income tax purposes. As a result, the notes will generally be subject to the OID provisions of the Code and the Treasury regulations issued thereunder (see Original Issue Discount above), and a U.S. Holder will be required to accrue as interest income the OID on the notes as described below.

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We are required to determine a comparable yield for the optionally exchangeable notes. The comparable yield is the yield at which we could issue a fixed-rate debt instrument with terms similar to those of the notes, including the level of subordination, term, timing of payments and general market conditions, but excluding any adjustments for the riskiness of the contingencies or the liquidity of the notes. The comparable yield may be greater than or less than the stated interest, if any, with respect to the notes. Solely for purposes of determining the amount of interest income that a U.S. Holder will be required to accrue on an optionally exchangeable note, we are also required to construct a projected payment schedule in respect of the notes representing a series of payments the amount and timing of which would produce a yield to maturity equal to the comparable yield.

Neither the comparable yield nor the projected payment schedule constitutes a representation by us regarding the actual amount, if any, that we will pay on the optionally exchangeable notes.

For U.S. federal income tax purposes, a U.S. Holder will be required to use our determination of the comparable yield and projected payment schedule in determining interest accruals and adjustments in respect of an optionally exchangeable note, unless the holder timely discloses and justifies the use of other estimates to the IRS. Regardless of its accounting method, a U.S. Holder will be required to accrue OID on the notes at the comparable yield, adjusted upward or downward to reflect the difference, if any, between the actual and the projected amount of any contingent payment(s) on the optionally exchangeable note (as described below).

In addition to interest accrued based upon the comparable yield as described above, a U.S. Holder will be required to recognize interest income equal to the amount of any net positive adjustment, i.e., the excess of actual payments over projected payments in respect of an optionally exchangeable note for a taxable year. A net negative adjustment, i.e., the excess of projected payments over actual payments in respect of an optionally exchangeable note for a taxable year:

- will first reduce the amount of interest in respect of the optionally exchangeable note that a holder would otherwise be required to include in income in the taxable year; and

- to the extent of any excess, will give rise to an ordinary loss, but only to the extent that the amount of all previous interest inclusions under the optionally exchangeable note exceeds the total amount of the U.S. Holder s net negative adjustments treated as ordinary loss on the optionally exchangeable note in prior taxable years.

A net negative adjustment is not subject to the limitation imposed on miscellaneous itemized deductions under Section 67 of the Code. Any net negative adjustment in excess of the amounts described above will be carried forward to offset future interest income in respect of the optionally exchangeable note or to reduce the amount realized on a sale or exchange of the optionally exchangeable notes (including redemption of the optionally exchangeable notes). If a U.S. Holder purchases an optionally exchangeable note for a price other than its adjusted issue price, the difference between the purchase price and the adjusted issue price must be reasonably allocated to the daily portions of interest or projected payments with respect to the optionally exchangeable note over its remaining term and treated as a positive or negative adjustment, as the case may be, with respect to each period to which it is allocated.

Upon a sale or exchange of an optionally exchangeable note (including redemption of the note or upon delivery of shares pursuant to the terms of the note), a U.S. Holder generally will recognize taxable gain or loss equal to the difference between the amount received from the sale, exchange or redemption and the holder s adjusted tax basis in the optionally exchangeable note. A holder s adjusted tax basis in an optionally exchangeable note will equal the cost thereof, increased by the amount of interest income previously accrued by the holder in respect of the note (determined without regard to any of the positive or negative adjustments to interest accruals described above) and decreased by the amount of any prior projected payments in respect of the note. If we deliver property to a U.S. Holder in exchange for an optionally exchangeable note, the amount

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realized will equal the fair market value of the property, determined at the time of receipt, plus the amount of cash delivered, if any. A U.S. Holder generally must treat any gain as interest income and any loss as ordinary loss to the extent of previous interest inclusions (reduced by the total amount of net negative adjustments previously taken into account as ordinary losses), and the balance as capital loss. These losses are not subject to the limitation imposed on miscellaneous itemized deductions under Section 67 of the Code. The deductibility of capital losses, however, is subject to limitations. Additionally, if a U.S. Holder recognizes a loss above certain thresholds, it may be required to file a disclosure statement with the IRS. Prospective purchasers should consult their tax advisers regarding these limitations and reporting obligations.

A U.S. Holder will have a tax basis in any property, other than cash, received upon the sale or exchange of an optionally exchangeable note equal to the fair market value of the property, determined at the time of receipt. The holder s holding period for the property will commence on the day after its receipt.

Special rules may apply if the contingent payment on the optionally exchangeable note becomes fixed prior to maturity. For purposes of the preceding sentence, the payment will be treated as fixed if (and when) all remaining contingencies with respect to it are remote or incidental within the meaning of the applicable Treasury regulations. Generally, under these rules a U.S. Holder would be required to make adjustments to account for the difference between the amount treated as fixed and the projected payment in a reasonable manner over the remaining term of the optionally exchangeable note. In addition, the U.S. Holder would be required to make adjustments to, among other things, its accrual periods and its adjusted basis in the optionally exchangeable note. The character of any gain or loss on a sale or exchange of the optionally exchangeable note may also be affected. Prospective purchasers should consult their tax advisers concerning the application of these special rules.

Foreign Currency Notes

The following discussion summarizes the principal U.S. federal income tax consequences to a U.S. Holder of notes that are denominated in a specified currency other than the U.S. dollar, which we refer to as foreign currency notes. The tax treatment of currency-linked notes and notes the payment of interest or principal on which are payable in more than one currency will be specified in the relevant supplement.

The rules applicable to foreign currency notes could require some or all gain or loss on the sale or exchange of a foreign currency note (including redemption of the foreign currency note) to be recharacterized as ordinary income or loss. The rules applicable to foreign currency notes are complex, and their application may depend on the holder s particular U.S. federal income tax situation. For example, various elections are available under these rules, and whether a U.S. Holder should make any of these elections may depend on the holder s particular federal income tax situation. U.S. Holders should consult their tax advisers regarding the U.S. federal income tax consequences of an investment in any foreign currency notes.

A U.S. Holder who uses the cash method of accounting and who receives a payment of qualified stated interest (or who receives proceeds from a sale, exchange or other disposition attributable to accrued qualified stated interest) in a foreign currency with respect to a foreign currency note will be required to include in income the U.S. dollar value of the foreign currency payment (determined based on a spot rate on the date the payment is received) regardless of whether the payment is in fact converted to U.S. dollars at the time, and this U.S. dollar value will be the U.S. Holder s tax basis in the foreign currency. A cash-method holder who receives a payment of qualified stated interest in U.S. dollars pursuant to an option available under that note will be required to include the amount of this payment in income upon receipt.

An accrual-method U.S. Holder will be required to include in income the U.S. dollar value of the amount of interest income (including OID or market discount, but reduced by acquisition premium and amortizable bond premium, to the extent applicable) that has accrued and is otherwise required to be taken into account with respect to a foreign currency note during an accrual period. The U.S. dollar value of the accrued income will be determined by translating the income at the average rate of exchange for the accrual period or, with respect to an

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accrual period that spans two taxable years, at the average rate for the partial period within the taxable year. The U.S. Holder will recognize ordinary income or loss (which will not be treated as interest income or expense) with respect to accrued interest income on the date the interest payment or proceeds from the sale or exchange attributable to accrued interest is actually received. The amount of ordinary income or loss recognized will equal the difference between (i) the U.S. dollar value of the foreign currency payment received (determined on the date the payment is received) in respect of the accrual period (or, where a holder receives U.S. dollars, the amount of the payment in respect of the accrual period) and (ii) the U.S. dollar value of interest income that has accrued during the accrual period (as determined above). Rules similar to these rules apply in the case of a cash-method taxpayer required to currently accrue OID or market discount.

An accrual-method U.S. Holder may elect to translate interest income (including OID) into U.S. dollars at the spot rate on the last day of the interest accrual period (or, in the case of a partial accrual period, the spot rate on the last day of the taxable year) or, if the date of receipt is within five business days of the last day of the interest accrual period, the spot rate on the date of receipt. A U.S. Holder that makes this election must apply it consistently to all debt instruments from year to year and may not change the election without the consent of the IRS.

OID, market discount, acquisition premium and amortizable bond premium on a foreign currency note are to be determined in the relevant foreign currency. Where the taxpayer elects to include market discount in income currently, the amount of market discount will be determined for any accrual period in the relevant foreign currency and then translated into U.S. dollars on the basis of the average rate in effect during the accrual period. Foreign currency gain or loss realized with respect to the accrued market discount will be determined in accordance with the rules relating to accrued interest described above.

If an election to amortize bond premium is made, amortizable bond premium taken into account on a current basis will reduce interest income in units of the relevant foreign currency. Foreign currency gain or loss is realized on amortized bond premium with respect to any period by treating the bond premium amortized in the period in the same manner as on the sale, exchange or retirement of a foreign currency note, as described below, and any foreign currency gain or loss will be ordinary income or loss. If the election is not made, any loss realized by a U.S. Holder on the sale or exchange of a foreign currency note with amortizable bond premium (including on a redemption of such a foreign currency note), other than to the extent of exchange loss, will be a capital loss to the extent of the bond premium.

A U.S. Holder s tax basis in a foreign currency note, and the amount of any subsequent adjustment to the holder s tax basis, will be the U.S. dollar value amount of the foreign currency amount paid for that foreign currency note, or of the foreign currency amount of the adjustment, determined on the date of the purchase or adjustment. A U.S. Holder who purchases a foreign currency note with previously owned foreign currency will recognize ordinary income or loss in an amount equal to the difference, if any, between that U.S. Holder s tax basis in the foreign currency and the U.S. dollar fair market value of the foreign currency note on the date of purchase.

Gain or loss realized upon the sale, exchange or retirement of a foreign currency note that is attributable to fluctuation in currency exchange rates will be ordinary income or loss, which will not be treated as interest income or expense. Gain or loss attributable to fluctuations in exchange rates will equal the difference between (i) the U.S. dollar value of the foreign currency principal amount of the note, determined at the spot rate on the date the payment is received or the note is disposed of, and (ii) the U.S. dollar value of the foreign currency principal amount of the note, determined on the date the U.S. Holder acquired the note. Payments received that are attributable to accrued interest will be treated in accordance with the rules applicable to payments of interest on foreign currency notes, described above. The foreign currency gain or loss will be recognized only to the extent of the total gain or loss realized by the U.S. Holder on the sale, exchange or retirement of a foreign currency note.

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The source of the foreign currency gain or loss will be determined by reference to the residence of the U.S. Holder or the qualified business unit of the holder on whose books the note is properly reflected. Any gain or loss realized by a U.S. Holder in excess of a foreign currency gain or loss will be capital gain or loss except to the extent of any accrued market discount or, in the case of short-term note, to the extent of any discount not previously included in the holder s income. If a U.S. Holder recognizes a loss upon a sale or other disposition of a foreign currency note and that loss is above certain thresholds, then the Holder may be required to file a disclosure statement with the IRS. U.S. Holders should consult their tax advisers regarding this reporting obligation. A U.S. Holder will have a tax basis in any foreign currency received on the sale, exchange or retirement of a foreign currency note equal to the U.S. dollar value of the foreign currency, determined at the time of sale, exchange or retirement. A cash-method taxpayer who buys or sells a foreign currency note is required to translate units of foreign currency paid or received into U.S. dollars at the spot rate on the settlement date of the purchase or sale, provided that the notes are traded on an established securities market. Accordingly, no foreign currency gain or loss will result from currency fluctuations between the trade date and the settlement date of the purchase or sale. An accrual-method taxpayer may elect the same treatment for all purchases and sales of foreign currency obligations, provided that the notes are traded on an established securities market. This election may not be changed without the consent of the IRS. Any gain or loss realized by a U.S. Holder on a sale or other disposition of foreign currency (including its exchange for U.S. dollars or its use to purchase foreign currency notes) will be ordinary income or loss.

Additional Tax on Certain Investment Income

For taxable years beginning after December 31, 2012, non-corporate U.S. persons generally will be subject to a 3.8% tax (the Medicare tax) on the lesser of (1) the U.S. person s net investment income for the relevant taxable year and (2) the excess of the U.S. person s modified gross income for the taxable year over a certain threshold (which in the case of individuals will be between $125,000 and $250,000, depending on the individual s tax return filing status). A U.S. Holder s net investment income will generally include any interest (including any OID) that the holder includes in income with respect to the notes and any gain recognized upon the sale or exchange of the notes (including a redemption of the notes), unless such interest (including any OID) or gain is derived in the ordinary course of the conduct of the holder s trade or business (other than a trade or business that consists of certain passive or trading activities).

Tax Consequences to Non-U.S. Holders

The term Non-U.S. Holder means a beneficial owner of a note that is, for United States federal income tax purposes:

- a nonresident alien individual;
- a foreign corporation; or
- a foreign estate or trust.

The term Non-U.S. Holder does not include a holder who is an individual present in the United States for 183 days or more in the taxable year of sale or exchange of the notes (including redemption of the notes). In this case, the holder should consult its tax adviser regarding the U.S. federal income tax consequences of sale, exchange or redemption of the notes.

Subject to the discussion below under New Laws Affecting Taxation of Notes Held By or through Foreign Entities, payments of principal and interest (including OID, if any) on the notes by us or any paying agent to any Non-U.S. Holder should not be subject to U.S. federal income or withholding tax, provided that, in the case of interest, (i) the Non-U.S. Holder does not own, actually or constructively, 10% or more of the total combined voting power of all classes of our stock entitled to vote and is not a controlled foreign corporation related, directly or indirectly, to us through stock ownership, (ii) the certification requirement described below

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has been fulfilled with respect to the beneficial owner and (iii) the income is not effectively connected with the Non-U.S. Holder s conduct of a U.S. trade or business. Additionally, a Non-U.S. Holder of the notes will not be subject to U.S. federal income tax on gain realized on the sale or exchange of the notes (including redemption of the notes), unless the gain is effectively connected with the holder s conduct of a U.S. trade or business, subject to an applicable income tax treaty providing otherwise.

The requirement referred to in clause (ii) above will be satisfied if the Non-U.S. Holder certifies on IRS Form W-8BEN, under penalties of perjury, that it is not a U.S. person and provides its name and address or otherwise satisfies applicable documentation requirements. The exemption from U.S. withholding tax does not apply to certain contingent interest. Unless otherwise provided in the applicable pricing supplement, we do not expect to pay this type of interest.

If a Non-U.S. Holder of a note is engaged in a U.S. trade or business, and if interest (including OID) and gain on the note is effectively connected with the conduct of that trade or business, the Non-U.S. Holder, although exempt from the withholding tax described above, will generally be subject to regular U.S. income tax on this income or gain in the same manner as a U.S. Holder, subject to an applicable income tax treaty providing otherwise, except that in lieu of the certificate described above, the Non-U.S. Holder will be required to provide a properly executed IRS Form W-8ECI in order to claim an exemption from withholding. Non-U.S. Holders should consult their tax advisers with respect to other U.S. tax consequences of the ownership and disposition of the notes, including the possible imposition of a 30% branch profits tax if they are corporations.

Subject to the application of an estate tax treaty, a note held by an individual who is a Non-U.S. Holder may be subject to U.S. federal estate tax upon the holder s death if, at that time, interest payments on the note would have been:

subject to U.S. federal withholding tax (even if the W-8BEN certification requirement described above were satisfied); or

effectively connected with the conduct by the holder of a U.S. trade or business.

Backup Withholding and Information Reporting

Interest (including OID) accrued or paid on the notes and the proceeds received from a sale or exchange of the notes (including redemption of the notes) will be subject to information reporting if you are not an exempt recipient and may also be subject to backup withholding at the rates specified in the Code if you fail to provide certain identifying information (such as an accurate taxpayer identification number, if you are a U.S. Holder) or meet certain other conditions. If you are a Non-U.S. Holder and you comply with the certification procedures described in the preceding section, you will generally establish an exemption from backup withholding.

Amounts withheld under the backup withholding rules are not additional taxes and may be refunded or credited against your U.S. federal income tax liability, provided the required information is timely furnished to the IRS.

New Laws Affecting Taxation of Notes Held By or Through Foreign Entities

Legislation was enacted on March 18, 2010 that will, effective for payments made after December 31, 2012, impose a 30% U.S. withholding tax on certain withholdable payments to a foreign financial institution (including, without limitation, foreign hedge funds, private equity funds and other investment vehicles), unless the institution enters into an agreement with the Treasury Department (Treasury) to collect and provide to Treasury substantial information regarding its U.S. account holders (including certain indirect U.S. account holders that hold an account through another foreign entity). The legislation also generally imposes a withholding

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tax of 30% on withholdable payments to a non-financial foreign entity unless the entity provides the withholding agent with a certification that it does not have any substantial U.S. owners or a certification identifying the direct and indirect substantial U.S. owners of the entity. Withholdable payments include (i) U.S.-source payments of interest (including original issue discount), dividends and other items of fixed or determinable annual or periodical gains, profits and income, and (ii) gross proceeds from the sale of any property of a type which can produce interest or dividends from sources within the United States. Under certain circumstances, a holder may be eligible for refunds or credits of taxes withheld. These withholding and reporting requirements will generally apply to withholdable payments made after December 31, 2012 with respect to notes issued after March 18, 2012. If we determine that any payments on any notes are subject to withholding under these rules, we will withhold tax at the applicable statutory rate. Investors are urged to consult their own tax advisors regarding the possible application of these rules to their investment in notes.

THE FEDERAL INCOME TAX DISCUSSION SET FORTH ABOVE IS INCLUDED FOR GENERAL INFORMATION ONLY AND MAY NOT BE APPLICABLE DEPENDING UPON A HOLDER S PARTICULAR SITUATION. HOLDERS SHOULD CONSULT THEIR TAX ADVISERS REGARDING THE TAX CONSEQUENCES OF OWNING AND DISPOSING OF THE NOTES, INCLUDING THE TAX CONSEQUENCES UNDER STATE, LOCAL, FOREIGN AND OTHER TAX LAWS AND THE POSSIBLE EFFECTS OF CHANGES IN U.S. FEDERAL OR OTHER TAX LAWS.

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ERISA CONSIDERATIONS

This section is specifically relevant to you if you propose to invest in the notes described in this prospectus supplement on behalf of an employee benefit plan which is subject to the U.S. Employee Retirement Income Security Act of 1974, as amended (ERISA) or a plan or individual retirement account or other arrangement which is subject to Section 4975 of the U.S. Internal Revenue Code of 1986, as amended (the Code) or on behalf of any other entity the assets of which are plan assets under ERISA (individually a Plan). If you are proposing to invest in the notes on behalf of a Plan, you should consult your legal counsel before making such investment. This section also may be relevant to you if you are proposing to invest in the notes described in this prospectus supplement on behalf of an employee benefit plan or other arrangement which is subject to laws which are similar to ERISA and the Code (Similar Laws), in which event you also should consult your legal counsel before making such investment.

If you propose to invest in the notes on behalf of a Plan, you should consider such investment in light of the fiduciary standards of ERISA as applicable to the Plan s particular circumstances before authorizing or making an investment in the notes. Accordingly, among other factors, you should consider whether the investment would satisfy the prudence and diversification requirements of ERISA, would meet the Plan s liquidity requirements and would be consistent with the documents governing the Plan as well as whether the investment could constitute a prohibited transaction under ERISA or the Code.

Section 406 of ERISA and Section 4975 of the Code prohibit a Plan from engaging in specified transactions involving plan assets with persons who are parties in interest under ERISA or disqualified persons under the Code with respect to such Plan. We may be considered a party in interest or disqualified person with respect to a Plan to the extent we or any of our affiliates are engaged in providing any services to such Plan. Thus there is a risk that an investment in the notes by a Plan could constitute a violation of those prohibited transaction rules and therefore could result under ERISA in a claim against you for a breach of fiduciary duty and other liabilities and could result under the Code in an excise tax assessment and other liabilities for us, unless in either case the investment comes under an applicable statutory or administrative prohibited transaction exemption.

For example, the U.S. Department of Labor has issued five administrative prohibited transaction class exemptions (PTCEs) that may provide an exemption from some direct or indirect prohibited transactions resulting from investing in the notes. These class exemptions are:

PTCE 96-23, for specified transactions determined by in-house asset managers;

PTCE 95-60, as amended, for specified transactions involving insurance company general accounts;

PTCE 91-38, as amended, for specified transactions involving bank collective investment funds;

PTCE 90-1, for specified transactions involving insurance company separate accounts; and

PTCE 84-14, for specified transactions determined by independent qualified professional asset managers.

We also note that employee benefit plans that are governmental plans, as defined in Section 3(32) of ERISA, church plans, as defined in Section 3(33) of ERISA, and foreign plans, as described in Section 4(b)(4) of ERISA, are not subject to the requirements of ERISA or Section 4975 of the Code, but these plans and other plan investors may be subject to Similar Laws that contain fiduciary and prohibited transaction provisions.

Based on the foregoing, the notes may not be purchased or held by any Plan, any governmental, church or foreign plan or other plan or arrangement subject to Similar Laws, any entity whose underlying assets include plan assets by reason of any Plan s investment in the entity (a plan asset entity) or any person investing plan assets of any Plan, unless the purchaser or holder is eligible for an applicable statutory or administrative prohibited transaction exemption.

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Any purchaser or holder of the notes will be deemed to have represented by its purchase and holding that either:

- it is not a Plan or governmental, church or foreign plan or other plan or arrangement subject to Similar Laws, or a plan asset entity and is not purchasing the notes on behalf of or with plan assets of any such Plan or governmental, church or foreign plan or other plan or arrangement; or

- its acquisition and holding of the notes qualifies (based on advice of counsel) for a prohibited transaction exemption under an applicable statutory or administrative prohibited transaction exemption with respect to such purchase or holding.

Due to the complexity of the prohibited transaction rules and the penalties that may be imposed upon persons involved in non-exempt prohibited transactions, it is particularly important that fiduciaries or other persons considering purchasing the notes on behalf of, or with plan assets of, any Plan or governmental, church or foreign plan or other plan or arrangement subject to Similar Laws consult with their counsel regarding the potential consequences of the investment and whether a prohibited transaction exemption is available.

Finally, if you propose to invest in the notes on behalf of, or with plan assets of, any Plan or governmental, church or foreign plan or other plan or arrangement subject to Similar Laws, as between you and us, you have the sole and exclusive responsibility for ensuring that the investment complies with the fiduciary responsibility rules of ERISA and does not violate the prohibited transaction rules of ERISA or the Code (or in the case of a governmental, church or foreign plan, or any other plan or arrangement, any Similar Laws).

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PLAN OF DISTRIBUTION

We are offering the notes on a continuing basis through SunTrust Robinson Humphrey, Inc. (STRH), which we refer to as the agent to the extent it is named in the applicable supplement. In addition, we may offer the notes through certain other agents to be named in the applicable supplement. The agent has agreed and any additional agents will agree to use reasonable efforts to solicit offers to purchase these notes. We will have the sole right to accept offers to purchase these notes and may reject any offer in whole or in part. Each agent may reject, in whole or in part, any offer it solicited to purchase notes. We will pay an agent, in connection with sales of these notes resulting from a solicitation that agent made or an offer to purchase that such agent received, a commission as set forth in the applicable supplement. The maximum discount or commission that may be received by any member of FINRA for any sales of securities pursuant to the accompanying prospectus, together with the reimbursement of any counsel fees by us, will not exceed 8.00%.

We may also sell these securities to an agent as principal for its own account at discounts to be agreed upon at the time of sale as disclosed in the applicable supplement. That agent may resell these notes to investors and other purchasers at a fixed offering price or at prevailing market prices, or prices related thereto at the time of resale or otherwise, as that agent determines and as we will specify in the applicable supplement. Unless the applicable pricing supplement states otherwise, any notes sold to agents as principal will be purchased at a price equal to 100% of the principal amount less the agreed upon discount. An agent may offer the notes it has purchased as principal to other dealers (including our affiliate SunTrust Investment Services, Inc.). That agent may sell the notes to any dealer at a discount and, unless otherwise specified in the applicable supplement, the concession or discount allowed to any dealer will not be in excess of the discount that agent will receive from us. After the initial public offering of notes that the agent is to resell on a fixed public offering price basis, the agent may change the public offering price, concession and discount.

The agent may be deemed to be an underwriter within the meaning of the Securities Act of 1933, as amended. We and the agent have agreed to indemnify each other against certain liabilities, including liabilities under the Securities Act, or to contribute to payments made in respect of those liabilities. We have also agreed to reimburse the agent for specified expenses. STRH is our wholly owned subsidiary. To the extent it is named in the applicable supplement, each offering of these notes will be conducted in compliance with the requirements of Rule 2720 of the Financial Industry Regulatory Authority, or FINRA, regarding a FINRA member firm s distributing the securities of an affiliate.

We estimate that we will spend approximately $535,000 for printing, trustee and legal fees and other expenses allocable to the offering.

Unless otherwise provided in the applicable supplement, we do not intend to apply for the listing of these notes on a national securities exchange. No assurance can be given as to the liquidity of any trading market for these notes.

Following the initial distribution of these notes, the agent may offer and sell notes in the course of its business as a broker-dealer. The agent may act as principal or agent in those transactions and will make any sales at varying prices related to prevailing market prices at the time of sale or otherwise. The agent is not obligated to make a market in any of these notes and may discontinue any market-making activities at any time without notice. In the event the agent acquires notes in a market-making transaction, we may, but are not obligated to, retire any such note held by the agent on a date prior to the applicable maturity date.

Notes Offered on a Global Basis

If the applicable supplement indicates that any of our notes will be offered on a global basis, those registered global securities will be offered for sale in those jurisdictions outside of the United States where it is legal to make offers for sale of those securities.

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The agent has represented and agreed, and any other agent through which we may offer any notes on a global basis will represent and agree, that it will comply with all applicable laws and regulations in force in any jurisdiction in which it purchases, offers, sells or delivers the securities or possesses or distributes the applicable supplement, this prospectus supplement or the accompanying prospectus and will obtain any consent, approval or permission required by it for the purchase, offer or sale by it of the securities under the laws and regulations in force in any jurisdiction to which it is subject or in which it makes purchases, offers or sales of the notes, and we shall not have responsibility for the agent s compliance with the applicable laws and regulations or obtaining any required consent, approval or permission.

With respect to sales in any jurisdictions outside of the United States of such notes offered on a global basis, purchasers of any such notes may be required to pay stamp taxes and other charges in accordance with the laws and practices of the country of purchase in addition to the issue price set forth on the cover page hereof.

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LEGAL MATTERS

The validity of the notes will be passed upon for SunTrust Banks, Inc. by King & Spalding LLP.

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PROSPECTUS

SunTrust Banks, Inc.

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SunTrust Capital X

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SunTrust Capital XIII

SunTrust Capital XIV

SunTrust Capital XV

SunTrust Capital XVI

SunTrust Capital XVII

Trust Preferred Securities

The securities listed above may be offered and sold by us and/or may be offered and sold, from time to time, by one or more selling securityholders to be identified in the future. We will provide the specific terms of these securities in supplements to this prospectus. You should read this prospectus and the applicable prospectus supplement carefully before you invest in the securities described in the applicable prospectus supplement.

This prospectus may not be used to sell securities unless accompanied by the applicable prospectus supplement.

These securities will be our equity securities or unsecured obligations, will not be savings accounts, deposits or other obligations of any bank or savings association, and will not be insured by the Federal Deposit Insurance Corporation, the bank insurance fund or any other governmental agency or instrumentality.

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

The date of this prospectus is September 3, 2009

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Unless the context requires otherwise, references to (1) we, us, our or similar terms are to SunTrust Banks, Inc. and its subsidiaries and (2) the Trusts are to SunTrust Capital X, SunTrust Capital XI, SunTrust Capital XII, SunTrust Capital XIII, SunTrust Capital XIV, SunTrust Capital XV, SunTrust Capital XVI and SunTrust Capital XVII, Delaware statutory trusts and the issuers of the trust preferred securities.

ABOUT THIS PROSPECTUS

This prospectus is a part of a registration statement that we and the Trusts filed with the Securities and Exchange Commission (SEC) using a shelf registration process. Under this shelf registration statement, we may sell, either separately or together, senior debt securities, subordinated debt securities, junior subordinated debt securities, purchase contracts, units, warrants, preferred stock, depositary shares representing interests in preferred stock, and common stock in one or more offerings. The Trusts may sell trust preferred securities representing undivided beneficial interests in the Trusts, which may be guaranteed by SunTrust, to the public.

Each time we sell securities, we will provide a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement may also add, update or change information contained in this prospectus. You should read this prospectus and the applicable prospectus supplement together with the additional information described under the heading Where You Can Find More Information.

The registration statement that contains this prospectus, including the exhibits to the registration statement, contains additional information about us and the securities offered under this prospectus. That registration statement can be read at the SEC web site or at the SEC offices mentioned under the heading Where You Can Find More Information.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, proxy statements and other information with the SEC. Our SEC filings are available to the public over the Internet at the SEC web site at http://www.sec.gov. You may also read and copy any document we file with the SEC at its public reference room at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference room. Our SEC filings are also available at the offices of the New York Stock Exchange. For further information on obtaining copies of our public filings at the New York Stock Exchange, you should call 212-656-3000.

The SEC allows us to incorporate by reference the information we file with them, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be a part of this prospectus, and later information that we file with the SEC will automatically update and supersede this information. We incorporate by reference the

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following documents listed below and any future filings made with the SEC under Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act) (other than, in each case, information that is deemed not to have been filed in accordance with SEC rules), until we sell all the securities offered by this prospectus:

- Annual Report on Form 10-K for the year ended December 31, 2008;
- Quarterly Report on Form 10-Q for the quarters ended March 31, 2009 and June 30, 2009;
- Current Reports on Form 8-K dated November 14, 2008 (Form 8-K/A filed on January 5, 2009), January 1, 2009, January 7, 2009, January 22, 2009 (except Items 2.02 and 7.01 and the related Exhibits 99.1 and 99.2 included in Item 9.01), February 10, 2009, February 10, 2009 (Form 8-K/A filed on April 2, 2009), April 28, 2009, May 6, 2009, May 15, 2009, June 1, 2009, June 8, 2009, June 17, 2009 and June 25, 2009;
- the description of SunTrust s Perpetual Preferred Stock, Series A, no par value and $100,000 liquidation preference per share, contained in our Registration Statement on Form 8-A, under Section 12(b) of the Exchange Act, filed September 12, 2006, including any amendment or report filed for the purpose of updating such description; and
- the description of SunTrust s common stock, $1.00 par value per share, contained in our Registration Statement on Form 8-A, under Section 12(b) of the Exchange Act, filed March 5, 2003, including any amendment or report filed for the purpose of updating such description.

You may request a copy of these filings (other than an exhibit to a filing unless that exhibit is specifically incorporated by reference into that filing), at no cost, by writing or calling us at the following address:

SunTrust Banks, Inc.

303 Peachtree Street, NE

Atlanta, Georgia 30308

Telephone: 404-658-4879

Attn: Corporate Secretary

You should rely only on the information contained or incorporated by reference in this prospectus and the applicable prospectus supplement. We have not authorized anyone else to provide you with additional or different information. We may only use this prospectus to sell securities if it is accompanied by a prospectus supplement. We are only offering these securities in jurisdictions where the offer is permitted. You should not assume that the information in this prospectus or the applicable prospectus supplement or any document incorporated by reference is accurate as of any date other than the dates of the applicable documents.

USE OF PROCEEDS

We intend to use the net proceeds from the sales of the securities as set forth in the applicable prospectus supplement.

VALIDITY OF SECURITIES

Unless otherwise indicated in the applicable prospectus supplement, some legal matters will be passed upon for us by our counsel, King & Spalding LLP or by Raymond D. Fortin, Corporate Executive Vice President, General Counsel and Corporate Secretary of SunTrust. Richards, Layton & Finger, P.A., special Delaware counsel to the Trusts, will pass upon certain legal matters for the Trusts. As of September 1, 2009,

Mr. Fortin beneficially owned 163,125 shares of SunTrust common stock (which amount includes 136,139 shares that are subject to options or are otherwise forfeitable but which Mr. Fortin is deemed to own pursuant to Rule 13d-3). Any underwriters will be represented by their own legal counsel.

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EXPERTS

Ernst & Young LLP, independent registered public accounting firm, has audited our consolidated financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2008, and the effectiveness of our internal control over financial reporting as of December 31, 2008, as set forth in their reports, which are incorporated by reference in this prospectus and elsewhere in the registration statement. Our financial statements as of December 31, 2008 are incorporated by reference in reliance on Ernst & Young LLP s reports, given on their authority as experts in accounting and auditing.

The financial statements for the year ended December 31, 2006 incorporated by reference in this prospectus by reference to our Annual Report on Form 10-K for the year ended December 31, 2008 have been so incorporated in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

an" SIZE="2">**Anti-Takeover Provisions**

The KBCA generally prohibits certain business combinations by a corporation or a subsidiary with an interested shareholder (generally defined as a beneficial owner of 10% or more of the voting power of the corporation s outstanding voting shares) for a period of five years after the date the interested shareholder becomes an interested shareholder, unless the business combination was approved by a majority of the independent members of the board of directors of the corporation before the date the interested shareholder became an interested shareholder. In addition, the KBCA requires that, absent an exemption, certain business combinations by a corporation or a subsidiary with an interested shareholder must either be approved by a majority of the independent members of the board of directors of the corporation or by the affirmative vote of at least (1) 80% of the votes entitled to be cast by the corporation s voting stock and (2) 66-2/3% of the votes entitled to be cast by holders of such voting stock other than voting stock owned by the interested shareholder, its affiliates and associates.

The shareholder transactions constituting a business combination and subject to these special requirements generally include (i) mergers or consolidations by a corporation or a subsidiary with an interested shareholder, or with any other corporation which is, or after the merger or consolidation will be, an affiliate of the interested shareholder; (ii) any sale, lease, transfer or other disposition or issuance or transfer of equity securities within 12 months by a corporation or a subsidiary to an interested shareholder that represents an aggregate book value of 5% or more of the total market value of the outstanding stock of the corporation; (iii) adoption of any plan or proposal for liquidation or dissolution by a corporation or a subsidiary in which an interested shareholder will receive anything other than cash; or (iv) any reclassification, merger or consolidation of a corporation with any subsidiary, which has the effect of increasing by 5% or more the proportionate amount of the outstanding shares of any class of the corporation s or a subsidiary s equity securities owned by an interested shareholder.

Section 203 of the DGCL generally prohibits certain business combinations, including mergers, sales and leases of assets, issuances of securities and similar transactions by a corporation or a subsidiary with an interested stockholder who beneficially owns 15% or more of a corporation s voting stock, within three years after the person or entity becomes an interested stockholder, unless:

the board of directors of the corporation has approved, before the acquisition time, either the business combination or the transaction that resulted in the person becoming an interested stockholder,

upon consummation of the transaction that resulted in the person becoming an interested stockholder, the person owns at least 85% of the corporation s voting stock (excluding shares owned by directors who are officers and shares owned by employee stock plans in which participants do not have the right to determine confidentially whether shares will be tendered in a tender or exchange offer), or

after the person or entity becomes an interested stockholder, the business combination is approved by the board of directors and authorized by the vote of at least two-thirds of the outstanding voting stock not owned by the interested stockholder.

These restrictions on interested stockholders do not apply under some circumstances, including if the corporation s original certificate of incorporation contains a provision expressly electing not to be governed by the Delaware statute regulating business combinations, or if the corporation, by action of its stockholders, adopts an amendment to its certificate of incorporation or by-laws expressly electing not to be governed by these provisions of the DGCL (and such amendment is duly approved by the stockholders entitled to vote thereon). Neither the Youbet

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CDI	Youbet
The KBCA s prohibition of certain business combinations discussed in this section does not apply to CDI in the merger.	Certificate of Incorporation nor the Youbet by-laws contain the election not to be governed by Section 203 of the DGCL. However, Section 203 of the DGCL does not apply to Youbet in the merger.
Regulatory Restrictions	
CDI s Amended and Restated Articles of Incorporation provide that all CDI capital stock is subject to the applicable provisions of all regulations. If any person which beneficially owns CDI capital stock fails to appear before, or submit to the jurisdiction of, or provide information to any regulatory authority or is determined by any regulatory authority not to be suitable or qualified with respect to the beneficial ownership of CDI capital stock, then CDI may elect to repurchase any or all of the CDI capital stock beneficially owned by such person or cause such person to dispose of the CDI capital stock within 120 days of notice.	Youbet s Certificate of Incorporation, as amended, and by-laws have no comparable provision regarding regulatory restrictions.

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ADDITIONAL INFORMATION

Stockholder Proposals

If you wish to submit proposals to be included in Youbet s 2010 proxy statement, Youbet must receive your proposals on or before December 31, 2009. Please address your proposals to Youbet s Secretary at Youbet.com, Inc., 5901 De Soto Avenue, Woodland Hills, California 91367. Such proposals must meet the requirements set forth in the rules and regulations of the SEC, including Rule 14a-8 under the Exchange Act, in order to be eligible for inclusion in Youbet s 2010 proxy materials.

In addition, Youbet s amended and restated bylaws provide that any stockholder proposals, including nominations of directors, may be considered at a meeting of stockholders, only if written notice of the proposal is delivered to Youbet not less than 50 nor more than 90 days in advance of the meeting, unless Youbet gives less than 60 days notice to stockholders of the date of the meeting, in which case the proposal must be received not later than the 10th day following the date Youbet s notice announcing the date of the meeting was mailed. Any stockholder wishing to submit a proposal or nomination at the 2010 annual meeting should contact the Secretary of Youbet after March 1, 2010 to obtain the actual meeting date and proposal deadlines.

A stockholder s notice to Youbet with respect to proposals for a meeting shall set forth as to each matter the stockholder proposes to bring before the meeting:

- a brief description of the business to be brought before the meeting and the reasons for conducting such business at the meeting;
- the stockholder s name and address as they appear on Youbet s books;
- the class and number of shares of capital stock that are owned beneficially or of record by such stockholder;
- a description of all arrangements or understandings between such stockholder and any other person or persons (including their names) in connection with the proposal of such business by such stockholder and any material interest of such stockholder in such business; and
- a representation that such stockholder intends to appear in person or by proxy at the meeting to bring such business before the meeting.

A stockholder s notice to Youbet concerning nominations for director is required to set forth:

- as to each proposed nominee for election as a director, the name, age, business address and residence address of the proposed nominee, the principal occupation or employment of each nominee, the class and number of shares of Youbet capital stock which are owned beneficially or of record by each nominee and any other information relating to the nominee that would be required to be disclosed in a proxy statement pursuant to Section 14 of the Exchange Act; and
- as to the stockholder giving notice, the stockholder s name and address as they appear on Youbet s books, the class and number of shares of capital stock that are owned beneficially or of record by the stockholder, a description of all arrangements or understandings between the stockholder and each proposed nominee and any other person pursuant to which the nomination is made, and a representation that the stockholder intends to appear in person or by proxy at the meeting to nominate the persons named in the notice and any other information relating to the stockholder that would be required to be disclosed in a proxy statement pursuant to Section 14 of the Exchange Act.

The notice concerning nominations for director must be accompanied by a written consent of each proposed nominee being named as a nominee and to serve as a director if elected.

Legal Matters

The validity of CDI common stock offered by this proxy statement/prospectus is being passed upon for CDI by Rebecca C. Reed, Senior Vice President, General Counsel and Secretary of CDI.

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Certain United States federal income tax consequences of the transaction will be passed upon by Sidley Austin LLP (or other counsel reasonably acceptable to CDI) for CDI and Kirkland & Ellis LLP (or other counsel reasonably acceptable to Youbet) for Youbet.

Experts

The consolidated financial statements and management s assessment of the effectiveness of internal control over financial reporting (which is included in Management s Report on Internal Control over Financial Reporting) of CDI incorporated in this proxy statement/prospectus by reference to CDI s Annual Report on Form 10-K for the year ended December 31, 2008 have been so incorporated in reliance upon the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

The consolidated financial statements of Youbet appearing in Youbet s Annual Report on Form 10-K for the year ended December 31, 2008 and the effectiveness of Youbet s internal control over financial reporting as of December 31, 2008 have been audited by Piercy Bowler Taylor & Kern, Certified Public Accountants, independent registered public accounting firm, as set forth in their reports thereon, included therein, and incorporated herein by reference. Such consolidated financial statements are incorporated herein by reference in reliance upon such reports given on the authority of such firm as experts in accounting and auditing.

Where You Can Find More Information

CDI and Youbet file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy these reports, statements or other information filed by either CDI or Youbet at the SEC s Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference rooms. The SEC filings of CDI and Youbet are also available to the public from commercial document retrieval services and at the website maintained by the SEC at *www.sec.gov*.

CDI has filed a registration statement on Form S-4 to register with the SEC the CDI common stock to be issued to Youbet stockholders in the merger. This proxy statement/prospectus is a part of that registration statement and constitutes a prospectus of CDI, in addition to being a proxy statement of Youbet for the Youbet special meeting. The registration statement, including the attached annexes, exhibits and schedules, contains additional relevant information about CDI, CDI common stock and Youbet. As allowed by SEC rules, this proxy statement/prospectus does not contain all the information you can find in the registration statement or the exhibits to the registration statement.

The SEC allows CDI and Youbet to incorporate by reference information into this proxy statement/prospectus. This means that CDI and Youbet can disclose important information to you by referring you to another document filed separately with the SEC. The information incorporated by reference is considered to be a part of this proxy statement/prospectus, except for any information that is superseded by information that is included directly in this proxy statement/prospectus or incorporated by reference subsequent to the date of this proxy statement/prospectus. Neither CDI nor Youbet is incorporating the contents of the websites of the SEC, CDI, Youbet or any other entity into this proxy statement/prospectus. CDI and Youbet are providing information about how you can obtain documents that are incorporated by reference into this proxy statement/prospectus at these websites only for your convenience.

This proxy statement/prospectus incorporates by reference the documents listed below that CDI and Youbet have previously filed with the SEC. They contain important information about CDI and Youbet and their financial conditions. The following documents, which were filed by CDI with the SEC, are incorporated by reference into this proxy statement/prospectus:

annual report of CDI on Form 10-K for the fiscal year ended December 31, 2008, filed with the SEC on March 4, 2009;

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proxy statement of CDI on Schedule 14A, dated April 28, 2009, filed with the SEC on April 28, 2009, as supplemented by the definitive additional materials of CDI filed with the SEC on June 3, 2009;

quarterly reports of CDI on Form 10-Q for the quarterly period ended March 31, 2009, filed with the SEC on May 6, 2009, for the quarterly period ended June 30, 2009, filed with the SEC on July 29, 2009 and for the quarterly period ended September 30, 2009, filed with the SEC on October 28, 2009;

current reports of CDI on Form 8-K, filed on January 20, 2009, February 12, 2009, March 13, 2009, September 24, 2009, November 12, 2009, November 13, 2009 and December 4, 2009 and amendments to current reports of CDI on Form 8-K/A filed with the SEC on June 8, 2009, July 21, 2009 and September 15, 2009 (other than with respect to information furnished under Items 2.02 and 7.01 of any Current Report on Form 8-K, including the related exhibits under Item 9.01); and

description of CDI Series A Junior Participating Preferred Stock Purchase Rights contained in its registration statement on Form 8-A filed with the SEC on March 17, 2008.

The following documents, which were filed by Youbet with the SEC, are incorporated by reference into this proxy statement/prospectus:

annual report of Youbet on Form 10-K for the fiscal year ended December 31, 2008, filed with the SEC on March 6, 2009;

quarterly reports of Youbet on Form 10-Q for the quarterly period ended March 31, 2009, filed with the SEC on May 14, 2009 (as amended by the amendment to quarterly report on Form 10-Q filed with the SEC on September 8, 2009), for the quarterly period ended June 30, 2009, filed with the SEC on August 13, 2009 (as amended by the amendment to quarterly report on Form 10-Q filed with the SEC on September 8, 2009) and for the quarterly period ended September 30, 2009, filed with the SEC on November 13, 2009;

proxy statement of Youbet on Schedule 14A, dated April 30, 2008, filed with the SEC on April 30, 2008;

current reports of Youbet on Form 8-K, filed with the SEC on April 1, 2009, April 17, 2009, April 30, 2009, June 2, 2009, September 8, 2009, September 9, 2009, November 12, 2009 and November 13, 2009, and the amendment to current report of Youbet on Form 8-K/A filed with the SEC on April 17, 2009 (other than with respect to information furnished under Items 2.02 and 7.01 of any Current Report on Form 8-K, including the related exhibits under Item 9.01);

description of the Youbet common stock contained in its registration statement on Form S-3, dated November 26, 2008, including any amendments and reports filed for the purpose of updating such description; and

description of Youbet Preferred Stock Purchase Rights contained in its registration statement on Form 8-A filed with the SEC on April 1, 2009, as amended by the amendment to registration statement on Form 8-A filed with the SEC on November 13, 2009.

In addition, CDI and Youbet incorporate by reference additional documents that either may file with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act between the date of this proxy statement/prospectus and the date of the Youbet special meeting. These documents include periodic reports, such as annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K, excluding any information furnished pursuant to Items 2.02 and 7.01 of any current report on Form 8-K solely for purposes of satisfying the requirements of Regulation FD or Regulation G under the Exchange Act, as well as proxy statements.

CDI and Youbet also incorporate by reference the merger agreement attached to this proxy statement/prospectus as Annex A and the Opinion of Moelis & Company attached to this proxy statement/prospectus as Annex B.

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CDI has supplied all information contained in or incorporated by reference into this proxy statement/prospectus relating to CDI, and Youbet has supplied all information contained in or incorporated by reference into this proxy statement/prospectus relating to Youbet.

You can obtain any of the documents incorporated by reference into this proxy statement/prospectus from CDI or Youbet, as applicable, or from the SEC, through the SEC s website at *www.sec.gov*. Documents incorporated by reference are available from CDI and Youbet without charge, excluding any exhibits to those documents, unless the exhibit is specifically incorporated by reference as an exhibit in this proxy statement/prospectus. CDI shareholders and Youbet stockholders may request a copy of such documents in writing or by telephone by contacting the applicable department at:

Churchill Downs Incorporated 700 Central Avenue Louisville, Kentucky 40208 Attn: Investor Relations (502) 636-4492	Youbet.com, Inc. 5901 De Soto Avenue Woodland Hills, California 91367 Attn: Investor Relations (818) 668-2384

In addition, you may obtain copies of some of this information by accessing CDI s website at *www.churchilldowns.com* under the heading About CDI, then under the link Investors, and then under the link SEC Filings.

You may also obtain copies of some of this information by accessing Youbet s website at *www.youbet.com* under the heading About Us, under the link Investor Relations, and then under the link SEC Filings.

In order for you to receive timely delivery of the documents in advance of the Youbet special meeting, Youbet or CDI, as applicable, should receive your request no later than five business days before your Youbet s special meeting.

We have not authorized anyone to give any information or make any representation about the merger or our companies that is different from, or in addition to, that contained in this proxy statement/prospectus or in any of the materials that we have incorporated into this proxy statement/prospectus. Therefore, if anyone does give you information of this kind, you should not rely on it. If you are in a jurisdiction where offers to exchange or sell, or solicitations of offers to exchange or purchase, the securities offered by this proxy statement/prospectus or the solicitation of proxies is unlawful, or if you are a person to whom it is unlawful to direct these types of activities, then the offer presented in this proxy statement/prospectus does not extend to you. The information contained in this proxy statement/prospectus is accurate only as of the date of this proxy statement/prospectus unless the information specifically indicates that another date applies.

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ANNEX A

AGREEMENT AND PLAN OF MERGER

AMONG

CHURCHILL DOWNS INCORPORATED,

TOMAHAWK MERGER CORP.,

TOMAHAWK MERGER LLC

AND

YOUBET.COM, INC.

Dated as of November 11, 2009

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AGREEMENT OF PLAN AND MERGER

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AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER, dated as of November 11, 2009 (this Agreement), among Churchill Downs Incorporated, a Kentucky corporation (Parent), Tomahawk Merger Corp., a Delaware corporation and a wholly owned subsidiary of Parent (Merger Sub), Tomahawk Merger LLC, a Delaware limited liability company and a wholly owned subsidiary of Parent (Merger LLC), and Youbet.com, Inc., a Delaware corporation (the Company).

W I T N E S S E T H:

WHEREAS, the respective Boards of Directors of Parent, Merger Sub and the Company have approved and declared advisable the merger of Merger Sub with and into the Company (the Merger), upon the terms and subject to the conditions set forth herein, whereby each issued and outstanding share of common stock, $0.001 par value, of the Company (Company Common Stock), together with the associated Company Rights (as hereinafter defined) issued under the Company Rights Agreement (as hereinafter defined), not owned directly or indirectly by Parent or the Company, will be converted into the right to receive (i) shares of Common Stock, no par value, of Parent (Parent Common Stock) and (ii) the Per Share Cash Consideration (as hereinafter defined);

WHEREAS, the respective Boards of Directors of Parent and the Company have determined that the Merger is in furtherance of and consistent with their respective long-term business strategies and is in the best interest of their respective shareholders or stockholders, as applicable;

WHEREAS, immediately following the Merger, Parent will cause the surviving corporation in the Merger to merge with and into Merger LLC in accordance with Section 1.16, on the terms and subject to the conditions of this Agreement and in accordance with the Delaware Limited Liability Company Act (the LLC Act);

WHEREAS, simultaneously with the execution and delivery of this Agreement and as a condition and inducement to Parent s and Merger Sub s willingness to enter into this Agreement, Parent is entering into a voting agreement with the members of the Board of Directors of the Company and certain stockholders of the Company, substantially in the form attached hereto as Exhibit A (each, a Voting Agreement); and

WHEREAS, this Agreement is intended to constitute a plan of reorganization with respect to the Merger and the Subsequent Merger (as hereinafter defined) for United States federal income tax purposes pursuant to which the Merger and the Subsequent Merger, taken together, are to be treated as a reorganization under Section 368(a) of the Internal Revenue Code of 1986 (the Code).

NOW, THEREFORE, in consideration of the premises, representations, warranties and agreements herein contained, the parties agree as follows:

ARTICLE I

THE MERGER AND SUBSEQUENT MERGER

Section 1.1 The Merger. Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the Delaware General Corporation Law (the DGCL), Merger Sub shall be merged with and into the Company at the Effective Time (as hereinafter defined). Following the Merger, the separate corporate existence of Merger Sub shall cease and the Company shall continue as the surviving corporation (the Surviving Corporation) and shall succeed to and assume all the rights and obligations of Merger Sub in accordance with the DGCL. Notwithstanding anything to the contrary herein, at the election of Parent, any direct wholly owned Subsidiary (as hereinafter defined) of Parent may be substituted for Merger Sub as a constituent corporation in

the Merger; provided that such substituted corporation is a Delaware corporation which is formed solely for the purpose of engaging in the transactions contemplated by this Agreement, has engaged in no other business activities and has assumed all obligations of Merger Sub under this Agreement. In such event, the parties agree to execute an appropriate amendment to this Agreement, in form and substance reasonably satisfactory to Parent and the Company, in order to reflect such substitution.

Section 1.2 Effective Time. The Merger shall become effective when a Certificate of Merger (the Certificate of Merger), executed in accordance with the relevant provisions of the DGCL, is filed with the Secretary of State of the State of Delaware; provided, however, that, upon the mutual consent of Merger Sub and the Company, the Certificate of Merger may provide for a later date of effectiveness of the Merger not more than thirty (30) days after the date the Certificate of Merger is filed. The filing of the Certificate of Merger shall be made on the date of the Closing (as hereinafter defined).

Section 1.3 Effects of the Merger. The Merger shall have the effects set forth in this Agreement and in Section 259 of the DGCL.

Section 1.4 Charter and Bylaws; Directors and Officers.

(a) At the Effective Time, the certificate of incorporation of Merger Sub, as in effect immediately prior to the Effective Time, shall become the Certificate of Incorporation of the Surviving Corporation until thereafter changed or amended as provided therein or by applicable foreign, federal, state, local or municipal laws, statutes, ordinances, regulations and rules of any Governmental Entity, including all Orders (Laws); provided that Article FIRST of the Certificate of Incorporation of the Surviving Corporation shall read as follows: The name of the corporation (which is hereinafter referred to as the *Corporation*) is Youbet.com, Inc. At the Effective Time, the Bylaws of Merger Sub, as in effect immediately prior to the Effective Time, shall become the Bylaws of the Surviving Corporation until thereafter changed or amended as provided therein or in the Certificate of Incorporation of the Surviving Corporation.

(b) The directors and officers of Merger Sub at the Effective Time shall be the directors and officers of the Surviving Corporation, until the earlier of their resignation or removal or until their respective successors are duly elected and qualified, as the case may be.

Section 1.5 Conversion of Securities. At the Effective Time, by virtue of the Merger and without any action on the part of Parent, Merger Sub, the Company or the holders of any securities of Merger Sub and the Company:

(a) Each issued and outstanding share of common stock, $0.01 par value, of Merger Sub shall be converted into one validly issued, fully paid and nonassessable share of common stock of the Surviving Corporation.

(b) All shares of Company Common Stock (Company Shares), together with the associated Company Rights, that are held in the treasury of the Company or by any wholly owned Subsidiary of the Company and any Company Shares, together with the associated Company Rights, owned by Parent or any wholly owned Subsidiary of Parent shall be canceled and no capital stock of Parent or other consideration shall be delivered in exchange therefor.

(c) Subject to the provisions of Sections 1.8 and 1.10 and, if applicable, Section 1.5(d), each Company Share issued and outstanding immediately prior to the Effective Time (together with the associated Company Rights), other than Dissenting Shares (as hereinafter defined) and shares to be canceled in accordance with Section 1.5(b), shall be converted into the right to receive (i) 0.0598 (such number being the Exchange Ratio) validly issued, fully paid and nonassessable shares of Parent Common Stock (Parent Shares) (including the associated Parent Rights (as hereinafter defined)) (the Per Share Stock Consideration) and (ii) $0.97 in cash

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without interest (the Per Share Cash Consideration and, together with the Per Share Stock Consideration, the Per Share Merger Consideration). All references in this Agreement to Parent Common Stock and Parent Shares shall be deemed to include the associated Parent Rights unless the context requires otherwise. All such Company Shares and the associated Company Rights, when so converted, shall no longer be outstanding and shall automatically be canceled and retired, and each holder of a certificate representing any such shares shall cease to have any rights with respect thereto, except the right to receive any dividends and other distributions in accordance with Section 1.7, certificates representing the Parent Shares into which such shares are converted, the Per Share Cash Consideration and any cash, without interest, in lieu of fractional shares to be issued or paid in consideration therefor upon the surrender of such certificate in accordance with Section 1.6.

(d) Notwithstanding anything in this Agreement to the contrary, to the extent that the aggregate number of Parent Shares issuable pursuant to Section 1.5(c) (the Total Stock Amount) would be greater than 19.6% of the Parent Shares outstanding as of immediately prior to the Effective Time (such amount, the Stock Threshold), (i) the Per Share Stock Consideration shall be decreased to reduce the Total Stock Amount to the Stock Threshold and (ii) the Per Share Cash Consideration shall be increased by an amount equal to the product of (x) the amount of such reduction in the Per Share Stock Consideration pursuant to the preceding sentence multiplied by (y) $30.71.

(e) Notwithstanding anything in this Agreement to the contrary, Company Shares issued and outstanding immediately prior to the Effective Time, together with the associated Company Rights, which are held of record by stockholders who shall not have approved the Merger and who shall have demanded properly in writing appraisal of such shares in accordance with Section 262 of the DGCL (Dissenting Shares) shall not be converted into the right to receive the Per Share Merger Consideration as set forth in Section 1.5(c), but the holders thereof instead shall be entitled to, and the Dissenting Shares shall only represent the right to receive, payment of the fair value of such shares in accordance with the provisions of Section 262 of the DGCL; provided, however, that (i) if such a holder fails to demand properly in writing from the Surviving Corporation the appraisal of his or its shares in accordance with Section 262(d) of the DGCL or, after making such demand, subsequently delivers an effective written withdrawal of such demand, or fails to establish his or its entitlement to appraisal rights as provided in Section 262 of the DGCL, if so required, or (ii) if a court shall determine that such holder is not entitled to receive payment for his or its shares or such holder shall otherwise lose his or its appraisal rights, then, in any such case, each Company Share, together with the associated Company Rights, held of record by such holder or holders shall automatically be converted into and represent only the right to receive the Per Share Merger Consideration as set forth in Section 1.5(c), upon surrender of the certificate or certificates representing such Dissenting Shares. The Company shall give Parent and Merger Sub prompt notice of any demands received by the Company for appraisal of such shares, and Parent and Merger Sub shall have the right to participate in all negotiations and proceedings with respect to such demands except as required by applicable Law. The Company shall not, except with the prior written consent of Parent, voluntarily make any payment with respect to any demands for fair value for Dissenting Shares or offer to settle, settle or negotiate in respect of any such demands.

Section 1.6 Exchange of Shares. Parent shall authorize a nationally recognized financial institution selected by Parent and reasonably acceptable to the Company to act as Exchange Agent hereunder (the Exchange Agent). Immediately prior to the Effective Time, Parent shall deposit with the Exchange Agent for exchange with outstanding Company Shares, together with the associated Company Rights, all cash and certificates representing the Parent Shares (or appropriate alternative arrangements shall be made by Parent if uncertificated Parent Shares will be issued) payable or issuable pursuant to Section 1.5(c) and cash, as required to make payments in lieu of any fractional shares pursuant to Section 1.8 (such cash and Parent Shares, together with any dividends or distributions with respect thereto, being hereinafter referred to as the Exchange Fund). The Exchange Agent may only invest any cash in the Exchange Fund as directed by Parent; provided, however, that such investments shall be in obligations of or guaranteed by the United States of America or any agency or instrumentality thereof and backed by the full faith and credit of the United States of America, in commercial paper obligations rated A-1 or P-1 or better by Moody s Investors Service, Inc. or Standard & Poor s

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Corporation, respectively, or in certificates of deposit, bank repurchase agreements or banker s acceptances of commercial banks with capital exceeding $1 billion (based on the most recent financial statements of such bank which are then publicly available). Any interest and other income resulting from such investments shall be paid to Parent and any risk of loss shall be borne by Parent. The Exchange Agent shall deliver the Per Share Merger Consideration contemplated to be issued and paid pursuant to Section 1.5(c) out of the Exchange Fund. Parent shall instruct the Exchange Agent, as soon as reasonably practicable after the Effective Time, to mail to each record holder of Company Shares, which at the Effective Time were converted into the right to receive the Per Share Merger Consideration pursuant to Section 1.5(c), a letter of transmittal (which shall be in a form reasonably satisfactory to the Company and shall specify that delivery shall be effected, and risk of loss and title to the Company Shares shall pass, only upon actual delivery of the Company Shares to the Exchange Agent), and shall contain instructions for use in effecting the surrender of such Company Shares in exchange for the Per Share Cash Consideration and certificates representing Parent Shares (or appropriate alternative arrangements shall be made by Parent if uncertificated Parent Shares will be issued), and cash in lieu of fractional shares (the Transmittal Letter). Upon surrender for cancellation to the Exchange Agent of Company Shares, together with the Transmittal Letter, duly executed, the holder of such Company Shares shall be entitled to receive in exchange therefor the Per Share Cash Consideration and that number of whole Parent Shares (after taking into account all shares surrendered by such holder) to which such holder is entitled pursuant to Section 1.5(c) (which shall be in uncertificated book entry form unless a physical certificate is requested), cash in lieu of any fractional share in accordance with Section 1.8 and certain dividends and other distributions in accordance with Section 1.7, and any Company Shares so surrendered shall forthwith be canceled. Subject to Section 1.5(e), until surrendered as contemplated by this Section 1.6, each Company Share shall be deemed at any time after the Effective Time to represent only the right to receive the Per Share Merger Consideration (and any amounts to be paid pursuant to Sections 1.7 and 1.8) upon such surrender.

Section 1.7 Dividends; Transfer Taxes; Withholding. No dividends or other distributions that are declared on or after the Effective Time on Parent Common Stock, or are payable to the holders of record thereof on or after the Effective Time, will be paid to any Person entitled by reason of the Merger to receive Parent Shares until such Person surrenders the related Company Shares, as provided in Section 1.6, and no cash payment in lieu of fractional shares will be paid to any such Person pursuant to Section 1.8 until such Person shall so surrender the related Company Shares. Subject to the effect of applicable Law, there shall be paid to each record holder of a new Parent Share: (i) at the time of such surrender or as promptly as practicable thereafter, the amount of any dividends or other distributions theretofore paid with respect to the Parent Shares and having a record date on or after the Effective Time and a payment date prior to such surrender; (ii) at the appropriate payment date or as promptly as practicable thereafter, the amount of any dividends or other distributions payable with respect to such Parent Shares and having a record date on or after the Effective Time but prior to such surrender and a payment date on or subsequent to such surrender; and (iii) at the time of such surrender or as promptly as practicable thereafter, the amount of any cash payable with respect to a fractional Parent Share to which such holder is entitled pursuant to Section 1.8. In no event shall the Person entitled to receive such dividends or other distributions or cash in lieu of fractional shares be entitled to receive interest on such dividends or other distributions or cash in lieu of fractional shares. If any portion of the Per Share Merger Consideration is to be paid to or issued in a name other than that in which the Company Shares surrendered in exchange therefor is registered, it shall be a condition to the registration thereof that the surrendered Company Shares be in proper form for transfer and that the person requesting such delivery of the Per Share Merger Consideration pay any transfer or other similar Taxes required as a result of such registration in the name of a Person other than the registered holder of such Company Shares or establish to the satisfaction of the Exchange Agent that such Tax has been paid or is not payable or otherwise applicable. Parent or the Exchange Agent shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any Person such amounts as Parent or the Exchange Agent is required to deduct and withhold with respect to the making of such payment under the Code or under any provision of state, local or foreign tax Law. To the extent that amounts are so withheld by Parent or the Exchange Agent, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person who otherwise would have received the payment in respect of which such deduction and withholding was made by Parent or the Exchange Agent.

Section 1.8 No Fractional Securities. No certificates or scrip representing fractional Parent Shares shall be issued upon the surrender for exchange of Company Shares pursuant to this Article I or upon the cancellation of Company Stock Options pursuant to Section 5.5; no Parent dividend or other distribution or stock split shall relate to any fractional share; and no fractional share shall entitle the owner thereof to vote or to any other rights of a securityholder of Parent. In lieu of any such fractional share, each holder of Company Shares who would otherwise have been entitled to a fraction of a Parent Share upon surrender of Company Shares for exchange pursuant to this Article I or upon cancellation of Company Stock Options pursuant to Section 5.5 will be paid an amount in cash (without interest), rounded down to the nearest cent, determined by multiplying (i) the per share value calculated as the average of the closing sale prices of one Parent Share for the five (5) most recent days that the Parent Common Stock has traded on The Nasdaq Global Select Market (Nasdaq) ending on the last full trading day immediately prior to the Effective Time by (ii) the fractional interest of a Parent Share to which such holder would otherwise be entitled. The parties acknowledge that payment of cash in lieu of fractional Parent Shares is solely for the purpose of avoiding the expense and inconvenience to Parent of issuing fractional shares and does not represent separately bargained-for consideration. As promptly as practicable after the determination of the amount of cash, if any, to be paid to holders of fractional share interests, the Exchange Agent shall so notify Parent, and Parent shall deposit such amount with the Exchange Agent and shall cause the Exchange Agent to forward payments to such holders of fractional share interests, without interest, subject to and in accordance with the terms of Section 1.7 and this Section 1.8.

Section 1.9 Return of Exchange Fund. Any portion of the Exchange Fund which remains undistributed to the former stockholders of the Company for one year after the Effective Time shall be delivered to Parent, upon demand of Parent, and any such former stockholders who have not theretofore complied with this Article I shall thereafter look only to Parent for payment of their claim for Parent Common Stock, Per Share Cash Consideration, any cash in lieu of fractional Parent Shares and any dividends or distributions with respect to Parent Common Stock. None of Parent, the Surviving Corporation or the Exchange Agent shall be liable to any former holder of Company Common Stock for any such Parent Shares, Per Share Cash Consideration, cash in lieu of fractional Parent Shares and dividends and distributions which are delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law. If any certificate representing any Company Shares shall not have been surrendered prior to five years after the Effective Time (or immediately prior to such earlier date on which any Parent Shares or any dividends or other distributions payable to the holder of such certificate representing any Company Share would otherwise escheat to or become the property of any Governmental Entity), any such Parent Shares, dividends or other distributions in respect of such certificate representing any Company Share shall, to the extent permitted by applicable Law, become the property of Parent, free and clear of all claims or interest of any person previously entitled thereto. Notwithstanding anything in this Agreement to the contrary, none of the Company, Parent, Merger Sub, the Surviving Corporation, the Surviving Company, the Exchange Agent or any other person shall be liable to any former holder of Company Shares for any amount properly delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law.

Section 1.10 Adjustment of Per Share Merger Consideration. In the event of any reclassification, stock split or stock dividend (including any dividend of securities convertible into or exercisable for Parent Common Stock or Company Common Stock) with respect to Parent Common Stock or Company Common Stock or any change or conversion of Parent Common Stock or Company Common Stock into other securities (or if a record date with respect to any of the foregoing should occur) prior to the Effective Time, appropriate and proportionate adjustments, if any, shall be made to the Per Share Merger Consideration, Exchange Ratio, Per Share Stock Consideration and, to the extent required by Section 1.5(d), Per Share Cash Consideration and all references to the Per Share Merger Consideration, Exchange Ratio, Per Share Stock Consideration and Per Share Cash Consideration in this Agreement shall be deemed to be to the Per Share Merger Consideration, Exchange Ratio, Per Share Stock Consideration and Per Share Cash Consideration as so adjusted.

Section 1.11 No Further Ownership Rights in Company Common Stock. All Parent Shares issued and the Per Share Cash Consideration paid upon the surrender for exchange of Company Shares in accordance with

the terms of this Agreement (including any cash paid pursuant to Section 1.8) shall be deemed to have been issued and paid in full satisfaction of all rights pertaining to the Company Shares, together with the associated Company Rights.

Section 1.12 Closing of Company Transfer Books. At the Effective Time, the stock transfer books of the Company shall be closed, and no transfer of Company Shares shall thereafter be made on the records of the Company. If, after the Effective Time, certificates representing Company Shares are presented to the Surviving Corporation, the Exchange Agent or Parent, such certificates shall be canceled and exchanged as provided in this Article I.

Section 1.13 Lost Certificates. If any certificate representing any Company Share(s) shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such certificate representing Company Share(s) to be lost, stolen or destroyed and, if required by Parent or the Exchange Agent, the posting by such Person of a bond, in such reasonable amount as Parent or the Exchange Agent may direct as indemnity against any claim that may be made against Parent, the Surviving Corporation or the Exchange Agent with respect to such certificate, the Exchange Agent or Parent will issue and pay or cause to be issued and paid in exchange for such lost, stolen or destroyed certificate representing any Company Share(s) the Parent Shares, Per Share Cash Consideration, any cash in lieu of fractional Parent Shares to which the holder thereof is entitled pursuant to Section 1.8, and any dividends or other distributions to which the holder thereof is entitled pursuant to Section 1.7.

Section 1.14 Further Assurances. If at any time after the Effective Time the Surviving Corporation shall consider or be advised that any deeds, bills of sale, assignments or assurances or any other acts or things are necessary, desirable or proper (a) to vest, perfect or confirm, of record or otherwise, in the Surviving Corporation its right, title or interest in, to or under any of the rights, privileges, powers, franchises, properties or assets of either of Merger Sub or the Company, or (b) otherwise to carry out the purposes of this Agreement, the Surviving Corporation and its proper officers and directors or their designees shall be authorized to execute and deliver, in the name and on behalf of either Merger Sub or the Company, all such deeds, bills of sale, assignments and assurances and to do, in the name and on behalf of either Merger Sub or the Company, all such other acts and things as may be necessary, desirable or proper to vest, perfect or confirm the Surviving Corporation s right, title or interest in, to or under any of the rights, privileges, powers, franchises, properties or assets of Merger Sub or the Company and otherwise to carry out the purposes of this Agreement.

Section 1.15 Closing. The closing of the transactions contemplated by this Agreement (the Closing) and all actions specified in this Agreement to occur at the Closing shall take place at the offices of Sidley Austin LLP, One South Dearborn Street, Chicago, Illinois, at 10:00 a.m., local time, no later than the second Business Day following the day on which the last of the conditions set forth in Article VI (other than those conditions that are by their nature to be satisfied at the Closing, but subject to the fulfillment or waiver of those conditions) shall have been fulfilled or waived (if permissible) or at such other time and place as Parent and the Company shall agree.

Section 1.16 Subsequent Merger.

(a) Immediately after the Effective Time, Parent will cause the Surviving Corporation to merge with and into Merger LLC (the Subsequent Merger), the separate corporate existence of the Surviving Corporation shall thereupon cease, Merger LLC shall continue as the surviving entity (the Surviving Company) and all of the rights and obligations of the Surviving Corporation under this Agreement shall be deemed the rights and obligations of the Surviving Company. The Subsequent Merger shall have the effects set forth in Section 18-209(g) of the LLC Act. Immediately following the completion of the Subsequent Merger, the Certificate of Formation and Operating Agreement of the Surviving Company shall be in the forms attached hereto as Exhibit B and Exhibit C, respectively.

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(b) The Merger and Subsequent Merger, taken together, are intended to be treated for federal income tax purposes as a reorganization under Section 368(a) of the Code (to which each of Parent and the Company are to be parties under Section 368(b) of the Code) in which the Company is to be treated as merging directly with and into Parent, with the Company Common Stock, together with the associated Company Rights, converted in such merger into the right to receive the consideration provided for hereunder.

(c) Each of the parties hereto shall, and shall cause its Affiliates to, treat the Merger and Subsequent Merger for all Tax (as hereinafter defined) purposes consistent with Section 1.16(b) unless the Continuity Requirement is not satisfied or unless required to do otherwise by applicable Law.

(d) Notwithstanding anything to the contrary in this Agreement, Parent shall have no obligation to cause the Subsequent Merger to be consummated under this Section 1.16 or otherwise if the Continuity Requirement is not satisfied.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF PARENT, MERGER SUB AND MERGER

LLC

Except as disclosed in the Parent SEC Documents filed or furnished with the SEC since January 1, 2007 but prior to the date of this Agreement (but excluding any risk factor disclosures contained under the heading Risk Factors, any disclosure of risks included in any forward-looking statements disclaimer or any other statements that are similarly predictive or forward-looking in nature, in each case, other than any specific factual information contained therein) or in the letter delivered by Parent to the Company immediately prior to the execution of this Agreement (the Parent Letter), Parent, Merger Sub and Merger LLC represent and warrant to the Company as follows:

Section 2.1 Organization, Standing and Power. Parent is a corporation duly organized, validly existing and in good standing under the laws of the State of Kentucky and has the requisite corporate power and authority to carry on its business as now being conducted. Merger Sub is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has the requisite corporate power and authority to carry on its business as now being conducted. Merger LLC is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has the requisite limited liability company power and authority to carry on its business as now being conducted. Each Subsidiary (as hereinafter defined) of Parent that is a Significant Subsidiary (as such term is defined in Rule 1-02 of Regulation S-X) is duly organized, validly existing and in good standing under the Laws of the jurisdiction in which it is organized and has the requisite corporate (in the case of a Subsidiary that is a corporation) or other power and authority to carry on its business as now being conducted, except where the failure to be so organized, existing or in good standing or to have such power or authority would not, individually or in the aggregate, have a Parent Material Adverse Effect (as hereinafter defined). Parent and each of its Subsidiaries that is a Significant Subsidiary are duly qualified to do business, and are in good standing, in each jurisdiction where the character of their properties owned or held under lease or the nature of their activities makes such qualification or good standing necessary, except where the failure to be so qualified and in good standing would not, individually or in the aggregate, have a Parent Material Adverse Effect.

Section 2.2 Capital Structure.

(a) As of the date of this Agreement, the authorized capital stock of Parent consists of 50,000,000 Parent Shares and 250,000 shares of preferred stock, no par value (the Parent Preferred Stock), of which 50,000 shares have been designated as Series A Junior Participating Preferred Stock. At the close of business on November 9, 2009, (i) 13,688,740 Parent Shares were issued and outstanding, all of which were validly issued,

fully paid, nonassessable and free of preemptive rights; (ii) no Parent Shares were held in the treasury of Parent or by Subsidiaries of Parent; (iii) 246,336 Parent Shares were reserved for issuance pursuant to outstanding options, warrants or other rights to purchase or otherwise acquire Parent Shares under Parent s plans or other arrangements or pursuant to any plans or arrangements assumed by Parent in connection with any acquisition, business combination or similar transaction (collectively, the Parent Stock Plans). Between November 9, 2009 and the date of this Agreement, except as set forth herein and except for the issuance of Parent Shares pursuant to the Parent Stock Plans, no shares of capital stock or other voting securities of Parent were issued, reserved for issuance or outstanding. Parent has 50,000 shares of Parent Preferred Stock reserved for issuance pursuant to the Rights Agreement, dated as of March 19, 2008, between the Company and National City Bank (the Parent Rights Agreement) providing for rights to acquire shares of Parent s Series A Junior Participating Preferred Stock (the Parent Rights). All of the Parent Shares issuable upon conversion of Company Common Stock at the Effective Time in accordance with this Agreement will be, when so issued, duly authorized, validly issued, fully paid, nonassessable and free of preemptive rights. As of the date of this Agreement, except for (i) this Agreement and (ii) as set forth above, there are no options, warrants, calls, rights, puts or Contracts (as hereinafter defined) to which Parent or any of its Subsidiaries is a party or by which any of them is bound obligating Parent or any of its Subsidiaries to issue, deliver, sell, redeem or otherwise acquire, or cause to be issued, delivered, sold, redeemed or otherwise acquired, any additional shares of capital stock (or other voting securities or equity equivalents) of Parent or any of its Subsidiaries or obligating Parent or any of its Subsidiaries to grant, extend or enter into any such option, warrant, call, right, put or Contract. As of the date of this Agreement, Parent does not have any outstanding bonds, debentures, notes or other obligations the holders of which have the right to vote (or convertible into or exercisable for securities having the right to vote) with the stockholders of Parent on any matter. There are no Contracts to which Parent, its Subsidiaries or any of their respective officers or directors is a party concerning the voting of any capital stock of Parent or any of its Subsidiaries.

(b) Each outstanding share of capital stock (or other voting security or equity equivalent, as the case may be) of each Significant Subsidiary of Parent is duly authorized, validly issued, fully paid and nonassessable and, except for director or qualifying shares, each such share (or other voting security or equity equivalent, as the case may be) is owned by Parent or another Subsidiary of Parent, free and clear of all security interests, liens, claims, pledges, options, rights of first refusal, limitations on voting rights, charges and other encumbrances of any nature whatsoever. Exhibit 21 to Parent s Annual Report on Form 10-K for the year ended December 31, 2008, as filed with the Securities and Exchange Commission (the SEC), constituted a true, accurate and correct statement in all material respects of all of the information required to be set forth therein by the regulations of the SEC as of the date thereof.

(c) Section 2.2(c) of the Parent Letter sets forth a list as of the date of this Agreement of all Significant Subsidiaries and material Joint Ventures (as hereinafter defined) of Parent and the jurisdiction in which such Significant Subsidiary or material Joint Venture is organized. Section 2.2(c) of the Parent Letter also sets forth as of the date of this Agreement the nature and extent of the ownership and voting interests held by Parent in each such material Joint Venture. As of the date of this Agreement, Parent has no obligation to make any capital contributions, or otherwise provide assets or cash, to any material Joint Venture.

Section 2.3 Authority. On or prior to the date of this Agreement, the Boards of Directors of each of Parent and Merger Sub, and the managing member of Merger LLC has (i) determined that this Agreement and the transactions contemplated hereby, including the Merger and the Subsequent Merger, are, based in part upon the opinion referenced in Section 2.14, advisable and fair to and in the best interests of Parent, Merger Sub and Merger LLC, respectively, and their respective shareholders, stockholders and members and (ii) approved this Agreement and the transactions contemplated hereby, including the Merger and the Subsequent Merger. Each of Parent, Merger Sub and Merger LLC has all requisite corporate or limited liability power and authority, as the case may be, to enter into this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by Parent, Merger Sub and Merger LLC and the consummation by Parent, Merger Sub and Merger LLC of the transactions contemplated hereby, including the Merger and the

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Subsequent Merger, have been duly authorized by all necessary corporate or limited liability company action on the part of Parent, Merger Sub and Merger LLC, subject to the filing of appropriate merger documents as required by the DGCL and LLC Act. This Agreement and the consummation of the transactions contemplated hereby have been approved by the sole stockholder of Merger Sub and the sole member of Merger LLC. This Agreement has been duly executed and delivered by Parent, Merger Sub and Merger LLC and (assuming the valid authorization, execution and delivery of this Agreement by the Company and the validity and binding effect of this Agreement on the Company) except to the extent enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting the enforcement of creditors rights generally and by the effect of general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law), this Agreement constitutes the valid and binding obligation of Parent, Merger Sub and Merger LLC enforceable against each of them in accordance with its terms. The filing of a registration statement on Form S-4 with the SEC by Parent under the Securities Act of 1933 (together with the rules and regulations promulgated thereunder, the Securities Act), for the purpose of registering the Parent Shares to be issued in the Merger (together with any amendments or supplements thereto, whether prior to or after the effective date thereof, the Registration Statement) has been duly authorized by Parent s Board of Directors. Parent has delivered or made available to the Company complete and correct copies of the Amended and Restated Certificate of Incorporation of Parent (the Parent Charter) and the Amended and Restated Bylaws of Parent (the Parent Bylaws), the Certificate of Incorporation and Bylaws of Merger Sub and the Certificate of Formation and Limited Liability Company Operating Agreement of Merger LLC.

Section 2.4 Consents and Approvals; No Violation. Assuming that all consents, approvals, authorizations and other actions described in this Section 2.4 have been obtained and all filings and obligations described in this Section 2.4 have been made, the execution and delivery of this Agreement does not, and the consummation of the transactions contemplated hereby and compliance with the provisions of this Agreement will not, result in any violation of, or default (with or without notice or lapse of time, or both) under, or give to others a right of termination, cancellation or acceleration of any obligation or the loss of a material benefit under, or result in the creation of any Encumbrance upon any of the properties or assets of Parent or any of its Subsidiaries under, any provision of (i) the Parent Charter or the Parent Bylaws, the Certificate of Incorporation or Bylaws of Merger Sub or the Certificate of Formation or Limited Liability Company Operating Agreement of Merger LLC; (ii) any material Contract applicable to Parent or any of its Subsidiaries or any of their respective properties or assets; or (iii) any judgment, order, decree, injunction, statute, Law, ordinance, rule or regulation applicable to Parent or any of its Subsidiaries or any of their respective properties or assets, other than, in the case of clauses (ii) or (iii), any such violations, defaults, rights or Encumbrances that would not, individually or in the aggregate, have a Parent Material Adverse Effect or materially impair the ability of Parent, Merger Sub or Merger LLC to perform their respective obligations hereunder or prevent the consummation of any of the transactions contemplated hereby by Parent, Merger Sub or Merger LLC. No filing or registration with, or authorization, consent or approval of, any domestic (federal and state), foreign or supranational court, commission, governmental body, regulatory agency, authority or tribunal (a Governmental Entity) is required by or with respect to Parent or any of its Subsidiaries in connection with the execution and delivery of this Agreement by Parent, Merger Sub or Merger LLC or is necessary for the consummation by Parent, Merger Sub or Merger LLC of the Merger, the Subsequent Merger and the other transactions contemplated by this Agreement, except for (i) in connection, or in compliance, with the provisions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (together with the rules and regulations promulgated thereunder, the HSR Act), the Securities Act and the Securities Exchange Act of 1934 (together with the rules and regulations promulgated thereunder, the Exchange Act); (ii) the filing of the Certificate of Merger and the filing of the certificate of merger in connection with the Subsequent Merger, in each case with the Secretary of State of the State of Delaware and appropriate documents with the relevant authorities of other states in which the Company or any of its Subsidiaries is qualified to do business; (iii) such filings, authorizations, orders and approvals as may be required by state takeover laws (the State Takeover Approvals); (iv) such filings as may be required in connection with the Taxes described in Section 5.13; (v) applicable requirements, if any, of state securities or blue sky laws (Blue Sky Laws) and Nasdaq; and (vi) such other consents, orders, authorizations, registrations, declarations and filings the failure of which to be obtained or made would not, individually or in the

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aggregate, have a Parent Material Adverse Effect or materially impair the ability of Parent, Merger Sub or Merger LLC to perform its obligations hereunder or prevent the consummation of any of the transactions contemplated hereby by Parent, Merger Sub or Merger LLC.

Section 2.5 SEC Documents and Other Reports; Internal Controls and Procedures.

(a) Parent has timely filed with the SEC all documents required to be filed by it since January 1, 2007 under the Securities Act or the Exchange Act (the Parent SEC Documents). As of their respective filing dates, or, if amended, as of the date of the last amendment prior to the date of this Agreement, the Parent SEC Documents complied in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, and, at the respective times they were filed, none of the Parent SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The consolidated financial statements (including, in each case, any notes thereto) of Parent included in the Parent SEC Documents complied as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, were prepared in accordance with generally accepted accounting principles (GAAP) (except, in the case of the unaudited statements, as permitted by Form 10-Q of the SEC) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto) and fairly presented in all material respects the consolidated financial position of Parent and its consolidated subsidiaries as at the respective dates thereof and the consolidated results of their operations and their consolidated cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein). Except as disclosed in the Parent SEC Documents filed with the SEC prior to the date of this Agreement or as required by GAAP, Parent has not, between January 1, 2007 and the date of this Agreement, made or adopted any material change in its accounting methods, practices or policies in effect on January 1, 2007.

(b) Parent is in compliance in all material respects with (i) the applicable provisions of the Sarbanes-Oxley Act of 2002 (the Sarbanes-Oxley Act) and (ii) the applicable rules and regulations of Nasdaq.

(c) Parent has made available to the Company true and complete copies of all written comment letters from the staff of the SEC received since January 1, 2007 through the date of this Agreement relating to the Parent SEC Documents and all written responses of Parent thereto through the date of this Agreement other than with respect to requests for confidential treatment. As of the date of this Agreement, there are no outstanding or unresolved comments in comment letters received from the SEC staff with respect to any Parent SEC Documents and, to the Knowledge of Parent, none of the Parent SEC Documents (other than confidential treatment requests) is the subject of ongoing SEC review. To the Knowledge of Parent, as of the date of this Agreement, there are no SEC inquiries or investigations, other governmental inquiries or investigations or internal investigations pending or threatened, in each case regarding any accounting practices of Parent.

(d) Parent has established and maintains disclosure controls and procedures and internal control over financial reporting (as such terms are defined in paragraphs (e) and (f), respectively, of Rule 13a-15 and paragraph (e) of Rule 15d-15 under the Exchange Act) as required by Rules 13a-15 and 15d-15 under the Exchange Act. Parent s disclosure controls and procedures are designed to ensure that all information (both financial and non-financial) required to be disclosed by Parent in the reports that it files or furnishes under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC, and that all such information is accumulated and communicated to Parent s management as appropriate to allow timely decisions regarding required disclosure and to make the certifications required pursuant to Sections 302 and 906 of the Sarbanes-Oxley Act. Parent s management has completed an assessment of the effectiveness of Parent s disclosure controls and procedures and, to the extent required by applicable Law, presented in any applicable Parent SEC Document that is a report on Form 10-K or Form 10-Q, or any amendment thereto, its conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by such report or amendment based on such evaluation. Based on Parent s

management s most recently completed evaluation of Parent s internal control over financial reporting prior to the date of this Agreement, (i) to the Knowledge of Parent, Parent had no significant deficiencies or material weaknesses in the design or operation of its internal control over financial reporting that would reasonably be expected to adversely affect Parent s ability to record, process, summarize and report financial information and (ii) Parent does not have knowledge of any fraud, whether or not material, that involves management or other employees who have a significant role in Parent s internal control over financial reporting.

Section 2.6 Information Supplied. None of the information to be supplied by Parent, Merger Sub or Merger LLC for inclusion or incorporation by reference in the Registration Statement or the proxy statement/prospectus included therein relating to the Company Stockholder Meeting (as hereinafter defined) (together with any amendments or supplements thereto, the Proxy Statement) will (i) in the case of the Registration Statement, at the time it becomes effective, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading or (ii) in the case of the Proxy Statement, at the time of the mailing of the Proxy Statement and at the time of the Company Stockholder Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. If, at any time prior to the Company Stockholder Meeting, any event with respect to Parent, its officers and directors or any of its Subsidiaries shall occur which is required to be described in the Proxy Statement or the Registration Statement, such event shall be so described, and an appropriate amendment or supplement shall be promptly filed with the SEC and, as required by Law, disseminated to the stockholders of the Company. The Registration Statement will comply (with respect to Parent) as to form in all material respects with the provisions of the Securities Act, and the Proxy Statement will comply (with respect to Parent) as to form in all material respects with the provisions of the Exchange Act.

Section 2.7 No Undisclosed Liabilities. Except as reflected or reserved against in the balance sheet of Parent dated September 30, 2009 included in the Form 10-Q filed by Parent with the SEC on October 28, 2009 (or described in the notes thereto), neither Parent nor any of its Subsidiaries has any debts, liabilities, commitments and obligations, whether accrued or fixed, absolute or contingent, matured or unmatured, determined or determinable, known or unknown, asserted or unasserted, including those arising under any Law, Action or any judgment, order, writ, award, preliminary or permanent injunction or decree of any Governmental Entity (an Order) or those arising under any Contract (Liabilities), except (a) Liabilities incurred since September 30, 2009, in the ordinary course of business consistent with past practice which, individually or in the aggregate, would not reasonably be expected to have a Parent Material Adverse Effect and (b) Liabilities incurred in connection with this Agreement or the transactions contemplated hereby.

Section 2.8 Absence of Certain Changes or Events. Except as disclosed in the Parent SEC Documents filed with the SEC prior to the date of this Agreement, since December 31, 2008, (i) Parent and its Subsidiaries have conducted their businesses, in all material respects, in the ordinary course of business consistent with past practice; (ii) there has not been any action taken or committed to be taken by Parent or any Subsidiary of Parent which, if taken following entry by Parent into this Agreement, would have required the consent of the Company pursuant to Section 4.2(a) or 4.2(b) and (iii) there has been no event, occurrence, fact, condition, effect, change or development which, individually or in the aggregate, has had or would reasonably be expected to have, a Parent Material Adverse Effect.

Section 2.9 Litigation. There is no material Action by or before any Governmental Entity or other Person pending or, to the Knowledge of Parent, threatened against Parent or any of its Subsidiaries or any of its or their respective properties or assets and neither Parent nor any of its Subsidiaries is subject to any Order.

Section 2.10 Permits and Compliance. Each of Parent and its Subsidiaries is in possession of all franchises, grants, authorizations, licenses, permits, charters, easements, variances, exceptions, consents, certificates, approvals and orders of any Governmental Entity necessary for Parent or any of its Subsidiaries to own, lease and operate its properties or to carry on its business as it is now being conducted (the Parent

Permits), except where the failure to have any of the Parent Permits would not, individually or in the aggregate, have a Parent Material Adverse Effect, and, as of the date of this Agreement, no suspension or cancellation of any of the Parent Permits is pending or, to the Knowledge of Parent (as hereinafter defined), threatened, except where the suspension or cancellation of any of the Parent Permits would not, individually or in the aggregate, have a Parent Material Adverse Effect. Neither Parent nor any of its Subsidiaries is in violation of (i) its charter, bylaws or other organizational documents; (ii) any applicable Law; or (iii) any Order, except, in the case of clauses (ii) and (iii), for any violations that would not, individually or in the aggregate, have a Parent Material Adverse Effect. No notice of any such violation or non-compliance has been received by Parent.

Section 2.11 Tax Matters. (i) Parent and each of its Subsidiaries have filed all federal, and all material state, local and foreign, Tax Returns (as hereinafter defined) required to have been filed or appropriate extensions therefor have been properly obtained, and such Tax Returns are correct and complete, except to the extent that any failure to so file or any failure to be correct and complete would not, individually or in the aggregate, have a Parent Material Adverse Effect; (ii) all Taxes (as hereinafter defined) shown to be due on such Tax Returns have been timely paid or extensions for payment have been properly obtained, except to the extent that any failure to so pay or so obtain such an extension would not, individually or in the aggregate, have a Parent Material Adverse Effect; (iii) no material issues that have been raised in writing by the relevant taxing authority in connection with the examination of the Tax Returns referred to in clause (i) which if resolved adversely would have a Parent Material Adverse Effect are currently pending; (iv) all material deficiencies asserted in writing or assessments made in writing as a result of any examination of such Tax Returns by any taxing authority have been resolved; (v) during the past three years, neither Parent nor any of its Subsidiaries has been a distributing or controlled corporation in a transaction intended to qualify for tax-free treatment under Section 355 of the Code; and (vi) during the last five years, neither Parent nor any of its Subsidiaries has been a party to any so-called listed transaction identified by the IRS for which reporting was required.

Section 2.12 Ownership of Company Common Stock. None of Parent, Merger Sub or Merger LLC is, nor at any time during the last three years has been, an interested stockholder of the Company as defined in Section 203 of the DGCL.

Section 2.13 ERISA. Except as would not, individually or in the aggregate, have a Parent Material Adverse Effect, (a) each Parent Plan (as hereinafter defined) complies in all respects with its terms, the terms of each applicable collective bargaining agreement, the Employee Retirement Income Security Act of 1974 (ERISA), the Code and all other applicable statutes and governmental rules and regulations, (b) no Parent Plan, nor any trust created thereunder, has failed to satisfy the minimum funding standard as described in Section 302 of ERISA, whether or not waived, (c) neither Parent nor any ERISA Affiliate has withdrawn, and neither has knowledge of any facts or conditions that could result in a withdrawal, from any multiemployer plan (as defined in Section 3(37) of ERISA), and (d) no liability under Title IV of ERISA has occurred or is reasonably expected to occur.

Section 2.14 Opinion of Financial Advisor. Parent has received the written opinion of Imperial Capital, LLC, dated as of November 11, 2009, to the effect that, as of the date of this Agreement, the Per Share Merger Consideration is fair to Parent from a financial point of view, a copy of which opinion has been delivered to the Company.

Section 2.15 No Vote Required. No vote of the holders of Parent Common Stock or any other securityholders of Parent is required under Nasdaq rules and regulations, by Law, by the Parent Charter or by the Parent Bylaws or otherwise in order for Parent to consummate the Merger, the Subsequent Merger and the transactions contemplated hereby and thereby.

Section 2.16 Reorganization. Neither Parent nor any of its Subsidiaries has taken any action or failed to take any action which action or failure would, to the Knowledge of Parent, jeopardize the qualification of the Merger and the Subsequent Merger, taken together, as a reorganization within the meaning of Section 368(a)

of the Code. To the Knowledge of Parent, the representations set forth in the form of Parent Tax Certificate attached as Exhibit A to the Parent Letter are correct in all material respects as of the date hereof, assuming the Merger and Subsequent Merger occurred on the date hereof.

Section 2.17 Brokers. No broker, investment banker or other Person, other than Imperial Capital, LLC, the fees and expenses of which will be paid by Parent, is entitled to any broker s, finder s or other similar fee or commission in connection with the Merger, the Subsequent Merger or any of the other transactions contemplated by this Agreement based upon arrangements made by or on behalf of Parent.

Section 2.18 Financing. Parent and Merger Sub have, and will have at the Effective Time, sufficient funds available to consummate the transactions contemplated hereby (including, if applicable, Section 5.5).

Section 2.19 Operations of Merger Sub. Merger Sub is a direct, wholly owned subsidiary of Parent, was formed solely for the purpose of engaging in the transactions contemplated hereby, has engaged in no other business activities and has conducted its operations only as contemplated hereby.

Section 2.20 Operations of Merger LLC. Merger LLC is a direct, wholly owned subsidiary of Parent, was formed solely for the purpose of engaging in the transactions contemplated hereby, has engaged in no other business activities and has conducted its operations only as contemplated hereby.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as disclosed in the Company SEC Documents filed or furnished with the SEC since January 1, 2007 but prior to the date of this Agreement (but excluding any risk factor disclosures contained under the heading Risk Factors, any disclosure of risks included in any forward-looking statements disclaimer or any other statements that are similarly predictive or forward-looking in nature, in each case, other than any specific factual information contained therein) or in the letter delivered by the Company to Parent immediately prior to the execution of this Agreement (the Company Letter), the Company represents and warrants to Parent, Merger Sub and Merger LLC as follows:

Section 3.1 Organization, Standing and Power. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has the requisite corporate power and authority to carry on its business as now being conducted. Each Subsidiary of the Company is duly organized, validly existing and in good standing under the Laws of the jurisdiction in which it is organized and has the requisite corporate (in the case of a Subsidiary that is a corporation) or other power and authority to carry on its business as now being conducted, except where the failure to be so organized, existing or in good standing or to have such power or authority would not, individually or in the aggregate, have a Company Material Adverse Effect. The Company and each of its Subsidiaries are duly qualified to do business, and are in good standing, in each jurisdiction where the character of their properties owned or held under lease or the nature of their activities makes such qualification or good standing necessary, except where the failure to be so qualified and in good standing would not, individually or in the aggregate, have a Company Material Adverse Effect.

Section 3.2 Capital Structure.

(a) As of the date of this Agreement, the authorized capital stock of the Company consists of (i) 100,000,000 Company Shares and (ii) 1,000,000 shares of preferred stock, $0.001 par value per share (Company Preferred Stock), of which (A) 400,000 shares have been designated as Series A Convertible Preferred Stock and (B) 100,000 shares have been designed as Series B Junior Participating Preferred Stock (the Company Series B Preferred Stock). At the close of business on November 9, 2009, (i) 42,826,170 Company Shares were issued and outstanding, all of which were validly issued, fully paid, nonassessable and free of

preemptive rights; (ii) 1,099,335 Company Shares were held in the treasury of the Company and no Company Shares were held by Subsidiaries of the Company; (iii) 6,804,594 Company Shares were reserved for issuance pursuant to outstanding options (the Company Stock Options) to purchase Company Shares pursuant to the Youbet.com, Inc. Equity Incentive Plan (the Company Stock Option Plan), warrants or other rights to purchase or otherwise acquire the Company Shares; and (iv) no shares of Company Preferred Stock were reserved for issuance, other than 100,000 shares of Company Series B Preferred Stock reserved for issuance pursuant to the Rights Agreement, dated as of March 31, 2009, between the Company and American Stock Transfer & Trust Company LLC (the Company Rights Agreement) providing for rights to acquire shares of Company Series B Preferred Stock (the Company Rights). The Company Stock Option Plan is the only benefit plan of the Company or its Subsidiaries under which any securities of the Company or any of its Subsidiaries are issuable. Each Company Share which may be issued pursuant to the Company Stock Option Plan has been duly authorized and, if and when issued pursuant to the terms thereof, will be validly issued, fully paid, nonassessable and free of preemptive rights. No shares of Company Preferred Stock are issued or outstanding. Except as set forth above and except for the issuance of Company Shares upon the exercise of Company Stock Options outstanding in accordance with the terms thereof, no shares of capital stock or other voting securities of the Company are issued, reserved for issuance or outstanding. As of the date of this Agreement, except for (i) this Agreement and (ii) as set forth above, there are no options, warrants, calls, rights, puts or Contracts to which the Company or any of its Subsidiaries is a party or by which any of them is bound obligating the Company or any of its Subsidiaries to issue, deliver, sell, redeem or otherwise acquire, or cause to be issued, delivered, sold, redeemed or otherwise acquired, any additional shares of capital stock (or other voting securities or equity equivalents) of the Company or any of its Subsidiaries or obligating the Company or any of its Subsidiaries to grant, extend or enter into any such option, warrant, call, right, put or Contract. As of the date of this Agreement, the Company does not have any outstanding bonds, debentures, notes or other obligations the holders of which have the right to vote (or convertible into or exercisable for securities having the right to vote) with the stockholders of the Company on any matter. There are no Contracts to which the Company, its Subsidiaries or any of their respective officers or directors is a party concerning the voting of any capital stock of the Company or any of its Subsidiaries.

(b) Each outstanding share of capital stock (or other voting security or equity equivalent, as the case may be) of each Subsidiary of the Company is duly authorized, validly issued, fully paid and nonassessable, and, except for director or qualifying shares, each such share (or other voting security or equity equivalent, as the case may be) is owned by the Company or another Subsidiary of the Company, free and clear of all security interests, liens, claims, pledges, options, rights of first refusal, limitations on voting rights, charges and other encumbrances of any nature whatsoever. Exhibit 21.1 to the Company s Annual Report on Form 10-K for the year ended December 31, 2008, as filed with the SEC, constituted a true, accurate and correct statement in all material respects of all of the information required to be set forth therein by the regulations of the SEC as of the date thereof.

(c) Section 3.2(c) of the Company Letter sets forth a list as of the date of this Agreement of all Subsidiaries and Joint Ventures of the Company and the jurisdiction in which such Subsidiary or Joint Venture is organized. Section 3.2 of the Company Letter also sets forth as of the date of this Agreement the nature and extent of the ownership and voting interests held by the Company in each such Joint Venture. As of the date of this Agreement, the Company has no obligation to make any capital contributions, or otherwise provide assets or cash, to any Joint Venture.

(d) Section 3.2(d) of the Company Letter sets forth a true, complete and correct list of all persons who, as of the date of this Agreement, held outstanding Company Stock Options indicating, with respect to each Company Stock Option then outstanding, the number of Company Shares subject to such Company Stock Option, and the exercise price, date of grant, vesting schedule and expiration date thereof.

Section 3.3 Authority. On or prior to the date of this Agreement, the Board of Directors of the Company has (i) determined that this Agreement and the transactions contemplated hereby, including the Merger and the Subsequent Merger, are, based in part upon the opinion referenced in Section 3.23 below, advisable and

fair to and in the best interests of the Company and its stockholders, (ii) approved this Agreement and the transactions contemplated hereby, including the Merger and the Subsequent Merger, (iii) resolved to recommend the approval and adoption of this Agreement by the Company s stockholders and (iv) directed that this Agreement be submitted to the Company s stockholders for approval and adoption. The Company has all requisite corporate power and authority to enter into this Agreement and, subject to approval and adoption of this Agreement by the stockholders of the Company, to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by the Company and the consummation by the Company of the transactions contemplated hereby, including the Merger and the Subsequent Merger, have been duly authorized by all necessary corporate action on the part of the Company, subject to the filing of appropriate Merger and Subsequent Merger documents as required by the DGCL. This Agreement has been duly executed and delivered by the Company and (assuming the valid authorization, execution and delivery of this Agreement by Parent, Merger Sub and Merger LLC and the validity and binding effect of this Agreement on Parent, Merger Sub and Merger LLC) except to the extent enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting the enforcement of creditors rights generally and by the effect of general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law), this Agreement constitutes the valid and binding obligation of the Company enforceable against the Company in accordance with its terms. The filing of the Proxy Statement with the SEC has been duly authorized by the Company s Board of Directors. The Company has delivered or made available to Parent complete and correct copies of the Certificate of Incorporation, as amended, of the Company (the Company Charter) and the Company s Amended and Restated Bylaws (the Company Bylaws) and the Certificate of Incorporation and Bylaws (or comparable organizational documents) of each of its Subsidiaries.

Section 3.4 Consents and Approvals; No Violation. Assuming that all consents, approvals, authorizations and other actions described in this Section 3.4 have been obtained and all filings and obligations described in this Section 3.4 have been made, the execution and delivery of this Agreement does not, and the consummation of the transactions contemplated hereby and compliance with the provisions of this Agreement will not, result in any violation of, or default (with or without notice or lapse of time, or both) under, or give to others a right of termination, cancellation or acceleration of any obligation or the loss of a material benefit under, or result in the creation of any Encumbrance upon any of the properties or assets of the Company or any of its Subsidiaries under, any provision of (i) the Company Charter or the Company Bylaws; (ii) the comparable charter or organizational documents of any of the Company s Subsidiaries; (iii) any Company Contract; or (iv) any judgment, order, decree, injunction, statute, Law, ordinance, rule or regulation applicable to the Company or any of its Subsidiaries or any of their respective properties or assets, other than, in the case of clause (iv), any such violations, defaults, rights or Encumbrances that would not, individually or in the aggregate, have a Company Material Adverse Effect or materially impair the ability of the Company to perform its obligations hereunder or prevent the consummation of any of the transactions contemplated hereby by the Company. No filing or registration with, or authorization, consent or approval of, any Governmental Entity is required by or with respect to the Company or any of its Subsidiaries in connection with the execution and delivery of this Agreement by the Company or is necessary for the consummation by the Company of the Merger, the Subsequent Merger and the other transactions contemplated by this Agreement, except for (i) in connection, or in compliance, with the provisions of the HSR Act, the Securities Act and the Exchange Act; (ii) the filing of the Certificate of Merger and the filing of the certificate of merger in connection with the Subsequent Merger, in each case with the Secretary of State of the State of Delaware and appropriate documents with the relevant authorities of other states in which the Company or any of its Subsidiaries is qualified to do business; (iii) such filings, authorizations, orders and approvals as may be required to obtain the State Takeover Approvals; (iv) such filings as may be required in connection with the Taxes described in Section 5.13; (v) applicable requirements, if any, of Blue Sky Laws and Nasdaq; and (vi) such other consents, orders, authorizations, registrations, declarations and filings the failure of which to be obtained or made would not, individually or in the aggregate, have a Company Material Adverse Effect or materially impair the ability of the Company to perform its obligations hereunder or prevent the consummation of any of the transactions contemplated hereby by the Company.

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Section 3.5 SEC Documents and Other Reports; Internal Controls and Procedures.

(a) The Company has timely filed with the SEC all documents required to be filed by it since January 1, 2007 under the Securities Act or the Exchange Act (the Company SEC Documents). As of their respective filing dates, or, if amended, as of the date of the last amendment prior to the date of this Agreement, the Company SEC Documents complied in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, and, at the respective times they were filed, none of the Company SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The consolidated financial statements (including, in each case, any notes thereto) of the Company included in the Company SEC Documents complied as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, were prepared in accordance with GAAP (except, in the case of the unaudited statements, as permitted by Form 10-Q of the SEC) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto) and fairly presented in all material respects the consolidated financial position of the Company and its consolidated subsidiaries as at the respective dates thereof and the consolidated results of their operations and their consolidated cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein). Except as disclosed in the Company SEC Documents filed with the SEC prior to the date of this Agreement or as required by GAAP, the Company has not, between January 1, 2007 and the date of this Agreement, made or adopted any material change in its accounting methods, practices or policies in effect on January 1, 2007.

(b) The Company is in compliance in all material respects with (i) the applicable provisions of the Sarbanes-Oxley Act and (ii) the applicable rules and regulations of Nasdaq.

(c) The Company has made available to Parent true and complete copies of all written comment letters from the staff of the SEC received since January 1, 2007 through the date of this Agreement relating to the Company SEC Documents and all written responses of the Company thereto through the date of this Agreement other than with respect to requests for confidential treatment. As of the date of this Agreement, there are no outstanding or unresolved comments in comment letters received from the SEC staff with respect to any Company SEC Documents and, to the Knowledge of the Company, none of the Company SEC Documents (other than confidential treatment requests) is the subject of ongoing SEC review. To the Knowledge of Company, as of the date of this Agreement, there are no SEC inquiries or investigations, other governmental inquiries or investigations or internal investigations pending or threatened, in each case regarding any accounting practices of the Company.

(d) The Company has established and maintains disclosure controls and procedures and internal control over financial reporting (as such terms are defined in paragraphs (e) and (f), respectively, of Rule 13a-15 and paragraph (e) of Rule 15d-15 under the Exchange Act) as required by Rules 13a-15 and 15d-15 under the Exchange Act. The Company s disclosure controls and procedures are designed to ensure that all information (both financial and non-financial) required to be disclosed by the Company in the reports that it files or furnishes under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC, and that all such information is accumulated and communicated to the Company s management as appropriate to allow timely decisions regarding required disclosure and to make the certifications required pursuant to Sections 302 and 906 of the Sarbanes-Oxley Act. The Company s management has completed an assessment of the effectiveness of the Company s disclosure controls and procedures and, to the extent required by applicable Law, presented in any applicable Company SEC Document that is a report on Form 10-K or Form 10-Q, or any amendment thereto, its conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by such report or amendment based on such evaluation. Based on the Company s management s most recently completed evaluation of the Company s internal control over financial reporting prior to the date of this Agreement, (i) to the Knowledge of the Company, the Company had no significant deficiencies or material weaknesses in the design or operation of its internal control over financial

reporting that would reasonably be expected to adversely affect the Company s ability to record, process, summarize and report financial information and (ii) the Company does not have knowledge of any fraud, whether or not material, that involves management or other employees who have a significant role in the Company s internal control over financial reporting.

Section 3.6 Information Supplied. None of the information to be supplied by the Company for inclusion or incorporation by reference in the Registration Statement or the Proxy Statement will (i) in the case of the Registration Statement, at the time it becomes effective, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading or (ii) in the case of the Proxy Statement, at the time of the mailing of the Proxy Statement and at the time of the Company Stockholder Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. If at any time prior to the Company Stockholder Meeting any event with respect to the Company, its officers and directors or any of its Subsidiaries shall occur which is required at that time to be described in the Proxy Statement or the Registration Statement, such event shall be so described, and an appropriate amendment or supplement shall be promptly filed with the SEC and, as required by Law, disseminated to the stockholders of the Company. The Registration Statement will comply (with respect to the Company) as to form in all material respects with the provisions of the Securities Act, and the Proxy Statement will comply (with respect to the Company) as to form in all material respects with the provisions of the Exchange Act.

Section 3.7 No Undisclosed Liabilities. Except as reflected or reserved against in the balance sheet of the Company dated June 30, 2009 included in the Form 10-Q/A filed by the Company with the SEC on September 8, 2009 (or described in the notes thereto), neither the Company nor any of its Subsidiaries has any Liabilities, except (a) Liabilities incurred since June 30, 2009, in the ordinary course of business consistent with past practice which, individually or in the aggregate, would not reasonably be expected to have a Company Material Adverse Effect and (b) Liabilities incurred in connection with this Agreement or the transactions contemplated hereby.

Section 3.8 Absence of Certain Changes or Events. Except as disclosed in the Company SEC Documents filed with the SEC prior to the date of this Agreement, since December 31, 2008, (i) the Company and its Subsidiaries have conducted their businesses, in all material respects, in the ordinary course of business consistent with past practice, (ii) there has not been any action taken or committed to be taken by the Company or any Subsidiary of the Company which, if taken following entry by the Company into this Agreement, would have required the consent of Parent pursuant to Section 4.1(a), 4.1(b), 4.1(d), 4.1(e), 4.1(f), 4.1(k), 4.1(l) or 4.1(o), (iii) the Company has not filed any Tax Return inconsistent with past practice or, on any such Tax Return, taken any position, made any material Tax election or changed any material Tax accounting method that is inconsistent with positions taken, elections made or methods used in preparing or filing similar Tax Returns in prior periods, except as required by applicable Law and (iv) there has been no event, occurrence, fact, condition, effect, change or development which, individually or in the aggregate, has had or would reasonably be expected to have, a Company Material Adverse Effect.

Section 3.9 Litigation. There is no material Action by or before any Governmental Entity or other Person pending or, to the Knowledge of the Company, threatened against the Company or any of its Subsidiaries or any of its or their respective properties or assets and neither the Company nor any of its Subsidiaries is subject to any Order.

Section 3.10 Permits and Compliance. Each of the Company and its Subsidiaries is in possession of all franchises, grants, authorizations, licenses, permits, charters, easements, variances, exceptions, consents, certificates, approvals and orders of any Governmental Entity necessary for the Company or any of its Subsidiaries to own, lease and operate its properties or to carry on its business as it is now being conducted (the Company Permits), except where the failure to have any of the Company Permits would not, individually or in

the aggregate, have a Company Material Adverse Effect, and, as of the date of this Agreement, no suspension or cancellation of any of the Company Permits is pending or, to the Knowledge of the Company (as hereinafter defined), threatened, except where the suspension or cancellation of any of the Company Permits would not, individually or in the aggregate, have a Company Material Adverse Effect. Neither the Company nor any of its Subsidiaries is in violation of (i) its charter, bylaws or other organizational documents; (ii) any applicable Law; or (iii) any Order, except, in the case of clauses (ii) and (iii), for any violations that would not, individually or in the aggregate, have a Company Material Adverse Effect. No notice of any such violation or non-compliance has been received by the Company or any of its Subsidiaries.

Section 3.11 Properties.

(a) Neither the Company nor any of its Subsidiaries owns any real property.

(b) Section 3.11(b) of the Company Letter sets forth a true, correct and complete list of all real property leases, subleases and other occupancy arrangements to which the Company or any of its Subsidiaries is a party and each amendment thereto (the Real Property Leases). Each premises subject to a Real Property Lease is hereinafter referred to as a Leased Property. The Company has made available to Parent a true, correct and complete copy of each Real Property Lease. Neither the Company nor any of its Subsidiaries has transferred, mortgaged or assigned any interest in any such Real Property Lease, nor has the Company nor any of its Subsidiaries subleased or otherwise granted rights of use or occupancy of any of the premises described therein to any other Person. With respect to each Real Property Lease: (i) such Real Property Lease is in full force and effect and is valid and binding on the Company and its Subsidiaries, as applicable and, to the Knowledge of the Company, each other party thereto and enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, rehabilitation, liquidation, preferential transfer, moratorium and similar Laws now or hereafter affecting creditors rights generally and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding at equity or law); (ii) neither the Company nor any of its Subsidiaries nor, to the Knowledge of the Company, any other party to such Real Property Lease, is in material breach or violation of, or in material default under, such Real Property Lease; (iii) the Company s and its Subsidiaries , as applicable, possession and quiet enjoyment of the Leased Property under such Real Property Lease has not been disturbed in any material respect and, to the Knowledge of the Company, there are no disputes with respect to such Real Property Lease; (iv) neither the Company nor any of its Subsidiaries owes any brokerage commissions or finder s fees with respect to such Real Property Lease; (v) no event has occurred or circumstance exists which, with the delivery of notice, the passage of time or both, would result in such a material breach or violation of, or a material default under, such Real Property Lease, or permit the termination, modification or acceleration of rent under such Real Property Lease; (vi) there is no pending, or to the Knowledge of the Company, threatened condemnation or similar proceeding affecting any Leased Property and (vii) the use and occupancy of the Leased Property by the Company or its Subsidiaries complies, in all material respects, with all applicable zoning restrictions or other Laws.

(c) Each of the Company and its Subsidiaries, in all material respects, (i) has good and valid title to all of its properties, assets and other rights that would not constitute real property (other than Intellectual Property), free and clear of all Encumbrances and (ii) owns, has valid leasehold interests in or valid contractual rights to use, all of the assets, tangible and intangible (other than Intellectual Property), used by its business free and clear of all Encumbrances, in each case, except for Permitted Encumbrances.

Section 3.12 Tax Matters. (i) The Company and each of its Subsidiaries have filed all federal, and all material state, local and foreign Tax Returns required to have been filed or appropriate extensions therefor have been properly obtained, and such Tax Returns are correct and complete in all material respects; (ii) all material Taxes shown to be due on such Tax Returns have been timely paid or extensions for payment have been properly obtained; (iii) the Company and each of its Subsidiaries have complied in all material respects with all rules and regulations relating to the withholding of Taxes; (iv) any federal income Tax Returns referred to in clause (i) have been examined by the IRS or the period for assessment of the Taxes in respect of which such Tax Returns

were required to be filed has expired; (v) no material issues that have been raised in writing by the relevant taxing authority in connection with the examination of the Tax Returns referred to in clause (i) are currently pending; (vi) all material deficiencies asserted or assessments made in writing as a result of any examination of such Tax Returns by any taxing authority have been paid in full; (vii) during the past three years, neither the Company nor any of its Subsidiaries has been a distributing or controlled corporation in a transaction intended to qualify for tax-free treatment under Section 355 of the Code; (viii) no withholding is required under Section 1445 of the Code in connection with the Merger; (ix) during the last five years, neither the Company nor any of its Subsidiaries has been a party to any so-called listed transaction identified by the IRS; (x) the Company has not waived any statute of limitations in respect of Taxes and (xi) there are no liens for Taxes upon the assets of the Company except Permitted Encumbrances.

Section 3.13 Company Rights Agreement. The Company has amended the Company Rights Agreement to (i) render the Company Rights Agreement inapplicable to the Merger and the transactions contemplated hereby and (ii) provide that Parent shall not be deemed an Acquiring Person (as defined in the Company Rights Agreement), the Distribution Date (as defined in the Company Rights Agreement) shall not be deemed to occur and the Company Rights will not separate from the shares of Company Common Stock as a result of entering into this Agreement or consummating the Merger or the other transactions contemplated hereby.

Section 3.14 Certain Agreements.

(a) Except as filed as exhibits to the Company SEC Documents filed prior to the date of this Agreement, neither the Company nor any of its Subsidiaries is a party to or bound by (i) any Contract which is a material contract (as such term is defined in Item 601(b)(10) of Regulation S-K under the Exchange Act); (ii) any Contract which materially limits or restricts the manner or localities in which the Company or any of its Affiliates (including Parent or any of its Subsidiaries following the Merger) may conduct business or which contains most favored nation pricing or exclusivity or non-solicitation provisions with respect to customers or suppliers; (iii) any Contract which requires any payment by the Company or its Subsidiaries in excess of $100,000 in any year and which is not terminable within one year without penalty, or which requires any payment to the Company or its Subsidiaries in excess of $100,000 in any year and which is not terminable within one year without penalty; (iv) any Contract relating to or guaranteeing indebtedness for borrowed money to the extent the aggregate principal amount outstanding thereunder exceeds $100,000; (v) since January 1, 2005, any Contract relating to the acquisition or disposition of any business (whether by merger, sale of stock, sale of assets, indemnity insurance or otherwise); (vi) any Employee Agreement (as hereinafter defined); (vii) any Contract of indemnification or any guaranty by the Company or any of its Subsidiaries other than any Contract entered into in connection with the sale or license by the Company or any of its Subsidiaries of products or services in the ordinary course of business, (viii) any Contract to provide the full source code owned by the Company to any third party (other than to consultants or contractors of the Company that are subject to appropriate and reasonable contractual non-disclosure obligations with respect to such source code) for any software product or technology that is material to the Company and its Subsidiaries, taken as a whole; (ix) any material Contract, other than end-user licenses, sale Contracts and related maintenance and support Contracts and other licenses or agreements entered into in the ordinary course of business, to license any third party to use, manufacture or reproduce any Company product, service or Intellectual Property Right or any material Contract to sell, distribute or market any Company product, service or Intellectual Property Right; (x) any settlement Contract which materially affects the conduct of the Company s or any of its Subsidiaries businesses; (xi) any Contract related to pari-mutuel wagering rights or source market or market access fees; and (xii) any Contract related to the formation and/or governance of a Joint Venture, strategic alliance or other similar arrangement. The Company has previously made available to Parent complete and correct copies of each Contract of the type described in this Section 3.14 which was entered into prior to the date of this Agreement. All Contracts of the type described in this Section 3.14 shall be referred to as Company Contracts regardless of whether they were entered into before or after the date of this Agreement.

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(b) All of the Company Contracts are valid and in full force and effect (except those which are cancelled, rescinded or terminated after the date of this Agreement in accordance with their terms), except where the failure to be in full force and effect would not, individually or in the aggregate, have a Company Material Adverse Effect. To the Knowledge of the Company, no Person is challenging the validity or enforceability of any Company Contract, except such challenges which would not, individually or in the aggregate, have a Company Material Adverse Effect. Neither the Company nor any of its Subsidiaries and, to the Knowledge of the Company, none of the other parties thereto, is in breach of any provision of, or committed or failed to perform any act which (with or without notice or lapse of time or both) would constitute a default under the provisions of, any Company Contract, except for those violations and defaults which would not, individually or in the aggregate, have a Company Material Adverse Effect.

(c) Section 3.14(c) of the Company Letter sets forth the total amount of indebtedness owed to the Company or its Subsidiaries from each officer or director of the Company and its Subsidiaries.

Section 3.15 ERISA.

(a) Each material Company Plan is listed in Section 3.15(a) of the Company Letter. With respect to each such material Company Plan, to the extent applicable, the Company has delivered to Parent a true and correct copy of (i) the three (3) most recent annual reports (Forms 5500) filed with the IRS; (ii) each such Company Plan that has been reduced to writing and all amendments thereto; (iii) each trust, insurance and administrative Contract relating to each such Company Plan; (iv) a written summary of each unwritten Company Plan; (v) the most recent summary plan description or other written explanation of each Company Plan provided to participants; (vi) the most recent determination or opinion letter issued by the IRS with respect to any Company Plan intended to be qualified under Section 401(a) of the Code; (vii) any request for a determination currently pending before the IRS; and (viii) all correspondence with the IRS, the Department of Labor, the SEC or Pension Benefit Guaranty Corporation relating to any outstanding inquiry, controversy or audit that would reasonably be expected to result in a material liability. Each Company Plan complies in all material respects with ERISA, the Code and all other applicable statutes and governmental rules and regulations, and the plan sponsor of each Company Plan is in compliance in all material respects with all filing and disclosure requirements imposed on it with respect to such Company Plans. Neither the Company nor any ERISA Affiliate sponsors, contributes to, or has any liability with respect to (x) a plan subject to Title IV of ERISA, including any defined benefit plan (as defined in Section 3(35) of ERISA), a multiemployer plan (as defined in Section 3(37) of ERISA), or a multiple employer plan subject to Section 4063 or 4064 of ERISA, (y) a multiple employer welfare benefit arrangement (as defined in Section 3(40)(A) of ERISA) or (z) a plan subject to Section 302 of ERISA or Section 412 of the Code.

(b) Neither the Company nor any ERISA Affiliate has any material liability of any kind whatsoever, whether known or unknown, direct, indirect, contingent or otherwise, (i) on account of any violation of the health care requirements of Part 6 or 7 of Subtitle B of Title I of ERISA or Section 4980B or 4980D of the Code, (ii) under Section 502(i) or 502(l) of ERISA or Section 4975 of the Code, (iii) under Section 302 of ERISA or Section 412 of the Code or (iv) under Title IV of ERISA. No fiduciary (within the meaning of Section 3(21) of ERISA) of any Company Plan subject to Part 4 of Subtitle B of Title I of ERISA has committed a breach of fiduciary duty with respect to that Company Plan that could subject such fiduciary, the Company or any of the Subsidiaries of the Company to any material liability. There is no pending or, to the Knowledge of the Company, threatened action, claim or lawsuit relating to any Company Plan (other than routine claims for benefits) that could result in a material liability. There is no audit, inquiry or examination pending or, to the Knowledge of the Company, threatened by the IRS, the Department of Labor, the Pension Benefit Guaranty Corporation or any other governmental body with respect to any Company Plan. All Company Plans that are intended by their terms to be, or are otherwise treated by the Company as, qualified under Section 401(a) of the Code have received a favorable determination or opinion letter from the IRS (or a timely application for such determination or opinion is now pending), and no loss of such qualification nor material penalty under the IRS Closing Agreement Program is reasonably expected to result if an IRS audit or investigation were to occur. Neither the Company nor

any of its Subsidiaries has any liability or obligation under any Company Plan to provide health or life insurance benefits after termination of employment to any person other than as required by Section 4980B of the Code or applicable state law.

(c) Except to the extent set forth in Section 5.5, neither the execution of this Agreement nor the consummation of the transactions contemplated by this Agreement (either alone or in combination with another event) will or is reasonably expected to (i) entitle any current or former director, officer, employee or consultant of a Company to any payment (including severance pay or similar compensation), any cancellation of indebtedness, or any increase in compensation, (ii) result in the acceleration of payment, funding or vesting under any material Company Plan or (iii) result in any increase in benefits payable under any material Company Plan. No amount paid or payable (whether in cash, in property, or in the form of benefits) in connection with the transactions contemplated hereby (either solely as a result thereof or as a result of such transactions in conjunction with any other event) will be an excess parachute payment within the meaning of section 280G of the Code, or would constitute an excess parachute payment if such amounts were subject to the provisions of section 280G of the Code.

(d) Each Company Plan which is a nonqualified deferred compensation plan within the meaning of, and subject to, Section 409A of the Code has been at all times administered, operated and maintained in all respects in accordance with its terms and according to the requirements of Section 409A of the Code, except for any failure that would not result in a material liability to the Company. No person is entitled to receive any tax gross up payment from the Company or any of its Subsidiaries as a result of the imposition of a Tax under Section 409A or 4999 of the Code.

(e) With respect to each Company Plan not subject to United States law (a Company Foreign Benefit Plan), except for any failure that would not impose a material liability on the Company, (i) the fair market value of the assets of each funded Company Foreign Benefit Plan, the liability of each insurer for any Company Foreign Benefit Plan funded through insurance or the reserve shown on the consolidated financial statements of the Company included in the Company SEC Documents for any unfunded Company Foreign Benefit Plan, together with any accrued contributions, is sufficient to procure or provide for the projected benefit obligations, as of the Effective Time, with respect to all current and former participants in such plan based on reasonable, country specific actuarial assumptions and valuations and no transaction contemplated by this Agreement shall cause such assets or insurance obligations or book reserve to be less than such projected benefit obligations and (ii) each Company Foreign Benefit Plan required to be registered has been registered and has been maintained in good standing with the appropriate regulatory authorities.

(f) Except for any occurrence that would not impose a material liability on the Company, the Company, with respect to employees outside of the United States, (i) is not under any legal liability to pay pensions, gratuities, superannuation allowances or the like to any past or present directors, officers, employees or dependents of employees; (ii) has not made ex-gratia or voluntary payments by way of superannuation allowance or pension; and/or (iii) does not maintain and has not contemplated any pension schemes or arrangements for payment of the pensions or death benefits or similar arrangements.

Section 3.16 Compliance with Worker Safety and Environmental Laws. The properties, assets and operations of the Company and its Subsidiaries are in compliance with all applicable federal, state, local and foreign Laws, rules and regulations, orders, decrees, judgments, permits and licenses relating to public and worker health and safety (collectively, Worker Safety Laws) and the protection and clean-up of the environment and activities or conditions related thereto, including those relating to the generation, handling, disposal, transportation or release of hazardous materials (collectively, Environmental Laws), except for any violations that would not, individually or in the aggregate, have a Company Material Adverse Effect. With respect to such properties, assets and operations, including any previously owned, leased or operated properties, assets or operations, there are no events, conditions, circumstances, activities, practices, incidents, actions or plans of the Company or any of its Subsidiaries that may interfere with or prevent compliance or continued

compliance with applicable Worker Safety Laws and Environmental Laws, other than any such interference or prevention as would not, individually or in the aggregate, have a Company Material Adverse Effect.

Section 3.17 Labor Matters. Neither the Company nor any of its Subsidiaries is a party to any collective bargaining Contract or any labor Contract. Neither the Company nor any of its Subsidiaries has engaged in any unfair labor practice or violation of state or local labor, wage and hour, or employment laws with respect to any Persons employed by or otherwise performing services primarily for the Company or any of its Subsidiaries (the Company Business Personnel), and there is no unfair labor practice complaint or grievance or other administrative or judicial complaint, action or investigation pending or, to the Knowledge of the Company, threatened in writing against the Company or any of its Subsidiaries by the National Labor Relations Board, the California Labor Commissioner, any comparable state or federal agency, or any other third party with respect to the Company Business Personnel, except where such unfair labor practice, complaint, grievance or other administrative or judicial complaint, action or investigation would not, individually or in the aggregate, have a Company Material Adverse Effect. There is no labor strike, dispute, slowdown or stoppage pending or, to the Knowledge of the Company, threatened against or affecting the Company or any of its Subsidiaries which may interfere with the respective business activities of the Company or any of its Subsidiaries, except where such dispute, strike or work stoppage would not, individually or in the aggregate, have a Company Material Adverse Effect.

Section 3.18 Intellectual Property.

(a) Except for computer software licensed pursuant to a shrink-wrap or click-wrap agreement or pursuant to a commercially available license agreement with annual license fees less than $50,000, the Company and its Subsidiaries either own, free and clear of all Encumbrances except Permitted Encumbrances, or have a perpetual royalty-free right to use under a valid and enforceable license or other agreement, all patents, trademarks, trade names, service marks, domain names, copyrights and any applications and registrations for any of the foregoing, trade secrets, know-how, technology, computer software and other tangible and intangible proprietary information and intellectual property rights (collectively, Intellectual Property Rights), as are necessary to conduct the business of the Company and its Subsidiaries as currently conducted by the Company and its Subsidiaries. Following the Closing, the Company and its Subsidiaries will continue to have in all material respects all such Intellectual Property Rights. Neither the Company nor any of its Subsidiaries has infringed, misappropriated or violated in any material respect any Intellectual Property Rights of any third party in the past six (6) years. To the Knowledge of the Company, no third party is currently infringing, misappropriating or violating, in any material respect, any Intellectual Property Rights owned by or exclusively licensed to the Company or any of its Subsidiaries.

(b) Section 3.18(b) of the Company Letter contains a list as of the date of this Agreement of (i) all material registered United States, state and foreign trademarks, service marks, logos, trade dress and trade names and pending applications to register the foregoing; (ii) all United States and material foreign patents and patent applications, (iii) all material registered United States and foreign copyrights and pending applications to register the same and (iv) all registered domain names, in each case owned by the Company and its Subsidiaries.

(c) Except as set forth in the Company SEC Documents filed prior to the date of this Agreement, as of the date of this Agreement there are no actions, suits or claims or administrative proceedings or investigations pending or, to the Knowledge of the Company, threatened that challenge or question the Company s ownership or right to use Intellectual Property Rights of the Company or any of its Subsidiaries.

(d) The Company and its Subsidiaries have taken reasonable steps to maintain the confidentiality of or otherwise protect and enforce their rights in all Intellectual Property Rights owned by them (Owned Intellectual Property Rights), and to protect and preserve through the use of customary non-disclosure agreements the confidentiality of all confidential information that is owned or held by the Company and its Subsidiaries and used in the conduct of the business. To the Knowledge of Company, such confidential information has not been used,

disclosed to or discovered by any Person except as permitted pursuant to valid non-disclosure agreements which have not been breached.

(e) During the past six (6) years, to the Knowledge of the Company, all personnel, including employees, agents, consultants and contractors, who have contributed to or participated in the conception or development, or both, of the Owned Intellectual Property Rights (i) have been and are a party to work-for-hire arrangements with Company or one of its Subsidiaries or (ii) have assigned to Company or one of its Subsidiaries all ownership of all tangible and intangible property arising in connection with the conception or development of such Owned Intellectual Property Rights.

Section 3.19 Information Technology; Security and Privacy.

(a) All information technology and computer systems relating to the transmission, storage, maintenance, organization, presentation, generation, processing or analysis of data and information whether or not in electronic format, necessary to the conduct of the business of the Company and its Subsidiaries (collectively, Company IT Systems) have been maintained, in all material respects, in accordance with reasonable and commercial standards suggested by the manufacturer of third-party-owned systems or in accordance with standards reasonably prudent in the entertainment industry and the electronic commerce industry, that are designed to encourage proper operation, monitoring and use. The Company IT Systems are currently in good working condition with respect to the performance of information technology operations necessary to conduct the business of the Company and its Subsidiaries in all material respects. The Company and its Subsidiaries have in place a commercially reasonable disaster recovery program that provides for the regular back-up of, and addresses recovery of, the data and information necessary to the conduct of the business of the Company and its Subsidiaries (including such data and information that is stored on magnetic or optical media in the ordinary course), and as of the date hereof, such disaster recovery program operates under normal circumstances without material disruption to, or material interruption in, the conduct of the business of the Company and its Subsidiaries.

(b) All right, title and interest in and to the confidential and proprietary data included in the Owned Intellectual Property Rights that is material to the business of the Company and its Subsidiaries and contained in any database used or maintained by the Company or its Subsidiaries (collectively, the Company Data) is owned by the Company or a Subsidiary, free and clear of all Encumbrances except Permitted Encumbrances. All computer programs included within the Owned Intellectual Property Rights are not licensed pursuant to a so-called open source license and do not incorporate and are not based on any computer programs that are licensed pursuant to a so-called open source license.

(c) The Company and its Subsidiaries have established and are in material compliance with written information security procedures covering the Company and its Subsidiaries that are in accordance with current standards reasonable in the entertainment industry and the electronic commerce industry, and that the Company believes in good faith are reasonable and sufficient to protect Company Data and provide reasonable assurance that adequate internal controls can be maintained over Company IT Systems, and (i) includes reasonable safeguards for the security, confidentiality, and integrity of transactions and confidential or proprietary Company Data and (ii) is designed to protect against unauthorized access to the Company IT Systems, Company Data and the systems of any third party service providers that have access to (A) Company Data or (B) Company IT Systems.

(d) The Company and its Subsidiaries have operated their businesses in compliance, in all material respects, with all applicable Laws relating to wagering transactions, horseracing, data collection, privacy, marketing and all contractual requirements that regulate or limit the maintenance, use or transmission of customer information made available to or collected by the Company in connection with the operation of the business of the Company and its Subsidiaries and has implemented in all material respects all confidentiality, security, protective and other measures required by those applicable Laws and contractual requirements. With

respect to applicable Laws related to privacy and security and all privacy and security commitments undertaken by the Company in any policy, contract or promise regarding protections for, or restrictions on the use, storage, transfer, disposal or other processing of, personally identifiable information (Personal Data) collected, maintained, disposed of or otherwise processed by or on behalf of the Company (the Privacy Commitments), (i) the Company is in compliance, in all material respects, with the Privacy Commitments; (ii) the transactions contemplated by this Agreement will not violate any of the Privacy Commitments; (iii) the Company has not received written (or, to the Knowledge of the Company, oral) inquiries from any Governmental Entity regarding the Privacy Commitments; (iv) the Privacy Commitments have not been rejected in any material respect by any applicable certification organization that has reviewed such Privacy Commitments or to which any such Privacy Commitment has been submitted; (v) the Company has confidentiality and data security agreements in place with all affiliates, vendors or other persons whose relationship with the Company involves the collection, use, disclosure, storage, disposal or processing of Personal Data on behalf of the Company, and such agreements require confidentiality and data security obligations consistent with current standards reasonable in the entertainment industry and the electronic commerce industry; and (vi) the Company has adopted and implements, in all material respects, and has designated an appropriately senior Company employee to be responsible for, a comprehensive written information security plan (Information Security Plan) designed to protect the security, integrity and confidentiality of Personal Data, and to protect Personal Data in the Company s possession or control, or in the possession or control of the Company s agents, vendors or service providers, from unauthorized access by third Persons, including the Company s employees and contractors, and which Information Security Plan complies with all applicable Laws, Privacy Commitments and standards prudent in the entertainment industry and the electronic commerce industry, including appropriate administrative, physical and technical safeguards, including encryption. To the Knowledge of the Company, there has been no unauthorized or illegal collection, disclosure, transfer, use of, processing, disposal or access to any Personal Data in the possession or control of the Company, or on behalf of the Company, in any material respect.

Section 3.20 Customer Approval. Since January 1, 2008, the Company and its Subsidiaries have undertaken the verifications described in Section 3.20 of the Company Letter with respect to all new customers prior to such customers placing any wagers; and the verification procedures described in Section 3.20 of the Company Letter comply in all material respects with all applicable Laws.

Section 3.21 Advance Deposits.

(a) All advance deposit wagering conducted by the Company and its Subsidiaries was conducted in accordance with all applicable Laws in all material respects, and the policies and procedures of the Company and its Subsidiaries applicable to advance deposit wagering comply, and have at all times complied, in all material respects, with all applicable Laws.

(b) All withdrawals from all accounts established by or on behalf of the Company and its Subsidiaries for wagering activity, deposit or other purposes were used solely for the purposes authorized by the account holder.

(c) The Company and its Subsidiaries have withheld and reported to the Internal Revenue Service in all material respects all wagers placed by U.S. residents or citizens to the extent required by applicable Laws.

(d) Neither the Company nor its Subsidiaries nor any of their respective directors, officers, employees, agents or representatives, nor any Person acting for or on behalf of the Company or its Subsidiaries, has violated the Bank Secrecy Act, USA PATRIOT Act, or the Money Laundering and Financial Crimes Strategy Act of 1998 in connection with the operation of the business of the Company and its Subsidiaries in any material respect. The Company and its Subsidiaries, the businesses of the Company and its Subsidiaries and employees, agents, and representatives thereof, as well as all Persons acting for or on behalf thereof, are in compliance in all material respects with the USA PATRIOT Act, the Bank Secrecy Act, the Money Laundering and Financial Crimes Strategy Act of 1998 as well as any recommendations made by the Financial Act Task Force Against Money

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Laundering in connection with the operation of the business of the Company and its Subsidiaries. Neither the Company nor any of its Subsidiaries has received any notice from the Department of the Treasury or any other Governmental Entity regarding the violation of any money laundering statues, including the statutes cited in this Section 3.21(d).

Section 3.22 Insurance. The Company has made available to Parent prior to the date of this Agreement copies of all material insurance policies which are maintained by the Company or its Subsidiaries or which names the Company or any of its Subsidiaries as an insured (or loss payee), including those which pertain to the Company s or its Subsidiaries assets, employees or operations. All such insurance policies are in full force and effect and all premiums due thereunder have been paid. Neither the Company nor any of its Subsidiaries is in breach of, or default under, in any material respect, any such insurance policy and, to the Knowledge of the Company, neither the Company nor any of its Subsidiaries have received notice of cancellation of any such insurance policy. There is no material claim by the Company or any of its Subsidiaries pending under any such insurance policy covering the assets, business, equipment, properties, operations, employees, officers and directors of the Company and its Subsidiaries as to which coverage has been questioned, denied or disputed by the underwriters of such policies.

Section 3.23 Opinion of Financial Advisor. The Company has received the written opinion of Moelis & Company LLC, dated as of November 10, 2009, to the effect that, as of the date of this Agreement, the Per Share Merger Consideration is fair to the Company s stockholders from a financial point of view, a copy of which opinion has been delivered to Parent.

Section 3.24 State Takeover Statutes; Certain Charter Provisions. The Board of Directors of the Company has, to the extent such statutes are applicable, taken all action (including appropriate approvals of the Board of Directors of the Company) necessary to exempt Parent, its Subsidiaries and Affiliates, the Merger, this Agreement and the transactions contemplated hereby from Section 203 of the DGCL. The Board of Directors of the Company has taken all action (including appropriate approvals of the Board of Directors of the Company) necessary to exempt or render inapplicable the provisions of Article NINTH of the Company Charter with respect to Parent, its Subsidiaries and Affiliates, the Merger, the Subsequent Merger and the other transactions contemplated by this Agreement, and to the Knowledge of the Company, no other state takeover statutes or charter or bylaw provisions are applicable to the Merger and/or the Subsequent Merger, this Agreement or the transactions contemplated hereby.

Section 3.25 Required Vote of Company Stockholders. The affirmative vote of the holders of a majority of the outstanding Company Shares is required to approve and adopt this Agreement. No other vote of the securityholders of the Company is required by Law, the Company Charter, the Company Bylaws or otherwise in order for the Company to consummate the Merger and the transactions contemplated hereby.

Section 3.26 Reorganization. Neither the Company nor any of its Subsidiaries has taken any action or failed to take any action which action or failure would, to the Knowledge of the Company, jeopardize the qualification of the Merger and the Subsequent Merger, taken together, as a reorganization within the meaning of Section 368(a) of the Code. To the Knowledge of the Company, the representations set forth in the form of Company Tax Certificate attached as Exhibit A to the Company Letter are correct in all material respects as of the date hereof, assuming the Merger and Subsequent Merger occurred on the date hereof.

Section 3.27 Brokers. No broker, investment banker or other Person, other than Moelis & Company LLC, the fees and expenses of which will be paid by the Company (as reflected in an agreement between Moelis & Company LLC and the Company, dated November 24, 2008, a copy of which has been furnished to Parent), is entitled to any broker s, finder s or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company.

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ARTICLE IV

COVENANTS RELATING TO CONDUCT OF BUSINESS

Section 4.1 Conduct of Business Pending the Merger. Except as expressly permitted by clauses (a) through (s) of this Section 4.1, during the period from the date of this Agreement until the Effective Time, the Company shall, and shall cause each of its Subsidiaries to, conduct, in all material respects, its business in the ordinary course of business consistent with past practice and, to the extent consistent therewith, use commercially reasonable efforts to preserve intact its current business organization, keep available the services of its current officers and employees and preserve its relationships with customers, suppliers and others having business dealings with it to the end that its goodwill and ongoing business shall be materially unimpaired at the Effective Time. Without limiting the generality of the foregoing, and except (i) as otherwise expressly contemplated by this Agreement, (ii) as reasonably contemplated to comply with the Company s or the Board of Directors of the Company fiduciary obligations in a manner consistent with Section 4.3, (iii) as required by the terms of any Contract set forth on Section 4.1 of the Company Letter, in each case existing on the date hereof between the Company or any of its Subsidiaries and any other Person or (iv) as otherwise set forth in Section 4.1 of the Company Letter, the Company shall not, and shall not permit any of its Subsidiaries to, without the prior written consent of Parent (which shall not be unreasonably withheld, conditioned or delayed):

(a) (i) declare, set aside or pay any dividends on, or make any other actual, constructive or deemed distributions in respect of, any of its capital stock, or otherwise make any payments to its stockholders in their capacity as such other than dividends or distributions from wholly owned Subsidiaries of the Company to the Company or other wholly owned Subsidiary of the Company, (ii) split, combine or reclassify any of its capital stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock, (iii) purchase, redeem or otherwise acquire, or modify or amend, any shares of capital stock of the Company or any Subsidiary or any other securities thereof or any rights, warrants or options to acquire, any such shares or other securities or (iv) redeem the rights issued under the Company Rights Agreement or amend or terminate the Company Rights Agreement prior to the Effective Time other than in the case of Section 4.1(a)(i)-(iv), (A) to render the Company Rights Agreement inapplicable to the Merger, this Agreement, the Voting Agreements executed by stockholders of the Company and the transactions contemplated hereby and thereby, (B) as required to do so by a court of competent jurisdiction (in which case, to the extent permitted by such court of competent jurisdiction, the Company shall provide Parent with written notice at least three (3) Business Days prior to taking any such action), (C) to preserve the net operating losses of the Company following the Closing or (D) to effectuate the Merger and the transactions contemplated hereby;

(b) except for transactions among the Company and its wholly owned Subsidiaries or among the Company s wholly owned Subsidiaries (i) authorize for issuance, issue, deliver, sell, pledge, dispose of, grant, transfer or otherwise encumber or agree or commit to issue, deliver, sell, pledge, dispose of, grant, transfer or encumber any shares of its capital stock, any other voting securities or equity equivalent or any securities convertible into or exchangeable for, or any rights, warrants or options of any kind to acquire, any such shares, voting securities, equity equivalent or convertible or exchangeable securities, other than the issuance of Company Shares (and the associated Company Rights in accordance with the Rights Agreement) upon the exercise of Company Stock Options outstanding on the date of this Agreement, in each case, in accordance with their terms, (ii) enter into any amendment of any term of any of its outstanding securities or (iii) accelerate the vesting of any options, warrants or other rights of any kind to acquire any shares of capital stock to the extent that such acceleration of vesting does not occur automatically under the terms of any such interests or plans governing such interests;

(c) amend or publicly propose to amend its certificate of incorporation or bylaws or other comparable organizational documents;

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(d) acquire or agree to acquire by merging or consolidating with, by purchasing a substantial portion of the assets of or equity in or by any other manner, any business or any corporation, limited liability company, partnership, joint venture, association or other business organization or division thereof or otherwise acquire or agree to acquire any assets, other than assets acquired in the ordinary course of business consistent with past practice and not material to the Company and its Subsidiaries, taken as a whole;

(e) sell, transfer, lease, license (as licensor of Intellectual Property Rights of the Company), mortgage, pledge, encumber or otherwise dispose of any of its properties or assets, other than sales, leases, licenses or disposals of products or services in the ordinary course of business consistent with past practice and not material to the Company and its Subsidiaries, taken as a whole;

(f) (i) incur, assume or modify any indebtedness for borrowed money, guarantee, endorse or otherwise become liable or responsible for (whether directly, contingently or otherwise), any such indebtedness for borrowed money of another Person or make any loans, advances or capital contributions to, or other investments in, any other Person, other than (A) indebtedness, obligations, loans, advances, capital contributions and investments between the Company and any of its wholly owned Subsidiaries or between any of such wholly owned Subsidiaries, (B) (x) letters of credit required under applicable Law to be issued in connection with the operation of the Company s advance deposit wagering business or otherwise not exceeding $100,000 in the aggregate, (y) indebtedness incurred under the revolving portion of the Company s existing credit facility and any other facility permitted pursuant to clause (C) and (z) other indebtedness incurred in the ordinary course of business not to exceed $100,000 in the aggregate (excluding any drawn letters of credit permitted pursuant to this clause (B)); (C) refinancings, refundings or replacements of indebtedness (including letters of credit permitted pursuant to clause (B)(x)), guarantees and investments in existence on the date hereof, provided that the outstanding principal amount is not materially increased thereby; and (D) indemnification advances to directors and officers pursuant to applicable Law, the Company Bylaws, and/or indemnification agreements existing as of the date hereof; (ii) issue or sell any debt securities or warrants or other rights to acquire any debt securities of the Company or any of its Subsidiaries, (iii) enter into any keep well or other agreement to maintain any financial statement condition of another Person other than any of the wholly owned Subsidiaries of the Company or (iv) enter into any arrangement having the economic effect of any of the foregoing;

(g) alter (including through merger, liquidation, dissolution, reorganization, restructuring or recapitalization) the corporate structure or ownership of the Company or any Subsidiary;

(h) enter into, adopt or amend any (x) Company Plan for the purpose of increasing benefits to the Company s or its Subsidiaries employees, where as a result of such amendment or adoption, as applicable, the cost to the Company of providing such increased benefits will exceed $250,000 in the aggregate during the twelve months immediately following such amendment or adoption or (y) employment or consulting Contract other than in the ordinary course of business, except, in each case, as required by applicable Law or the terms of this Agreement; provided, however, that in the case of clauses (x) and (y), the Company agrees that it shall first consult with Parent prior to taking any such action that would otherwise be permitted without Parent s prior written consent pursuant to this Section 4.1(h) (it being understood and agreed that any breach by the Company of the proviso in this Section 4.1(h) shall not be taken into account for purposes of Section 6.3(a));

(i) increase the compensation or benefits payable or to become payable to its directors, officers or employees (except for increases in the ordinary course of business consistent with past practice in salaries or wages of employees of the Company or any of its Subsidiaries who are not officers of the Company or any of its Subsidiaries) or grant any severance or termination pay to, or enter into or amend any employment or severance Contract with, any current or former director or officer of the Company or any of its Subsidiaries other than as required by Law, a Contract or any Company Plan in existence on the date hereof, or establish, adopt, enter into or, except as may be required to comply with applicable Law, amend or take action to enhance or accelerate any rights or benefits under, any labor, bonus, profit sharing, thrift, compensation, stock option, restricted stock, pension, retirement, deferred compensation, employment, termination, severance or other plan, Contract, trust,

fund, policy or arrangement for the benefit of any current or former director, officer or employee (without limiting the foregoing, for the avoidance of doubt, this Section 4.1(i) shall not prohibit the Company or its Subsidiaries from paying and/or accruing bonuses to, or with respect to, their respective employees in the ordinary course of business);

(j) knowingly violate or knowingly fail to perform in any material respect any obligation or duty imposed upon it or any Subsidiary by any applicable material federal, state or local Law, rule, regulation, guideline or ordinance;

(k) make or adopt any change to its accounting methods, practices or policies (other than actions required to be taken by GAAP or under applicable Law as communicated to the Company by its independent auditors);

(l) except as required by applicable Law, prepare or file any Tax Return in a manner that is materially inconsistent with past practice or, on any such Tax Return, take any position, make or change any election or adopt any method that is materially inconsistent with positions taken, elections made or methods used in preparing or filing similar Tax Returns in prior periods;

(m) enter into, materially amend, cancel, terminate, extend or request any material change in, or agree to any material change in, any Company Contract, other than in the ordinary course of business consistent with past practice;

(n) from January 1, 2010 through December 31, 2010, authorize, or enter into any commitment for, capital expenditures exceeding $2,650,000 in the aggregate;

(o) waive, release or assign any material right or claim or pay, discharge or satisfy any material claims, liabilities or obligations (absolute, accrued, asserted or unasserted, contingent or otherwise), other than the payment, discharge or satisfaction, in the ordinary course of business consistent with past practice or in accordance with their terms, of liabilities reflected or reserved against in the most recent Company SEC Documents filed prior to the date of this Agreement, or incurred in the ordinary course of business consistent with past practice;

(p) initiate any material litigation or arbitration proceeding or settle or compromise any material litigation or arbitration proceeding;

(q) enter into any agreement or arrangement that would be required to be reported by the Company pursuant to Item 404 of Regulation S-K promulgated by the SEC (subject to clauses (h) and (i) above, other than compensation arrangements with the Company s and its Subsidiaries employees, officers and directors) or other agreements or arrangements in the ordinary course of business consistent with past practice;

(r) (i) enter into (A) any material line of business in the United States other than the line of business in the United States in which the Company and its Subsidiaries is currently engaged or (B) any line of business outside of the United States other than the line of business outside of the United States in which the Company and its Subsidiaries is currently engaged, in each case as of the date of this Agreement or (ii) distribute products or services (A) in the United States other than the products and services that the Company and its Subsidiaries are currently distributing in the United States or (B) to any country outside the United States other than the products and services that the Company and its Subsidiaries are currently distributing outside the United States, in each case as of the date of this Agreement; or

(s) authorize, recommend, publicly propose or announce an intention to do any of the foregoing or enter into any Contract to do any of the foregoing.

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Section 4.2 Conduct of Business Pending the Merger. Except as (x) otherwise expressly contemplated by this Agreement, (y) required by the terms of any Contract existing on the date hereof between Parent or any of its Subsidiaries and any other Person or (z) as otherwise set forth in Section 4.2 of the Parent Letter, Parent shall not, and shall not permit any of its Subsidiaries to, without the prior written consent of the Company (which shall not be unreasonably withheld, conditioned or delayed):

(a) (i) declare, set aside or pay any dividends on, or make any other actual, constructive or deemed distributions in respect of, any of its capital stock, or otherwise make any payments to its stockholders in their capacity as such, other than (A) annual aggregate cash dividends by Parent to its stockholders with respect to Parent Common Stock not in excess of $0.50 per share with usual declaration, record and payment dates or (B) dividends or distributions paid or made by any wholly owned Subsidiary of Parent, (ii) split, combine or reclassify any of its capital stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock, except with respect to any transaction by a wholly owned Subsidiary of Parent which remains a wholly owned Subsidiary of Parent after consummation of such transaction, (iii) purchase, redeem or otherwise acquire, or modify or amend, any shares of capital stock of Parent or any Subsidiary or any other securities thereof or any rights, warrants or options to acquire, any such shares or other securities, other than (A) in the ordinary course of business consistent with past practice in connection with any net share settlement or Tax withholding pursuant to any Parent Plans or (B) repurchases, redemptions or other acquisitions of the capital stock of Parent or any Subsidiary pursuant to any plans, arrangements or contracts between Parent or any of its Subsidiaries existing on the date hereof in an amount not to exceed 5% of the fully diluted number of shares of Parent capital stock outstanding after giving effect to the Merger, (iv) redeem the rights issued under the Parent Rights Agreement or amend or terminate the Parent Rights Agreement prior to the Effective Time other than (A) as required to do so by a court of competent jurisdiction (in which case, to the extent permitted by such court of competent jurisdiction, Parent shall provide the Company with written notice at least three Business Days prior to taking any such action), (B) as required to comply with the Parent Board of Director s fiduciary obligations or (C) in response to a shareholder proposal or in response to a request or recommendation from an institutional shareholder or institutional shareholder service if, in each case, such action would not adversely affect the consummation of the Merger, in any material respect, or affect the holders of Company Common Stock whose shares are converted into Parent Common Stock at the Effective Time in a manner different, in any material respect, than holders of Parent Common Stock prior to the Effective Time or (v) amend, modify or waive any material provision of the Stockholder s Agreement, dated as of September 8, 2000, among Parent and the stockholders from time to time party thereto in a manner that would adversely affect the consummation of the Merger or affect the holders of Company Common Stock whose shares are converted into Parent Common Stock at the Effective Time in a manner different than holders of Parent Common Stock prior to the Effective Time;

(b) except for transactions among Parent and its wholly owned Subsidiaries or among Parent s wholly owned Subsidiaries (i) authorize for issuance, issue, deliver, sell, pledge, dispose of, grant, transfer or otherwise encumber or agree or commit to issue, deliver, sell, pledge, dispose of, grant, transfer or encumber any shares of its capital stock, any other voting securities or equity equivalent or any securities convertible into or exchangeable for, or any rights, warrants or options of any kind to acquire, any such shares, voting securities, equity equivalent or convertible or exchangeable securities, other than (A) the issuance of Parent Shares upon the exercise of options to purchase Parent Common Stock or the issuance of Parent Shares in settlement of, or upon exercise or conversion of, any other equity-based compensation award of Parent under a Parent Plan, (B) the issuance of any securities of Parent pursuant to a Parent Plan, (C) the issuance of Parent Shares or other securities of Parent in connection with bona fide acquisitions, mergers, strategic partnership transactions or similar transactions not prohibited by Section 4.2(d) or (D) the issuance of Parent Shares or other securities of Parent in connection with Parent s general capital raising efforts or (ii) enter into any amendment of any material term of any of its outstanding securities;

(c) amend the Parent Charter or the Parent Bylaws in a manner that would adversely affect the consummation of the Merger or affect the holders of Company Common Stock whose shares are converted into

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Parent Common Stock at the Effective Time in a manner different than holders of Parent Common Stock prior to the Effective Time;

(d) acquire or agree to acquire by merging or consolidating with, by purchasing a substantial portion of the assets of or equity in or by any other manner, any totalisator business or any advance deposit wagering business; or

(e) authorize, recommend, publicly propose or announce an intention to do any of the foregoing or enter into any Contract to do any of the foregoing.

Section 4.3 No Solicitation.

(a) From the date of this Agreement until the earlier of the Effective Time or the date on which this Agreement is terminated in accordance with the terms of this Agreement, the Company shall not, nor shall it permit any of its Subsidiaries to, nor shall it authorize or knowingly permit any officer, director or employee of or any financial advisor, attorney or other advisor or representative (Representatives) of, the Company or any of its Subsidiaries to, directly or indirectly, (i) solicit, initiate or knowingly facilitate, induce or encourage the submission of, any Alternative Proposal (as hereinafter defined); (ii) enter into any letter of intent or agreement in principle or any agreement providing for, relating to or in connection with, any Alternative Proposal; (iii) approve, endorse or recommend any Alternative Proposal or (iv) enter into, continue or otherwise participate in any discussions or negotiations regarding, or furnish to any Third Party any information with respect to, or take any other action to knowingly facilitate any inquiries or the making of any proposal that constitutes any Alternative Proposal. Without limiting the foregoing, it is agreed that any violation of the restrictions set forth in this Section 4.3(a) by any of the Company or its Subsidiaries or their respective directors, officers, employees or Representatives shall be deemed to be a breach of this Section 4.3(a) by the Company. The Company will, and will cause each of its Subsidiaries and each of the directors, officers, employees and Representatives of the Company and its Subsidiaries to, immediately cease and cause to be terminated any and all existing activities, discussions or negotiations with any Person conducted heretofore with respect to any Alternative Proposal. The Company agrees that it will take the necessary steps to promptly inform its directors, officers, employees and Representatives of the obligations undertaken in this Section 4.3.

(b) Notwithstanding anything to the contrary contained in Section 4.3(a) or elsewhere in this Agreement, in the event that the Company receives after the date of this Agreement and prior to obtaining the Company Stockholder Approval, an unsolicited, bona fide Alternative Proposal that the Board of Directors of the Company determines in good faith (after consultation with its outside legal counsel and a financial advisor of nationally recognized reputation) would be, or would be reasonably likely to lead to, a Superior Proposal, the Company may, in response to such Alternative Proposal, subject to compliance with this Section 4.3 and receiving from such Person an executed confidentiality agreement containing terms not materially less favorable to the Company than the terms of the Confidentiality Agreement, then take the following actions:

(i) furnish any information with respect to the Company and its Subsidiaries to the Person or group (and their respective Representatives) making such Alternative Proposal; provided, that within one (1) Business Day of furnishing any such information to such Person or group, it furnishes such information to Parent; and

(ii) engage in discussions or negotiations with such Person or group (and their respective Representatives) with respect to such Alternative Proposal.

The Company agrees that it and its Subsidiaries shall not enter into any confidentiality agreement with any person subsequent to the date of this Agreement that prohibits the Company from providing information to Parent that is required to be provided under this Section 4.3.

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(c) In addition to the obligations of the Company set forth in Sections 4.3(a), 4.3(b) and 4.3(d), as promptly as practicable (and in any event within one (1) Business Day) after receipt of any Alternative Proposal or any request for nonpublic information or any inquiry relating in any way to, or that would reasonably be expected to lead to, any Alternative Proposal, the Company shall provide Parent with written notice of the material terms and conditions of such Alternative Proposal, request or inquiry (to the extent not previously provided to Parent), and the identity of the Person or group making any such Alternative Proposal, request or inquiry and a copy of all written materials provided to it in connection with such Alternative Proposal, request or inquiry. In addition, the Company shall provide Parent as promptly as practicable (and in any event within one (1) Business Day) with all information as is reasonably necessary to keep Parent reasonably informed of all material oral or written communications regarding, and the status and changes to the economic or other material terms of, any such Alternative Proposal, request or inquiry, and shall provide, as promptly as reasonably practicable, to Parent a copy of all material written materials (including material written materials provided by email or otherwise in electronic format) provided by or to the Company, any of its Subsidiaries or any of their Representatives in connection with such Alternative Proposal, request or inquiry.

(d) Neither the Board of Directors of the Company nor any committee thereof shall, directly or indirectly, (i) (A) withhold, withdraw, qualify, amend or modify (in each case, in a manner adverse to Parent) or publicly propose to withhold, withdraw, qualify, amend or modify (in each case, in a manner adverse to Parent), the approval, recommendation or declaration of advisability by such Board of Directors or any committee thereof of this Agreement, the Merger or the other transactions contemplated by this Agreement, or (B) recommend, adopt or approve, or publicly propose to recommend, adopt or approve, any Alternative Proposal (any action described in this clause (i) being referred to as a "Company Adverse Recommendation Change") or (ii) approve, adopt or recommend, or publicly propose to approve, adopt or recommend, or allow the Company or any of its Affiliates to execute or enter into, any letter of intent, memorandum of understanding, agreement in principle, merger agreement, acquisition agreement, option agreement, joint venture agreement, partnership agreement or other similar agreement, arrangement or understanding or any tender offer (A) constituting, or relating to, any Alternative Proposal or (B) requiring it (or that would require it) to abandon, terminate or fail to consummate the Merger or any other transaction contemplated by this Agreement. Notwithstanding anything to the contrary set forth in this Section 4.3(d) or in any other provision of this Agreement, the Board of Directors of the Company may, solely in response to a Superior Proposal made after the date of this Agreement and that did not otherwise result from a breach of this Section 4.3, terminate this Agreement pursuant to Section 7.1(f) and concurrently enter into a definitive agreement with respect to such Superior Proposal if all of the following conditions in clauses (i) through (v) are met, as applicable:

(i) such Superior Proposal has been made and has not been withdrawn and continues to be a Superior Proposal;

(ii) the Company Stockholder Approval has not been obtained;

(iii) the Company has (A) provided to Parent three (3) Business Days prior written notice which shall state expressly (1) that it has received a Superior Proposal, (2) the material terms and conditions of the Superior Proposal (including the per share value of the consideration offered therein and the identity of the Person or group of Persons making the Superior Proposal), and shall have provided a copy of the relevant proposed transaction agreements with the Person or group of Persons making such Superior Proposal and other material documents, including the definitive agreement with respect to such Superior Proposal (the "Alternative Transaction Agreement") (it being understood and agreed that any amendment to the financial terms or any other material term of such Superior Proposal shall require a new notice and a new three (3) Business Day period) and (3) that it intends to terminate this Agreement, and the manner in which it intends to do so, and (B) prior to terminating this Agreement, to the extent requested by Parent, engaged in good faith negotiations with Parent to amend this Agreement in such a manner that the transaction contemplated by the Alternative Transaction Agreement ceases to constitute a Superior Proposal;

(iv) the Company shall have complied in all material respects with this Section 4.3; and

(v) the Company pays all fees and expenses as required pursuant to Section 7.3.

(e) Notwithstanding anything to the contrary set forth in any provision of this Agreement, prior to receipt of the Company Stockholder Approval, the Board of Directors of the Company (or a committee thereof) may, other than in circumstances involving or relating to a Superior Proposal but only in response to an Intervening Event and provided that the Company and its Subsidiaries have complied in all material respects with this Section 4.3, effect a Company Adverse Recommendation Change if the Board of Directors of the Company determines in good faith (after consultation with its outside legal counsel) that, in light of such Intervening Event, failure to take such action would reasonably be expected to constitute a breach of the directors fiduciary obligations to the Company s stockholders under applicable Law; provided, however, that neither the Board of Directors of the Company nor any committee thereof shall take any of the actions set forth in this Section 4.3(e) unless the Company has first complied with the provisions of Section 4.3(d)(iii), treating the occurrence of such Intervening Event as if a Superior Proposal had been received and after so complying, the Board of Directors of the Company determines in good faith (after consultation with outside legal counsel) that, in light of such Intervening Event, failure to make a Company Adverse Recommendation Change would constitute a breach of the directors fiduciary obligations to the Company s stockholders under applicable Law.

(f) Notwithstanding anything to the contrary in Section 4.3(a), prior to the Company Stockholder Meeting, nothing contained in this Agreement shall prevent the Company or its Board of Directors from complying with Rules 14d-9 and 14e-2 under the Exchange Act or publicly disclosing the existence of a Alternative Proposal to the extent the Board of Directors of the Company determines in good faith (after consultation with its outside counsel) that the failure to make such disclosure would reasonably be expected to constitute a breach of its fiduciary duties under applicable Law.

Section 4.4 Third Party Standstill Agreements. During the period from the date of this Agreement through the Effective Time, the Company shall not terminate, materially amend or modify or waive any provision of any confidentiality agreement relating to a Alternative Proposal or standstill agreement to which the Company or any of its Subsidiaries is a party (other than any involving Parent). During such period, the Company agrees to use commercially reasonable efforts to enforce, to the fullest extent permitted under applicable Law, the provisions of any such agreements, including obtaining injunctions to prevent any material breaches of such agreements and to enforce specifically the terms and provisions thereof in any court of the United States or any state thereof having jurisdiction. Notwithstanding the foregoing, the Company shall not be required to take, or be prohibited from taking, any action otherwise prohibited by this Section 4.4, if, in the good faith judgment of the Company s Board of Directors, after consultation with outside counsel of the Company, such action or inaction, as the case may be, would violate the fiduciary duties of the Company s Board of Directors to the Company s stockholders.

Section 4.5 Reorganization. During the period from the date of this Agreement through the Effective Time, unless the other party shall otherwise agree in writing, none of Parent, the Company or any of their respective Subsidiaries shall take or fail to take any action which action or failure would to the Knowledge of Parent or the Knowledge of Company, as the case may be, jeopardize the qualification of the Merger and the Subsequent Merger, taken together, as a reorganization within the meaning of Section 368(a) of the Code.

ARTICLE V

ADDITIONAL AGREEMENTS

Section 5.1 Preparation of the Registration Statement and the Proxy Statement. As promptly as practicable following the date of this Agreement, Parent and the Company shall prepare, and Parent shall file with the SEC, the Registration Statement, in which the Proxy Statement will be included as a prospectus; provided, however, that Parent shall not be required to file the Registration Statement until such time as the Company has taken such action as is necessary to resolve in all material respects the matters set forth in the

comment letter dated October 13, 2009 addressed to the Company from the SEC with respect to the Company s Form 10-K for the year ended December 31, 2008 and Form 8-K furnished August 13, 2009 and any subsequent letters from the SEC addressed to the Company relating to the subject matter thereof (collectively, the Company Comment Letter), including the filing of any amendments to the Company s current and periodic reports with the SEC as reasonably requested by Parent; provided, further, that notwithstanding the preceding proviso, Parent shall file the Registration Statement not later than 60 days after the date hereof so long as the Company has used its reasonable best efforts to resolve such matters set forth in the Company Comment Letter, subject to applicable rules and regulations of the SEC. Each of Parent and the Company shall cooperate in the preparation and filing of the Registration Statement and Proxy Statement, including the use by each of Parent and the Company of reasonable best efforts to cause to be delivered to the other a comfort letter of its independent auditors, dated the date two (2) Business Days prior to the date on which the Registration Statement becomes effective. Each of Parent and the Company shall use its reasonable best efforts to cause the Registration Statement and the Proxy Statement to comply with the rules and regulations promulgated by the SEC and state securities Laws, to have the Registration Statement declared effective under the Securities Act as promptly as practicable after such filing and to keep the Registration Statement effective as long as is necessary to consummate the Merger and the other transactions contemplated hereby. The Company and Parent shall provide the other with the opportunity to review and comment on such documents prior to their filing with the SEC. No filing of, or amendment or supplement to, the Registration Statement or the Proxy Statement will be made by Parent or the Company, as applicable, without the other s prior consent (which shall not be unreasonably withheld, delayed or conditioned) and without providing the other the opportunity to review and comment thereon; provided that the prior written consent of Parent shall not be required in connection with any filings made by the Company in connection with a Company Adverse Recommendation Change. Parent or the Company, as applicable, will advise the other promptly after it receives oral or written notice of the time when the Registration Statement has become effective or any supplement or amendment thereto has been filed, the issuance of any stop order, the suspension of the qualification of the Parent Common Stock issuable in connection with the Merger for offering or sale in any jurisdiction, or any oral or written request by the SEC for amendment of the Registration Statement or the Proxy Statement or comments thereon and responses thereto or requests by the SEC for additional information, and will promptly provide the other with copies of any written communication from the SEC or any state securities commission. If at any time prior to the Effective Time any information relating to Parent or the Company, or any of their respective affiliates, officers or directors, should be discovered by Parent or the Company which should be set forth in an amendment or supplement to any of the Registration Statement or the Proxy Statement, so that any of such documents would not include any misstatement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the party which discovers such information shall promptly notify the other parties and an appropriate amendment or supplement describing such information shall be promptly filed with the SEC, after the other party has had a reasonable opportunity to review and comment thereon, and, to the extent required by applicable Law, disseminated to the respective stockholders of the Company. As promptly as practicable after the Registration Statement shall have become effective, the Company shall distribute the Proxy Statement to its stockholders.

Section 5.2 Company Stockholder Meeting.

(a) The Company will, as soon as practicable following the date on which the Registration Statement is declared effective under the Securities Act, duly call, give notice of, convene and hold a meeting of stockholders (the Company Stockholder Meeting) for the purpose of the Company s stockholders duly approving and adopting this Agreement (the Company Stockholder Approval).

(b) The Company shall, through its Board of Directors, recommend to its stockholders approval and adoption of this Agreement, shall use reasonable best efforts to solicit such approvals and adoption by its stockholders and such Board of Directors or committee thereof shall not withhold, withdraw, qualify, amend or modify in a manner adverse to Parent such recommendation or its declaration that this Agreement and the Merger are advisable and fair to and in the best interest of the Company and its stockholders or resolve or propose to do any of the foregoing, except if the Company has complied with Section 4.3. Notwithstanding any

Company Adverse Recommendation Change pursuant to Section 4.3(e), Parent shall have the option, exercisable within five (5) Business Days after such Company Adverse Recommendation Change, to cause the Board of Directors of the Company to submit this Agreement to the stockholders of the Company for the purpose of approving and adopting this Agreement. If Parent exercises such option, Parent shall not be entitled to terminate this Agreement pursuant to Section 7.1(g)(i) and shall not be entitled to the Termination Fee or reimbursement of the Termination Expenses under Section 7.3(a)(i) in respect thereof.

Section 5.3 Access to Information. Subject to contractual and legal restrictions applicable to Parent or to the Company or any of their respective Subsidiaries, as the case may be, each of Parent and the Company shall, and shall cause each of its Subsidiaries to, upon reasonable notice, afford to the Representatives of the other reasonable access to, and permit them to make such inspections as they may reasonably require of, during normal business hours during the period from the date of this Agreement through the Effective Time, all of its employees, customers, properties, books, contracts, commitments and records (including the work papers of independent accountants, if available and subject to the consent of such independent accountants), and, during such period, each of Parent and the Company shall, and shall cause each of its Subsidiaries to, furnish promptly to the other (i) a copy of each report, schedule, registration statement and other document filed by it during such period pursuant to the requirements of federal or state securities laws and (ii) all other information concerning its business, properties and personnel as the other may reasonably request. No investigation pursuant to this Section 5.3 shall affect any representation or warranty in this Agreement of any party hereto or any condition to the obligations of the parties hereto. Notwithstanding the foregoing, neither the Company nor Parent shall be required to afford such access if it would (i) unreasonably disrupt the operations of such party or any of its Subsidiaries, (ii) cause a violation of any agreement to which such party or any of its Subsidiaries is a party (provided that Parent or the Company, as the case may be, shall use reasonable best efforts to implement procedures to provide the access or information contemplated by this Section 5.3 without violating such agreement), or (iii) cause a risk of a loss of privilege to such party or any of its Subsidiaries or would constitute a violation of any applicable Law. All information obtained pursuant to this Section 5.3 shall be kept confidential in accordance with the terms of the Confidentiality Agreement, dated September 16, 2009, between Parent and the Company (the Confidentiality Agreement).

Section 5.4 Current Nasdaq Listing. Each of Parent and the Company shall use its reasonable best efforts to continue the listing of the Parent Common Stock and the Company Common Stock, respectively, on Nasdaq during the term of this Agreement.

Section 5.5 Company Stock Options. Immediately prior to the Effective Time, each Company Stock Option that is outstanding immediately prior to the Effective Time shall, if unvested, vest and become exercisable in full. Prior to and effective as of the Effective Time, the Company shall take all action necessary to terminate the Company Stock Option Plan. Holders of all unexercised Company Stock Options outstanding as of immediately prior to the Effective Time will receive, in cancellation of their Company Stock Options, the following: (a) a single lump sum cash payment from the Company at the Effective Time (or, to the extent the Company does not have sufficient cash available to make such payment at the Effective Time, Parent shall cause the Surviving Corporation or the Surviving Company to make such payment immediately following the Effective Time), in an amount equal to the product of (i) the number of Company Shares provided for in such Company Stock Option and (ii) the Pro-Rata Cash Portion, which cash payment shall be treated as compensation and shall be net of any applicable United States federal or state withholding Tax; and (b) a number of Parent Shares in an amount equal to the product of (i) the number of Company Shares provided for in such Company Stock Option and (ii) the Pro-Rata Stock Portion, which share issuance shall be treated as compensation and shall be net of any applicable United States federal or state withholding Tax; provided, however, that if the exercise price per share of any such Company Stock Option is equal to or greater than the Closing Merger Consideration, such Company Stock Option shall be canceled without any cash payment or issuance of Parent Shares being made in respect thereof.

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Section 5.6 Reasonable Best Efforts. Subject to the terms and conditions of this Agreement, except with respect to filings under the HSR Act and matters involving Antitrust Laws (which shall be governed by Section 5.7), each party will use its reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under applicable Law to consummate the transactions contemplated by this Agreement, including preparing and filing as promptly as practicable all documentation to effect all necessary filings, notices, petitions, statements, submissions of information, applications and other documents, and to obtain all Permits which are material to the Company and its subsidiaries, taken as a whole, with respect to the transactions contemplated by this Agreement.

Section 5.7 HSR Approval.

(a) As promptly as reasonably practicable (but in no event later than ten (10) Business Days after the date of this Agreement or any shorter period as required by applicable Law), each of Parent and the Company shall file any Notification and Report Forms and related material required to be filed by it with the Federal Trade Commission and the Antitrust Division of the United States Department of Justice under the HSR Act with respect to the transactions contemplated by this Agreement and shall promptly make any further filings pursuant thereto that may be necessary, proper or advisable (the HSR Filings).

(b) Upon and subject to the terms of this Section 5.7, Parent and the Company shall, and shall cause their respective Subsidiaries to (i) use their best efforts to obtain prompt termination of any waiting period under the HSR Act; (ii) cooperate and consult with each other in connection with the making of all HSR Filings and any other material actions pursuant to this Section 5.7, including subject to applicable Law, by permitting counsel for the other party to review in advance, and consider in good faith the views of the other party in connection with, any proposed written communication to any Antitrust Authority and by providing counsel for the other party with copies of all filings and submissions made by such party and all correspondence between such party (and its advisors) with any Antitrust Authority and any other information supplied by such party and such party s Subsidiaries to an Antitrust Authority or received from an Antitrust Authority in connection with such HSR Filings or any applicable Antitrust Laws in connection with the transactions contemplated by this Agreement; provided, however, that materials may be redacted before being provided to the other party (A) to remove references concerning the valuation of Parent, the Company, or any of their Subsidiaries, (B) as necessary to comply with contractual arrangements and (C) as necessary to address reasonable privilege or confidentiality concerns; (iii) furnish to the other parties such information and assistance as such parties reasonably may request in connection with the preparation of any submissions to, or agency proceedings by, any Antitrust Authority; and (iv) promptly inform the other party of any communications with, and inquiries or requests for information from, such Antitrust Authority in connection with the transactions contemplated by the Agreement. In furtherance and not in limitation of the covenants of the parties contained in Section 5.7(a) and this Section 5.7(b), each party agrees to cooperate and use its best efforts to assist in any defense by any other party hereto of the transactions contemplated by this Agreement before any Antitrust Authority reviewing the transactions contemplated by this Agreement, including by providing (as promptly as practicable) such information as may be requested by such Antitrust Authority or such assistance as may be reasonably requested by the other party hereto in such defense.

(c) If any objections are asserted by any Antitrust Authority with respect to the transactions contemplated hereby, or if any Action is instituted by any Governmental Entity challenging any of the transactions contemplated hereby as violative of any applicable Antitrust Law or an Order is issued enjoining the transactions contemplated by this Agreement, in each case under any applicable Antitrust Law, Parent shall, subject to the provisions of this Section 5.7, use its best efforts to resolve any such objections or challenge as such Antitrust Authority may have to such transactions under such Law or to have such Order vacated, reversed or otherwise removed in accordance with applicable legal procedures with the goal of enabling the transactions contemplated by this Agreement to be consummated by the Outside Date (as hereinafter defined), and the Company shall use its best efforts to assist Parent in effectuating the foregoing; provided, however, that (i) the Company shall not take any of the foregoing actions without the prior written consent of Parent, and (ii) Parent

shall not take any of the foregoing actions without the prior written consent of the Company if such actions would bind the Company to take any action (including paying money or entering into any other obligation) irrespective of whether the Closing occurs. Parent and the Company and their respective Subsidiaries shall, subject to the provisions of this Section 5.7, use their respective best efforts to seek to lift, reverse or remove any temporary restraining order, preliminary or permanent injunction or other order or decree that would otherwise give rise to a failure of any Antitrust Conditions.

(d) Notwithstanding anything to the contrary contained in this Agreement, Parent shall not be obligated to agree (and failure to so agree shall not constitute a failure by Parent to satisfy its best efforts obligations as provided in this Section 5.7), and neither the Company nor any Subsidiary shall agree without Parent s prior written consent, to take any action or accept any condition, restriction, obligation or requirement with respect to Parent, the Company, their respective Subsidiaries or their and their respective Subsidiaries assets if such action, condition, restriction, obligation or requirement (i) would reasonably be expected to require Parent, the Company or their respective Subsidiaries to sell, license, transfer, assign, lease, dispose of or hold separate any material business or assets, (ii) would reasonably be expected to result in any material limitations on Parent, the Company or their respective Subsidiaries to own, retain, conduct or operate all or a material portion of their respective businesses or assets or (iii) would reasonably be expected to require Parent, the Company or their respective Subsidiaries to grant any material right or commercial or other accommodation to, or enter into any material commercial contractual or other commercial relationship with, any third party.

(e) Parent will, after reasonable consultation with the Company as to strategy, lead all proceedings and coordinate all activities with respect to seeking any actions, consents, approvals or waivers of any Antitrust Authority as contemplated hereby, and the Company and its Subsidiaries will take such actions as reasonably requested by Parent in connection with obtaining such consents, approvals or waivers. Notwithstanding Parent s rights to lead all proceedings as provided in the prior sentence, Parent shall not require the Company to, and the Company shall not be required to, take any action with respect to satisfying the Antitrust Conditions which would bind the Company or its Subsidiaries irrespective of whether the Closing occurs. Without in any way limiting its rights or obligations hereunder (including under Section 5.7(d) and this Section 5.7(e)), Parent and the Company each acknowledges and agrees that it is the intent of the parties to cause the closing of the transactions contemplated by this Agreement to occur as soon as reasonably practicable.

Section 5.8 Public Announcements. Parent and the Company will not issue any press release with respect to the transactions contemplated by this Agreement or otherwise issue any written public statements with respect to such transactions without prior consultation with the other party, except as may be required by applicable Law, by obligations pursuant to any listing agreement with Nasdaq or with respect to any Company Adverse Recommendation Change.

Section 5.9 State Takeover Laws. If any fair price, business combination or control share acquisition statute or other similar statute or regulation shall become, or purport to become, applicable to the transactions contemplated hereby, Parent and the Company and their respective Boards of Directors shall use their reasonable best efforts to grant such approvals and take such actions as are necessary so that the transactions contemplated hereby may be consummated as promptly as practicable on the terms contemplated hereby and otherwise act to eliminate the effects of any such statute or regulation on the transactions contemplated hereby.

Section 5.10 Indemnification; Directors and Officers Insurance.

(a) For a period of six (6) years after the Effective Time (and until such later date as of which any Action commenced during such six (6) year period shall have been finally disposed of), Parent shall, and shall cause the Surviving Corporation and its Subsidiaries, and from and after the Subsequent Merger, the Surviving Company and its Subsidiaries to, honor and fulfill in all respects the obligations (including both indemnification and advancement of expenses) of the Company and its Subsidiaries under the certificate of incorporation or any bylaws of the Company or its Subsidiaries or indemnification agreements, in each case, in effect immediately

prior to the Effective Time for the benefit of any of its current or former directors and officers and any person who becomes a director or officer of the Company or any of its Subsidiaries prior to the Effective Time (the Indemnified Parties). In addition, for a period of six (6) years following the Effective Time (and until such later date as of which any Action commenced during such six (6) year period shall have been finally disposed of), Parent shall (and shall cause the Surviving Corporation, the Surviving Company and their respective Subsidiaries to) cause the certificate of incorporation, certificate of formation and bylaws and operating agreement, as applicable (and other similar organizational documents) of the Surviving Corporation, the Surviving Company and their respective Subsidiaries to contain provisions with respect to indemnification, advancement of expenses and exculpation that are at least as favorable, in the aggregate, as the indemnification, advancement of expenses and exculpation provisions contained in the certificate of incorporation and bylaws (or other similar organizational documents) of the Company and its Subsidiaries immediately prior to the Effective Time, and during such six (6) year period (and until such later date as of which any Action commenced during such six (6) year period shall have been finally disposed of), such provisions shall not be amended, repealed or otherwise modified in any respect, except as required by Law.

(b) Parent shall provide, or shall cause the Surviving Corporation (and from and after the Subsequent Merger, the Surviving Company) to provide, for an aggregate period of not less than six (6) years from the Effective Time, the Company s current directors and officers an insurance and indemnification policy that provides coverage for events occurring prior to the Effective Time (the D&O Insurance) that is no less favorable to the Company s existing policy or, if no such insurance coverage is available, the best available coverage; provided, however, that Parent and the Surviving Corporation (and from and after the Subsequent Merger, the Surviving Company) shall not be required to pay an annual premium for the D&O Insurance in excess of 300% of the last annual premium paid prior to the date of this Agreement (the Company s Current Premium). If such premiums for such insurance would at any time exceed 300% of the Company s Current Premium, then Parent shall use its reasonable efforts to cause to be maintained policies of insurance which, in Parent s good faith determination, provide the maximum coverage available at an annual premium equal to 300% of the Company s Current Premium. The Company s Current Premium is set forth on the Company Letter.

(c) Successors. If Parent, the Surviving Corporation, the Surviving Company or any of their respective successors or assigns shall (i) consolidate with, or merge with or into, any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfer all or substantially all of its properties or assets to any Person, then, in each case, Parent shall take such action as may be necessary so that such Person shall assume all of the applicable obligations set forth in this Section 5.10.

Section 5.11 Notification of Certain Matters. Parent shall use its reasonable best efforts to give prompt notice to the Company, and the Company shall use its reasonable best efforts to give prompt notice to Parent, of (i) the occurrence, or non-occurrence, of any event the occurrence, or non-occurrence, of which it is aware and which would be reasonably likely to cause (x) any representation or warranty of the notifying party contained in this Agreement to be untrue or inaccurate at the Effective Time such that the applicable condition to closing set forth in Article VI would, or would reasonably be expected to, fail to be satisfied or (y) any covenant, condition or agreement of the notifying party contained in this Agreement not to be complied with or satisfied such that the applicable condition to closing set forth in Article VI would, or would reasonably be expected to, fail to be satisfied, (ii) any failure of the notifying party to comply in a timely manner with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder or (iii) any change, event or effect which would be reasonably likely to, individually or in the aggregate, have a Company Material Adverse Effect or Parent Material Adverse Effect, as the case may be, on the notifying party; provided, however, that the delivery of any notice pursuant to this Section 5.11 shall not limit or otherwise affect the remedies available hereunder to the party receiving such notice.

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Section 5.12 Employee Benefit Plans and Agreements.

(a) Parent agrees that it will cause the Surviving Company from and after the Effective Time to honor all Company Plans, including all Employee Agreements; provided, however, that nothing in this Agreement shall be interpreted as limiting the power of Parent or the Surviving Company to amend or terminate any Company Plan or any other individual employee benefit plan, program, Contract or policy in accordance with its terms or as requiring Parent or the Surviving Company to offer to continue (other than as required by its terms) any written employment contract.

(b) Parent shall cause each Parent Plan covering employees of the Company or its Subsidiaries to recognize prior service of such employees with the Company and its Subsidiaries as service with Parent and its Subsidiaries (i) for purposes of any waiting period, eligibility requirements, vesting, and determination of benefits under any Parent Plan that is not a pension plan (as defined in Section 3(2) of ERISA) and (ii) for purposes of eligibility (including eligibility for early retirement benefits) and vesting (but not benefit accrual) under any Parent Plan that is a pension plan (as defined in Section 3(2) of ERISA).

(c) Prior to the Closing Date, the Company shall adopt resolutions providing that no additional contributions will be made to the Youbet.com, Inc. 401(k) Retirement Savings Plan or the United Tote Company, Inc. 401(k) Plan on and after the Closing and that such plans will be terminated effective as of the Business Day immediately prior to the Closing (but contingent on the Closing).

Section 5.13 Tax-Free Reorganization Treatment.

(a) Parent, the Company, Merger LLC and Merger Sub intend that, if the Continuity Requirement is satisfied, the Merger and the Subsequent Merger, taken together, be treated for federal income tax purposes as a reorganization under Section 368(a) of the Code (to which each of Parent and the Company are to be parties under Section 368(b) of the Code) in which the Company is to be treated as merging directly with and into Parent, with the Company Common Stock, together with the associated Company Rights, converted in such merger into the right to receive the consideration provided for hereunder, and each shall file all Tax Returns consistent with, and take no position inconsistent with, such treatment unless the Continuity Requirement is not satisfied or unless required to do so by applicable Law. The parties to this Agreement agree to make such reasonable representations as requested by counsel for the purpose of rendering the opinions described in Section 6.2(c) and Section 6.3(c), including representations in the Company Tax Certificate (in the case of the Company) and in the Parent Tax Certificate (in the case of Parent).

(b) Parent, the Company, Merger LLC and Merger Sub hereby adopt this Agreement as a plan of reorganization within the meaning of Sections 1.368-2(g) and 1.368-3(a) of the Regulations.

(c) None of Parent, the Company, Merger LLC or Merger Sub shall, nor shall they permit their Subsidiaries (including the Surviving Corporation and the Surviving Company after the Effective Time) to, take any action before or, if the Continuity Requirement is satisfied, after the Effective Time, which would prevent the Merger and the Subsequent Merger, taken together, from qualifying as a reorganization within the meaning of Section 368(a) of the Code.

(d) Prior to Closing, the Company shall not take, and shall cause its Subsidiaries not to take, any action that would adversely impact the ability of counsel to provide the opinions pursuant to Section 6.2(c) and Section 6.3(c) or the ability of the Company to deliver the Company Tax Certificate.

Section 5.14 Nasdaq. Parent shall cause the Parent Shares to be issued in connection with the Merger to be approved for listing on Nasdaq, subject to official notice of issuance, prior to the Effective Time. The Surviving Corporation shall use its reasonable best efforts to cause its shares of Common Stock and associated

Company Rights to no longer be listed on Nasdaq and to be de-registered under the Exchange Act as soon as practicable following the Effective Time.

Section 5.15 Company Board of Directors Representative. Parent shall take all actions as may be necessary to cause, as of the Effective Time, the Board of Directors of Parent to be comprised of fourteen (14) members, consisting of (i) the thirteen (13) current directors of the Board of Directors of Parent and (ii) one current director of the Company Board of Directors designated by the Company (a Company Designee), which Company Designee shall also be appointed to Parent s Executive Committee and Strategic Planning Committee as of the Effective Time; provided, however, that prior to the appointment of such Company Designee to the Board of Directors of Parent such Company Designee shall have applicable suitability requirements to serve on the Board of Directors of Parent as required by applicable Law. At the first annual meeting of shareholders of Parent following the Effective Time, Parent shall nominate the Company Designee, and use reasonable best efforts to cause the Company Designee, to be reelected to the Board of Directors of Parent for a term expiring at the third annual meeting following the Effective Time.

Section 5.16 Section 16 Matters. Prior to the Effective Time, Parent and the Company shall take all such steps as may be required to cause any dispositions of Company Common Stock (including derivative securities with respect to Company Common Stock) or acquisitions of Parent Common Stock (including derivative securities with respect to Parent Common Stock) resulting from the transactions contemplated by this Agreement by each individual who is subject to the reporting requirements of Section 16(a) of the Exchange Act with respect to the Company or will become subject to such reporting requirements with respect to Parent, to be exempt under Rule 16b-3 promulgated under the Exchange Act.

Section 5.17 Certain Litigation. The Company shall promptly advise Parent orally and in writing of any Action commenced after the date of this Agreement against the Company or any of its directors by any stockholder of the Company relating to this Agreement, the Merger and the transactions contemplated hereby and shall keep Parent reasonably informed regarding any such litigation. The Company shall give Parent the opportunity to consult with the Company regarding the defense or settlement of any such Action and shall consider Parent s views with respect to such Action and shall not settle any such Action without the prior written consent of Parent (not to be unreasonably withheld, conditioned or delayed).

Section 5.18 Reservation of Parent Common Stock. Effective at or prior to the Effective Time, Parent shall reserve (free from preemptive rights) out of its reserved but unissued Parent Shares, for the purposes of effecting the conversion of the issued and outstanding Company Shares pursuant to this Agreement, sufficient Parent Shares to provide for such conversion and assumption.

ARTICLE VI

CONDITIONS PRECEDENT TO THE MERGER

Section 6.1 Conditions to Each Party s Obligation to Effect the Merger. The respective obligations of each party to effect the Merger shall be subject to the fulfillment or waiver by Parent and the Company at or prior to the Effective Time of the following conditions:

(a) Stockholder Approval. The Company Stockholder Approval shall have been obtained in accordance with applicable Law and the Company Charter and the Company Bylaws.

(b) No Injunctions or Restraints. No temporary restraining order, preliminary or permanent injunction or other judgment, order or decree issued by a court or agency of competent jurisdiction located in the United States that prohibits the consummation of the Merger or the Subsequent Merger shall have been issued and remain in effect, and no Law shall have been enacted, issued, enforced, entered, or promulgated that prohibits or makes illegal the consummation of the Merger or the Subsequent Merger.

(c) Antitrust Laws. The waiting period applicable to the consummation of the transactions contemplated by this Agreement under the HSR Act shall have expired or been terminated.

(d) No Litigation. There shall not be pending any material Action by any Governmental Entity seeking to prohibit the consummation of the Merger or any other material transactions contemplated by this Agreement that is reasonably likely to succeed.

(e) Registration Statement. The Registration Statement shall have been declared effective by the SEC under the Securities Act and no stop order suspending the effectiveness of the Registration Statement shall have been issued by the SEC and no proceedings for that purpose shall have been initiated by the SEC.

Section 6.2 Conditions to Obligation of the Company to Effect the Merger. The obligation of the Company to effect the Merger shall be subject to the fulfillment or waiver by the Company at or prior to the Effective Time of the following additional conditions:

(a) Performance of Obligations. Parent shall have performed in all material respects each of its agreements contained in this Agreement required to be performed on or prior to the Effective Time.

(b) Representations and Warranties. (i) The representations and warranties of Parent, Merger Sub and Merger LLC contained in Section 2.2 and Section 2.8(iii) shall be true and correct in all respects as of the date of this Agreement and as of the Effective Time as though made on and as of such date (except to the extent that any such representation or warranty speaks as of an earlier date, in which case, such representation and warranty shall be true and correct in all respects as of such earlier date); provided, however, that with respect to Section 2.2 any deviation therein of not more than 100,000 shares in the aggregate shall not be deemed to make such representations and warranties untrue or incorrect for purposes of this Section 6.2(b)(i), (ii) the representations and warranties of Parent, Merger Sub and Merger LLC contained in Sections 2.3 and 2.17 shall be true and correct in all material respects as of the date of this Agreement and as of the Effective Time as though made on and as of such date (except to the extent that any such representation or warranty speaks as of an earlier date, in which case, such representation or warranty shall be true and correct in all material respects as of such earlier date) and (iii) the other representations and warranties of Parent, Merger Sub and Merger LLC shall be true and correct in all respects as of the date of this Agreement and as of the Effective Time as though made on and as of such date (except to the extent that any such representation or warranty speaks as of an earlier date, in which case, such representation or warranty shall be true and correct in all respects as of such earlier date), except where all failures of such representations and warranties to be so true and correct (without giving effect to any Parent Material Adverse Effect or materiality qualifications), has not had, or would not be reasonably expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

(c) Tax Opinion. The Company shall have received an opinion of Kirkland & Ellis LLP, in form and substance reasonably satisfactory to the Company, dated the Effective Time, substantially to the effect that on the basis of facts, representations and assumptions set forth in such opinion which are consistent with the state of facts existing as of the Effective Time, for federal income tax purposes: (i) the Merger and the Subsequent Merger, taken together, will constitute a reorganization within the meaning of Section 368(a) of the Code and (ii) the Company and Parent will each be a party to that reorganization within the meaning of Section 368(b) of the Code. In rendering such opinion, Kirkland & Ellis LLP may rely upon the representations contained herein and may receive and rely upon representations from Parent, the Company, and others, including representations from Parent in the Parent Tax Certificate and representations from the Company in the Company Tax Certificate. Notwithstanding the foregoing, the condition set forth in this Section 6.2(c) shall not apply if the Continuity Requirement is not satisfied.

(d) Parent Material Adverse Effect. Since the date of this Agreement, there shall not have been any event, occurrence, fact, condition, effect, change or development that, individually or in the aggregate, has had or would be reasonably expected to have a Parent Material Adverse Effect.

(e) Officer s Certificate. The Company shall have received a certificate of an executive officer of Parent as to the satisfaction of the conditions set forth in Sections 6.2(a), 6.2(b) and 6.2(d).

(f) Listing of Stock. The Parent Common Stock issuable in the Merger shall have been authorized for listing on Nasdaq, subject to official notice of issuance.

Section 6.3 Conditions to Obligations of Parent and Merger Sub to Effect the Merger. The obligations of Parent and Merger Sub to effect the Merger shall be subject to the fulfillment or waiver by Parent at or prior to the Effective Time of the following additional conditions:

(a) Performance of Obligations. The Company shall have performed in all material respects each of its agreements contained in this Agreement required to be performed on or prior to the Effective Time (other than breaches of Section 4.1 which were unintentional and which resulted in less than $250,000 in damages in the aggregate to Parent as a result thereof).

(b) Representations and Warranties. (i) The representations and warranties of the Company contained in Section 3.2 and Section 3.8(iv) shall be true and correct in all respects as of the date of this Agreement and as of the Effective Time as though made on and as of such date (except to the extent that any such representation or warranty speaks as of an earlier date, in which case, such representation and warranty shall be true and correct in all respects as of such earlier date); provided, however, that with respect to Section 3.2 any deviation therein which does not result in an increase of more than $320,000 in the aggregate to the amount payable to the holders of Company Shares pursuant to Section 1.5(c) and the holders of Company Stock Options pursuant to Section 5.5 shall not be deemed to make such representations and warranties untrue or incorrect for purposes of this Section 6.3(b)(i), (ii) the representations and warranties of the Company contained in Sections 3.3, 3.24, 3.25 and 3.27 shall be true and correct in all material respects as of the date of this Agreement and as of the Effective Time as though made on and as of such date (except to the extent that any such representation or warranty speaks as of an earlier date, in which case, such representation or warranty shall be true and correct in all material respects as of such earlier date) and (iii) the other representations and warranties of the Company shall be true and correct in all respects as of the date of this Agreement and as of the Effective Time as though made on and as of such date (except to the extent that any such representation or warranty speaks as of an earlier date, in which case, such representation or warranty shall be true and correct in all respects as of such earlier date), except where all failures of such representations and warranties to be so true and correct (without giving effect to any Company Material Adverse Effect or materiality qualifications), has not had, or would not be reasonably expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(c) Tax Opinion. Parent shall have received an opinion of Sidley Austin LLP, in form and substance reasonably satisfactory to Parent, dated the Effective Time, substantially to the effect that on the basis of facts, representations and assumptions set forth in such opinion which are consistent with the state of facts existing as of the Effective Time, for federal income tax purposes: (i) the Merger and the Subsequent Merger, taken together, will constitute a reorganization within the meaning of Section 368(a) of the Code and (ii) the Company and Parent will each be a party to that reorganization within the meaning of Section 368(b) of the Code. In rendering such opinion, Sidley Austin LLP may rely upon representations contained herein and may receive and rely upon representations from Parent, the Company and others, including representations from Parent in the Parent Tax Certificate and representations from the Company in the Company Tax Certificate. Notwithstanding the foregoing, the condition set forth in this Section 6.3(c) shall not apply if the Continuity Requirement is not satisfied.

(d) Company Material Adverse Effect. Since the date of this Agreement, there shall not have been any event, occurrence, fact, condition, effect, change or development that, individually or in the aggregate, has had or would be reasonably expected to have a Company Material Adverse Effect.

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(e) Officer s Certificate. The Company shall have received a certificate of an executive officer of the Company as to the satisfaction of the conditions set forth in Sections 6.3(a), 6.3(b) and 6.3(d).

ARTICLE VII

TERMINATION, AMENDMENT AND WAIVER

Section 7.1 Termination. This Agreement may be terminated at any time prior to the Effective Time, whether before or after any approval of the matters presented in connection with the Merger by the stockholders of the Company or Parent:

(a) by mutual written consent of Parent and the Company;

(b) by either Parent or the Company:

(i) if the Merger shall not have been consummated on or before the date that is six (6) months after the date of the Agreement (as extended as set forth below, the Outside Date); provided, however, that the right to terminate this Agreement under this Section 7.1(b)(i) shall not be available to any party whose material breach of a representation, warranty or covenant in this Agreement has been a principal cause of the failure of the Merger to be consummated on or before the Outside Date; provided, further, that if any of the Antitrust Conditions shall not have been satisfied on or prior to the Outside Date, then provided that the other conditions to Closing (other than conditions that by their nature are to be satisfied on the date of the Closing) shall have been satisfied, unless otherwise agreed to in writing by Parent and the Company, the Outside Date shall be automatically extended until the date that is fifteen (15) months after the date of this Agreement; or

(ii) if any Governmental Entity of competent jurisdiction shall have issued an order, decree or ruling or taken any other action permanently restraining, enjoining or otherwise prohibiting the Merger, in either case, (A) on the basis that the Merger and the transactions contemplated thereby are violative of any Antitrust Law or (B) for any reason other than as contemplated by Section 7.1(b)(ii)(A), and, in each case, such order decree, ruling or action shall have become final and nonappealable; provided, however, that the right to terminate under this Section 7.1(b)(ii) shall not be available to any party whose material breach of a representation, warranty or covenant in this Agreement has been the principal cause of such action;

(c) by Parent (provided it is not then in material breach of any of its obligations under this Agreement) if (i) there is any continuing inaccuracy in the representations and warranties of the Company set forth in this Agreement, or (ii) the Company is then failing to perform any of its covenants or other agreements set forth in this Agreement, in either cases (i) and (ii), such that the conditions to closing set forth in Section 6.3(a) or 6.3(b), as applicable, would not be satisfied as of the time of such termination and such breach or condition is not curable or, if curable, is not cured within thirty (30) days after written notice thereof is given by Parent to the Company stating its intention to terminate pursuant to this Section 7.1(c) and the basis for such termination (it being understood that Parent shall be obligated to provide such written notice as soon as reasonably practicable after Parent becomes aware of such breach);

(d) by the Company (provided it is not then in material breach of any of its obligations under this Agreement) if (i) there is any continuing inaccuracy in the representations and warranties of Parent, Merger Sub or Merger LLC set forth in this Agreement, or (ii) Parent or Merger Sub are then failing to perform any of their covenants or other agreements set forth in this Agreement, in either cases (i) and (ii), such that the conditions to closing set forth in Section 6.2(a) or 6.2(b), as applicable, would not be satisfied as of the time of such termination and such breach or condition is not curable or, if curable, is not cured within thirty (30) days after written notice thereof is given by the Company to Parent stating its intention to terminate pursuant to this

Section 7.1(d) and the basis for such termination (it being understood that the Company shall be obligated to provide such written notice as soon as reasonably practicable after the Company becomes aware of such breach);

(e) by Parent or the Company, if the Company Stockholder Vote shall not have been obtained at the Company Stockholder Meeting, or at any adjournment or postponement thereof, at which the final vote thereon was taken;

(f) by the Company, at any time prior to obtaining the Company Stockholder Approval, if the Board of Directors of the Company (or any committee thereof) authorizes the Company, subject to complying with the terms of this Agreement, to enter into a definitive agreement concerning a transaction that constitutes a Superior Proposal and the Company enters into such definitive agreement concurrently with such termination and pays the Termination Fee and Termination Expenses in accordance with the procedures and within the time periods set forth in Section 7.3; provided, however, that the Company shall not terminate this Agreement pursuant to this Section 7.1(f) unless the Company has first provided notice of such Superior Proposal to Parent in accordance with Section 4.3(d) and has complied with the provisions of Section 4.3(d) and, after so complying, such proposal continues to constitute a Superior Proposal; provided that, as a condition to the effectiveness of such termination, the Company shall have delivered to Parent all fees and expenses as required pursuant to Section 7.3;

(g) by Parent if (i) the Board of Directors of the Company or any committee thereof (A) shall not have recommended, or such Board of Directors or a committee thereof shall have resolved not to recommend approval and adoption of this Agreement, shall have effected a Company Adverse Recommendation Change or shall have failed to include its recommendation of the approval and adoption of this Agreement by the Company s stockholders in the Proxy Statement, (B) in response to a publicly announced or publicly disclosed Alternative Proposal from a Third Party, shall not have publicly reconfirmed its recommendation in favor of the adoption and approval of this Agreement within five (5) Business Days after Parent requests in writing that such recommendation be publicly reconfirmed; provided, however, that Parent shall only be entitled to request that its recommendation be reconfirmed in response to a publicly announced or publicly disclosed Alternative Proposal from any Third Party once, unless such Alternative Proposal is materially amended, in which event, Parent shall be entitled to request such recommendation be reconfirmed once following the public announcement or public disclosure of such material amendment or (C) shall have resolved or publicly proposed to do any of the foregoing; (ii) the Company has breached in any material respect its obligations under Section 4.3 (except for any inadvertent or unintentional breaches that have no impact on Parent s ability to consummate the Merger on the terms set forth herein); (iii) within ten (10) Business Days after a tender or exchange offer relating to securities of the Company involving a Person or group unaffiliated with Parent has first been published or announced, the Company shall not have published, sent or given to the stockholders of the Company pursuant to Rule 14e-2 promulgated under the Securities Act a statement disclosing that the Board of Directors of the Company recommends rejection of such tender or exchange offer (including by taking no position with respect to such tender offer or exchange offer) or (iv) the Board of Directors of the Company or any committee thereof shall have recommended to the stockholders of the Company or approved any Alternative Proposal or any definitive agreement with respect to an Alternative Proposal or shall have resolved to do so; provided, however, that Parent shall no longer be entitled to terminate this Agreement pursuant to this Section 7.1(g)(i)(A) or (C) after the earlier of (x) five (5) Business Days after the first day upon which Parent is first entitled to terminate this Agreement pursuant to Section 7.1(g)(i)(A) or (C) or (y) Company Stockholder Approval having been obtained;

(h) by the Company if there shall have been a Parent Material Adverse Effect and such Parent Material Adverse Effect is not curable or, if curable, is not cured within thirty (30) days after written notice thereof is given by the Company to Parent stating its intention to terminate pursuant to this Section 7.1(h) and the basis for such termination (it being understood that the Company shall be obligated to provide such written notice as soon as reasonably practicable after the Company becomes aware of such Parent Material Adverse Effect); or

(i) by Parent if there shall have been a Company Material Adverse Effect and such Company Material Adverse Effect is not curable or, if curable, is not cured within thirty (30) days after written notice thereof is given by Parent to the Company stating its intention to terminate pursuant to this Section 7.1(i) and the basis for such termination (it being understood that Parent shall be obligated to provide such written notice as soon as reasonably practicable after Parent becomes aware of such Company Material Adverse Effect).

The right of any party hereto to terminate this Agreement pursuant to this Section 7.1 shall remain operative and in full force and effect regardless of any investigation made by or on behalf of any party hereto, any Person controlling any such party or any of their respective officers or directors, whether prior to or after the execution of this Agreement.

Section 7.2 Effect of Termination. In the event of termination of this Agreement by either Parent or the Company, as provided in Section 7.1, this Agreement shall forthwith become void, and there shall be no liability hereunder on the part of the Company, Parent, Merger Sub, Merger LLC or their respective officers or directors (except for the last sentence of Section 5.3, the entirety of Section 7.3 and the entirety of Article VIII (other than Section 8.1) which shall survive the termination); provided, however, that nothing contained in this Section 7.2 shall relieve any party hereto from any liability for any willful breach of a representation or warranty contained in this Agreement or the breach of any covenant contained in this Agreement. No termination of this Agreement shall affect the obligations of the parties contained in the Confidentiality Agreement, all of which obligations shall survive termination of this Agreement in accordance with their terms.

Section 7.3 Payments; Obligations.

(a) Company Termination Fee.

(i) In the event that Parent terminates this Agreement pursuant to Section 7.1(g), then the Company shall pay to Parent (A) $4,326,000 (the Termination Fee) as promptly as possible (but in any event within three (3) Business Days) following such termination and (B) the Termination Expenses no later than three (3) Business Days after receipt of documentation supporting such Termination Expenses.

(ii) In the event that the Company terminates this Agreement pursuant to Section 7.1(f), then the Company shall pay to Parent (A) the Termination Fee concurrently with any such termination and (B) the Termination Expenses no later than three (3) Business Days after receipt of documentation supporting such Termination Expenses.

(iii) In the event that after the date hereof and prior to the Company Stockholder Approval, (A) an Alternative Proposal shall have been made to the Company or shall have been made directly to the stockholders of the Company generally or shall have otherwise become publicly known or any Person shall have publicly announced an intention (whether or not conditional) to make an Alternative Proposal and (B) thereafter this Agreement is terminated pursuant to Section 7.1(c) or 7.1(e), then the Company shall pay to Parent the Termination Expenses no later than three (3) Business Days after receipt following termination of documentation supporting such Termination Expenses. If, concurrently with or within twelve (12) months after any such termination described in clause (B) in the immediately preceding sentence, the Company enters into a definitive agreement with respect to, or consummates, any Alternative Proposal, then the Company shall pay to Parent the Termination Fee as promptly as possible (but in any event within three (3) Business Days) following the earlier of the entry into such definitive agreement or consummation of such Alternative Proposal.

Any fee due and Termination Expenses to be reimbursed under this Section 7.3(a) shall be paid by wire transfer of same-day funds to an account provided in writing by Parent to the Company For purposes of this Section 7.3(a), the term Alternative Proposal shall have the meaning assigned to such term in Section 8.12, except that all references to 15% in the definition of Alternative Transaction, as used in the definition of Alternative Proposal shall be deemed to be references to 50%.

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(b) Parent Termination Fee. In the event that this Agreement is terminated by Parent or the Company pursuant to Section 7.1(b)(i) or Section 7.1(b)(ii)(A) and, in each case, at the time of such termination, (i) the conditions set forth in Sections 6.1 and 6.3 (other than (A) the Antitrust Conditions, (B) the delivery of certificates and opinions which (in light of the underlying facts as of the time of such termination and any waiver of the condition set forth in Section 6.3(a) deemed made pursuant to Section 7.1(b)(i)) would be capable of being delivered but are to be delivered on the date of the Closing and (C) other such conditions the failure of which to be satisfied by such date has been principally caused by a material breach by Parent of any representation, warranty or covenant hereunder or the facts or circumstances underlying such breach) have been satisfied or (to the extent permitted by Law) waived (or in the case of termination pursuant to Section 7.1(b)(ii)(A), are reasonably likely to have been satisfied by the Outside Date), and (ii) neither Parent nor the Company has the right to terminate this Agreement pursuant to Section 7.1(b)(ii)(B) (or would have the right to so terminate assuming that the relevant order, decree, ruling or action referenced in Section 7.1(b)(ii)(B) has become final and non-appealable at the time of such termination), then Parent shall (x) pay the Company a fee equal to $5,000,000 (the Non-Clearance Termination Fee) by wire transfer of same-day funds on the first Business Day following the date of such termination of this Agreement and (y) use commercially reasonable efforts to cause certain matters to occur on the terms set forth on Section 7.3(b) of the Parent Letter.

(c) Each of the Company and Parent acknowledges that the agreements contained in Section 7.3 are an integral part of the transactions contemplated by this Agreement, and that, without these agreements neither Parent nor the Company would have entered into this Agreement; accordingly, if the Company fails to promptly pay the amounts due pursuant to Section 7.3(a) or Parent fails to promptly pay the amounts due pursuant to Section 7.3(b), and, in order to obtain such payment Parent or the Company, as the case may be, commences a suit which results in a judgment against the Company or Parent, as applicable, for any of the amounts set forth in Section 7.3(a) or 7.3(b), then Company shall pay to Parent or Parent shall pay to the Company, as the case may be, its costs and expenses (including attorneys fees) in connection with such suit, together with interest on the amounts due pursuant to Section 7.3(a) or 7.3(b) at the prime rate of JPMorgan Chase Bank, N.A. in effect on the date plus 2% per annum from the date such amounts were required to be paid until the date actually received by such party.

(d) Upon payment of the Termination Fee and the Termination Expenses, as applicable, to Parent, the Company shall have no further liability with respect to this Agreement or the transactions contemplated hereby to Parent; provided that nothing herein shall release any party from liability for willful or intentional breach or fraud. Upon payment of the Non-Clearance Termination Fee to the Company, Parent shall have no further liability with respect to this Agreement or the transactions contemplated hereby to the Company other than Parent s obligations pursuant to Section 7.3(b)(y); provided that nothing herein shall release any party from liability for willful or intentional breach or fraud.

Section 7.4 Amendment. This Agreement may be amended by the parties hereto, by or pursuant to action taken by their respective Boards of Directors, at any time before or after approval of the matters presented in connection with the Merger by the stockholders of the Company, but, after any such approval, no amendment shall be made which by Law requires further approval by such stockholders without such further approval. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

Section 7.5 Waiver. At any time prior to the Effective Time, the parties hereto may (i) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (ii) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto and/or (iii) waive compliance with any of the covenants, agreements or conditions contained herein which may legally be waived. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party.

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ARTICLE VIII

GENERAL PROVISIONS

Section 8.1 Non-Survival of Representations and Warranties. The representations and warranties in this Agreement or in any instrument delivered pursuant to this Agreement shall terminate at the Effective Time.

Section 8.2 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given when delivered personally, one day after being delivered to a nationally recognized overnight courier or on the Business Day received (or the next Business Day if received after 5 p.m. local time or on a weekend or day on which banks are closed) when sent via facsimile (with a confirmatory copy sent by overnight courier) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) if to Parent, Merger Sub or Merger LLC, to

Churchill Downs Incorporated
700 Central Avenue
Louisville, Kentucky 40208
Attention: General Counsel
Facsimile No.: (502) 636-4548

with a copy to:

Sidley Austin LLP
One South Dearborn Street
Chicago, Illinois 60603
Attention: Brian J. Fahrney
Matthew G. McQueen
Facsimile No.: (312) 853-7036

(b) if to the Company, to

Youbet.com, Inc.
2600 West Olive Avenue, 5th Floor
Burbank, CA 91505
Attention: General Counsel
Facsimile No.: (818) 668-2101

with a copy to:

Kirkland & Ellis LLP
300 North LaSalle Street
Chicago, Illinois 60654
Attention: Jon A. Ballis, P.C.
James S. Rowe
Theodore A. Peto
Facsimile No.: (312) 862-2200

Section 8.3 Interpretation. When a reference is made in this Agreement to a Section, such reference shall be to a Section of this Agreement unless otherwise indicated. The table of contents, table of defined terms and headings contained in this Agreement are for reference purposes only and shall not affect in any way the

meaning or interpretation of this Agreement. Whenever the words include, includes or including are used in this Agreement, they shall be deemed to be followed by the words without limitation. The words hereof, herein and hereunder and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant thereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. Each of the parties has participated in the drafting and negotiation of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement must be construed as if it is drafted by all the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this Agreement.

Section 8.4 Counterparts. This Agreement may be executed in counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties.

Section 8.5 Entire Agreement; No Third-Party Beneficiaries. This Agreement, except as provided in the last sentence of Section 5.3, constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement. This Agreement, except for the provisions of Section 5.10 (which upon the Effective Time are intended to benefit the Indemnified Parties), is not intended to confer upon any Person other than the parties hereto any rights or remedies hereunder; provided, however, that following the Effective Time, each holder of Company Common Stock shall be entitled to enforce the provisions of Article I to the extent necessary to receive the Per Share Merger Consideration to which such holder is entitled pursuant to Article I.

Section 8.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware.

Section 8.7 Specific Performance; Submission To Jurisdiction. The parties agree that irreparable damage would occur if any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that each of the parties shall be entitled (in addition to any other remedy that may be available to it, including monetary damages) to seek an injunction or injunctions to prevent breaches of this Agreement and to seek to enforce specifically the terms and provisions of this Agreement exclusively in the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (or, if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any state and federal courts located within the State of Delaware). The parties further agree that no party to this Agreement shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 8.7 and each party waives any objection to the imposition of such relief or any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument. In addition, each of the parties irrevocably agrees that any legal action or proceeding with respect to this Agreement and the rights and obligations arising hereunder, or for recognition and enforcement of any judgment in respect of this Agreement and the rights and obligations arising hereunder brought by the other party hereto or its successors or assigns, shall be brought and determined exclusively in the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (or, if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any state and federal courts located within the State of Delaware). Each of the parties hereby irrevocably submits with regard to any such action or proceeding

for itself and in respect of its property, generally and unconditionally, to the personal jurisdiction of the aforesaid courts and agrees that it will not bring any action relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than the aforesaid courts. Each of the parties hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, counterclaim or otherwise, in any action or proceeding with respect to this Agreement, (a) any claim that it is not personally subject to the jurisdiction of the above named courts for any reason other than the failure to serve in accordance with this Section 8.7, (b) any claim that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (c) to the fullest extent permitted by the applicable Law, any claim that (i) the suit, action or proceeding in such court is brought in an inconvenient forum, (ii) the venue of such suit, action or proceeding is improper or (iii) this Agreement, or the subject matter of this Agreement, may not be enforced in or by such courts. Parent and the Company hereby consent to service being made through the notice procedures set forth in Section 8.2 and agree that service of any process, summons, notice or document by registered mail (return receipt requested and first-class postage prepaid) to the respective addresses set forth in Section 8.2 shall be effective service of process for any suit or proceeding in connection with this Agreement or the transactions contemplated by this Agreement.

Section 8.8 Waiver of Jury Trial. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) EACH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (iv) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.8.

Section 8.9 Assignment. Subject to Section 1.1, neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other parties.

Section 8.10 Expenses. Except as provided in Section 7.3, whether or not the Merger is consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby, including the fees and disbursements of counsel, financial advisors and accountants, shall be paid by the party incurring such costs and expenses.

Section 8.11 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other terms, conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic and legal substance of the transactions contemplated hereby are not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement may be consummated as originally contemplated to the fullest extent possible.

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Section 8.12 Definitions.

(a) In this Agreement, the following terms have the meanings specified or referred to in this Section 8.12(a) and shall be equally applicable to both the singular and plural forms.

(i) Action means any claim, action, suit, proceeding, arbitration, mediation or investigation.

(ii) Affiliate means, with respect to any Person, any other Person which directly or indirectly controls, is controlled by or is under common control with such Person.

(iii) Alternative Proposal means any offer or proposal by a Third Party relating to any Alternative Transaction.

(iv) Alternative Transaction means any transaction or series of related transactions other than the Merger involving (a) any acquisition or purchase from the Company by any Third Party of more than a 15% interest in the total outstanding voting securities of the Company or any of its Subsidiaries or any tender offer or exchange offer that if consummated would result in any Third Party beneficially owning 15% or more of the total outstanding voting securities of the Company or any of its Subsidiaries or any merger, consolidation, business combination or similar transaction involving the Company pursuant to which the stockholders of the Company immediately preceding such transaction hold less than 85% of the equity interests in the surviving or resulting entity of such transaction, (b) any sale, lease, exchange, transfer, license, acquisition or disposition of more than 15% of the assets of the Company or any of its Subsidiaries or (c) any liquidation, dissolution, recapitalization or other significant corporate reorganization of the Company.

(v) Antitrust Authority means, in their capacity as an enforcement agency with respect to Antitrust Laws, the Federal Trade Commission, the Antitrust Division of the United States Department of Justice, any attorney general of any state of the United States or any Governmental Entity having competition law authority in any other applicable jurisdiction.

(vi) Antitrust Conditions means any of the conditions set forth in Section 6.1(b), Section 6.1(c) and Section 6.1(d) (but solely, in the case of Sections 6.1(b) and 6.1(d), to the extent the order, injunction, judgment, decree or litigation referred to in such Sections is issued or brought under applicable Antitrust Laws).

(vii) Antitrust Laws means the Sherman Act, the Clayton Act, the HSR Act, the Federal Trade Commission Act and all other federal, state and foreign Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restriction of trade or business or competition through merger or acquisition.

(viii) Business Day means any day other than a Saturday, Sunday or a day on which the banks in New York are authorized by law or executive order to be closed.

(ix) Closing Merger Consideration means the Per Share Cash Consideration plus an amount equal to the product of (a) the Exchange Ratio and (b) Parent Trading Price.

(x) Company Material Adverse Effect means (a) any event, occurrence, fact, condition, effect, change or development that is materially adverse to the business, financial condition or results of operations of the Company and its Subsidiaries, taken as a whole or (b) a decrease in the Company s EBITDA of 15% or more for fiscal 2008 or a decrease in the Company s EBITDA of 15% or more for the first nine (9) months of fiscal 2009, in each case, due to any restatement of the Company s financial statements in response to the Company Comment Letter; provided, however, that for purposes of clause (a), none of the following shall be deemed in themselves to constitute, and that none of the following shall be taken into account in determining whether there has been or will be, a Company Material Adverse Effect: (i) any change generally affecting the economy, financial, credit or capital markets (including changes in interest rates or exchange rates) or political, economic conditions in the United States, (ii) conditions (or changes therein) generally affecting the industries in which the Company or its Subsidiaries operate, (iii) changes in

applicable Law or GAAP, except in the case of each of clauses (i), (ii) and (iii) to the extent that the Company and its Subsidiaries are adversely affected in a disproportionate manner relative to other participants in the industries in which the Company and its Subsidiaries operate, (iv) compliance by the Company or its Subsidiaries with the terms of this Agreement, (v) any change attributable to the negotiation, execution, announcement, pendency or pursuit of the transactions contemplated hereby, including the Merger, (vi) acts of war (whether or not declared), the commencement, continuation or escalation of a war, acts of armed hostility, sabotage or terrorism or other international or national calamity or any material worsening of such conditions threatened or existing as of the date of this Agreement, (vii) any hurricane, earthquake, flood, natural disaster, or other force majeure event or (viii) any failure by the Company to meet analysts revenue or earnings projections, in and of itself, or the trading price of the Company Common Stock or Parent Common Stock, as the case may be, in and of itself (it being understood that any event, occurrence, fact, condition, effect, change or development which affects or otherwise relates to the failure to meet analysts revenue or earnings projections or the trading price, other than an event, occurrence, fact, condition, effect, change or development provided for in clauses (i) through (vii) above, may be deemed to constitute, or be taken into account in determining whether there has been, a Company Material Adverse Effect). Notwithstanding clauses (i) through (viii) above, any changes in applicable federal Law (including any regulations thereunder) in the United States that are first enacted after the date hereof and that materially restrict or prohibit on a national basis operation of the Company s and its Subsidiaries (taken as a whole) advance deposit wagering business shall be deemed to constitute a Company Material Adverse Effect (for purposes of clarity, any Law under the Unlawful Internet Gambling Enforcement Act of 2006 shall not be considered as being first enacted after the date hereof for purposes of this definition).

(xi) Company Plan means any employee benefit plan (as defined in Section 3(3) of ERISA), whether or not subject to ERISA, any other employee benefit plan, program, policy, arrangement or agreement, including any pension, retirement, profit-sharing, thrift, savings, bonus plan, incentive, stock option or other equity or equity-based compensation, or deferred compensation arrangement, stock purchase, severance pay, retention, change of control, unemployment benefits, sick leave, vacation pay, salary continuation for disability, hospitalization, health or medical insurance, life insurance, fringe benefit, compensation, flexible spending account or scholarship program, and any employment, severance or change in control agreement or similar practice, policy or arrangement maintained by the Company or any ERISA Affiliate, or to which the Company or any ERISA Affiliate is obligated to contribute, on behalf of any current or former officer, director, employee or consultant of the Company or any Subsidiary.

(xii) Company Tax Certificate shall mean a certificate substantially to the effect of the form of Company Tax Certificate attached to the Company Letter.

(xiii) Continuity Requirement shall be satisfied if the value of the Per Share Stock Consideration equals 40% or more of the value of the Per Share Merger Consideration (in each case as determined for purposes of Section 1.5(c) after taking into account all applicable adjustments), with value determined in each case based on the closing sale price of one Parent Share as of the close of the last full trading day immediately prior to the Effective Time that the Parent Common Stock has traded on Nasdaq.

(xiv) Contract means any contract, agreement, instrument, guarantee, indenture, note, bond, mortgage, permit, franchise, concession, commitment, lease, license, arrangement, obligation or understanding, whether written or oral.

(xv) Effective Time means the date and time at which the Certificate of Merger is accepted for recording or such later time established by the Certificate of Merger.

(xvi) Employee Agreement means each management, employment, severance, retention, consulting or other Contract between the Company, or any ERISA Affiliate, and any current or former employee, director or officer of the Company or any ERISA Affiliate other than standard offer letters used in the Company s ordinary course of business that do not provide for severance or other payments after termination of employment or acceleration of any equity award.

(xvii) "Encumbrance" means, with respect to any asset, any mortgage, deed of trust, lien, pledge, charge, security interest, title retention device, collateral assignment, adverse claim, restriction or other encumbrance of any kind in respect of such asset (including any restriction on the voting of any security, any restriction on the transfer of any security or other asset, any restriction on the receipt of any income derived from any asset, any restriction on the use of any asset and any restriction on the possession, exercise or transfer of any other attribute of ownership of any asset).

(xviii) "ERISA Affiliate" means, with respect to any Person, any trade or business (whether or not incorporated) which is under common control or would be considered a single employer with such Person pursuant to Section 414(b), (c), (m) or (o) of the Code and the rules and regulations promulgated under those sections or pursuant to Section 4001(b) of ERISA and the rules and regulations promulgated thereunder.

(xix) "Intervening Event" means, with respect to Parent or the Company, as applicable, a material event, occurrence, fact, condition, effect, change or development that was not known or reasonably foreseeable to the Board of Directors of the Company on the date of this Agreement, which event, occurrence, fact, condition, effect, change or development becomes known to the Board of Directors of the Company before receipt of the Company Stockholder Approval; provided, that (i) in no event shall any action taken by either party pursuant to and in compliance with the terms of this Agreement, including the covenants set forth in Section 5.7, and the consequences of any such action, constitute an Intervening Event, (ii) in no event shall the receipt, existence of or terms of an Alternative Proposal or a Superior Proposal or any inquiry relating thereto or the consequences thereof constitute an Intervening Event and (iii) in no event shall any event, occurrence, fact, condition, effect, change or development that has an adverse effect on the business, financial condition or results of operations of Parent or any of its Subsidiaries constitute an Intervening Event unless such event, occurrence, fact, condition, effect, change or development has had or would reasonably be expected to have a Parent Material Adverse Effect.

(xx) "IRS" means the Internal Revenue Service.

(xxi) "Joint Venture" means, with respect to a party, any corporation, limited liability company, partnership, joint venture, trust or other entity which is not a Subsidiary of such party and in which (i) such party, directly or indirectly, owns or controls any shares of any class of the outstanding voting securities or other equity interests (other than the ownership of securities primarily for investment purposes as part of routine cash management or investments of 1% or less in publicly traded companies) or (ii) such party or a Subsidiary of such party is a general partner.

(xxii) "Knowledge of Parent" means the actual knowledge of the individuals identified in Section 8.12 of the Parent Letter.

(xxiii) "Knowledge of the Company" means the actual knowledge of the individuals identified in Section 8.12 of the Company Letter.

(xxiv) "Net Option Amount" means the excess, if any, of (a) the Closing Merger Consideration, over (b) the exercise price per share provided for in such Company Stock Option.

(xxv) "Option Exchange Ratio" means the Net Option Amount divided by the Closing Merger Consideration.

(xxvi) "Parent Material Adverse Effect" means any event, occurrence, fact, condition, effect, change or development that is materially adverse to the business, financial condition or results of operations of Parent and its Subsidiaries, taken as a whole; provided, however, that none of the following shall be deemed in themselves to constitute, and that none of the following shall be taken into account in determining whether there has been or will be, a Parent Material Adverse Effect: (i) any change generally affecting the economy, financial, credit or capital markets (including changes in interest rates or exchange rates) or political, economic conditions in the United States, (ii) conditions (or changes therein) generally affecting the industries in which Parent or its Subsidiaries operate, (iii) changes in applicable Law or GAAP, except in

the case of each of clauses (i), (ii) and (iii) to the extent that Parent and its Subsidiaries are adversely affected in a disproportionate manner relative to other participants in the industries in which Parent and its Subsidiaries operate, (iv) compliance by Parent or its Subsidiaries with the terms of this Agreement, (v) any change attributable to the negotiation, execution, announcement, pendency or pursuit of the transactions contemplated hereby, including the Merger, (vi) acts of war (whether or not declared), the commencement, continuation or escalation of a war, acts of armed hostility, sabotage or terrorism or other international or national calamity or any material worsening of such conditions threatened or existing as of the date of this Agreement, (vii) any hurricane, earthquake, flood, natural disaster, or other force majeure event or (viii) any failure by Parent to meet analysts revenue or earnings projections, in and of itself, or the trading price of Company Common Stock or Parent Common Stock, as the case may be, in and of itself (it being understood that any event, occurrence, fact, condition, effect, change or development which affects or otherwise relates to the failure to meet analysts revenue or earnings projections or the trading price, other than an event, occurrence, fact, condition, effect, change or development provided for in clauses (i) through (vii) above, may be deemed to constitute, or be taken into account in determining whether there has been, a Parent Material Adverse Effect).

(xxvii) Parent Plan means any employee benefit plan (as defined in Section 3(3) of ERISA), whether or not subject to ERISA, any other employee benefit plan, program, policy, arrangement or agreement, including any pension, retirement, profit-sharing, thrift, savings, bonus plan, incentive, stock option or other equity or equity-based compensation, or deferred compensation arrangement, stock purchase, severance pay, retention, change of control, unemployment benefits, sick leave, vacation pay, salary continuation for disability, hospitalization, health or medical insurance, life insurance, fringe benefit, compensation, flexible spending account or scholarship program, and any employment, severance or change in control agreement or similar practice, policy or arrangement maintained by Parent, or to which Parent or any ERISA Affiliate is obligated to contribute, on behalf of any current or former officer, director, employee or consultant of Parent or any Subsidiary.

(xxviii) Parent Tax Certificate shall mean a certificate substantially to the effect of the form of Parent Tax Certificate attached to the Parent Letter.

(xxix) Parent Trading Price means the reported closing sale price per share of the Parent Common Stock on the Nasdaq Stock Market, Inc. as reported in the Wall Street Journal on the trading day immediately prior to the Effective Time.

(xxx) Permitted Encumbrances means (a) statutory Encumbrances for current Taxes or other payments that are not yet due and payable or that are being contested in good faith through appropriate proceedings, (b) deposits or pledges made in connection with, or to secure payment of, workers compensation, unemployment insurance or similar programs mandated by applicable Laws, and (c) statutory Encumbrances in favor of carriers, warehousemen, mechanics and materialmen, to secure claims for labor, materials or supplies and other like Encumbrances.

(xxxi) Person means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, estate, Governmental Entity, trust or unincorporated organization.

(xxxii) Pro-Rata Cash Portion means an amount equal to the product of (i) the Option Exchange Ratio and (ii) the Per Share Cash Consideration (as adjusted pursuant to Section 1.5(d)).

(xxxiii) Pro-Rata Stock Portion means an amount equal to the product of (i) the Option Exchange Ratio and (ii) the Per Share Stock Consideration (as adjusted pursuant to Section 1.5(d)).

(xxxiv) Subsidiary means any corporation, partnership, limited liability company, joint venture, trust, association or other entity of which Parent or the Company, as the case may be (either alone or through or together with any other Subsidiary), owns, directly or indirectly, (i) 50% or more of the stock or other equity interests the holders of which are generally entitled to elect at least a majority of the Board of Directors or other governing body of such corporation, partnership, limited liability company, joint venture, trust,

association or other entity or (ii) if there are no such voting interests, 50% or more of the equity interests in such corporation, partnership, limited liability company, joint venture, trust, association or other entity.

(xxxv) "Superior Proposal" means a bona fide written proposal made by a Third Party to acquire, directly or indirectly, pursuant to a tender offer, exchange offer, merger, consolidation or other business combination, in excess of 50% of all of the assets of the Company and its Subsidiaries, taken as a whole, or in excess of 50% of the outstanding voting securities of the Company and as a result of which the stockholders of the Company immediately preceding such transaction would cease to hold at least 50% of the equity interests in the surviving or resulting entity of such transaction, on terms that in the reasonable good faith judgment of the Board of Directors of Company, after consultation with its outside financial advisors, are more favorable to Company's stockholders from a financial point of view than the terms of the Merger and the Subsequent Merger, taken together, and is reasonably likely to be completed on a timely basis after taking into account all the terms and conditions of such proposal and this Agreement (including any proposal by either party to amend the terms of this Agreement).

(xxxvi) "Tax Return" means any return, report or similar statement (including the attached schedules) required to be filed with respect to any Tax, including any information return, claim for refund, amended return or declaration of estimated Tax.

(xxxvii) "Taxes" means any federal, state, local or foreign income, gross receipts, property, sales, use, license, excise, franchise, employment, payroll, withholding, alternative or added minimum, ad valorem, value-added, transfer or excise tax, or other tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any additions to tax, interest or penalty imposed by any Governmental Entity.

(xxxviii) "Termination Expenses" shall mean documented fees and expenses incurred or paid by or on behalf of Parent and its Affiliates in connection with the Merger or the other transactions contemplated by this Agreement, or related to the authorization, preparation, negotiation, execution and performance of this Agreement, in each case including all documented fees and expenses of law firms, commercial banks, investment banking firms, financing sources, accountants, experts and consultants to Parent and its Affiliates provided, however, that the amount required to be reimbursed in respect of Expenses by the Company shall not exceed $500,000.

(xxxix) "Third Party" means any Person or group (as defined under Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder) other than Parent and its Affiliates.

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(b) Each of the following terms is defined on the pages set forth opposite such term:

Defined Term	Section
Agreement	Introduction
Alternative Transaction Agreement	4.3(d)(iii)
Blue Sky Laws	2.4
Certificate of Merger	1.2
Closing	1.15
Code	Recitals
Company	Introduction
Company Adverse Recommendation Change	4.3(d)
Company Business Personnel	3.17
Company Bylaws	3.3
Company Charter	3.3
Company Comment Letter	5.1
Company Common Stock	Recitals
Company Contract	3.14(a)
Company Data	3.19(b)
Company Designee	5.15
Company Foreign Benefit Plan	3.15(e)
Company IT Systems	3.19(a)
Company Letter	Article III
Company Permits	3.10
Company Preferred Stock	3.2(a)
Company Rights	3.2(a)
Company Rights Agreement	3.2(a)
Company SEC Documents	3.5
Company Series B Preferred Stock	3.2(a)
Company Shares	1.5(b)
Company Stock Option Plan	3.2(a)
Company Stock Options	3.2(a)
Company Stockholder Approval	5.2(a)
Company Stockholder Meeting	5.2(a)
Company s Current Premium	5.10(b)
Confidentiality Agreement	5.3
D&O Insurance	5.10(b)
DGCL	1.1
Dissenting Shares	1.5(e)
Environmental Laws	3.16
ERISA	2.13(a)
Exchange Act	2.4
Exchange Agent	1.6(a)
Exchange Fund	1.6(a)
Exchange Ratio	1.5(c)
GAAP	2.5(a)
Governmental Entity	2.4
HSR Act	2.4
HSR Filings	5.7(a)
Indemnified Parties	5.10
Information Security Plan	3.19(d)
Intellectual Property Rights	3.18(a)
Laws	1.4(a)

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Defined Term	Section
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LLC Act	Recitals
Merger	Recitals
Merger LLC	Introduction
Merger Sub	Introduction
Nasdaq	1.8
Non-Clearance Termination Fee	7.3(b)
Order	2.7
Outside Date	7.1(b)(i)
Owned Intellectual Property Rights	3.18(d)
Parent	Introduction
Parent Bylaws	2.3
Parent Charter	2.3
Parent Common Stock	Recitals
Parent Letter	Article II
Parent Permits	2.10
Parent Preferred Stock	2.2(a)
Parent Rights	2.2(a)
Parent Rights Agreement	2.2(a)
Parent SEC Documents	2.5(a)
Parent Shares	1.5(c)
Parent Stock Plans	2.2(a)
Per Share Cash Consideration	1.5(c)
Per Share Merger Consideration	1.5(c)
Per Share Stock Consideration	1.5(c)
Personal Data	3.19(d)
Privacy Commitments	3.19(d)
Proxy Statement	2.6
Real Property Leases	3.11(b)
Registration Statement	2.3
Representatives	4.3(a)
Sarbanes-Oxley Act	2.5(b)
SEC	2.2(b)
Securities Act	2.3
Significant Subsidiary	2.1
State Takeover Approvals	2.4
Stock Threshold	1.5(d)
Subsequent Merger	1.16(a)
Surviving Company	1.16(a)
Surviving Corporation	1.1
Termination Fee	7.3(a)(i)
Total Stock Amount	1.5(d)
Transmittal Letter	1.6
Voting Agreement	Recitals
Worker Safety Laws	3.16

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IN WITNESS WHEREOF, Parent, Merger Sub, Merger LLC and the Company have caused this Agreement to be signed by their respective officers thereunto duly authorized all as of the date first written above.

CHURCHILL DOWNS INCORPORATED

By: /s/ William Carstanjen
Name: William Carstanjen
Title: Chief Operating Officer

TOMAHAWK MERGER CORP.

By: /s/ William Carstanjen
Name: William Carstanjen
Title: President

TOMAHAWK MERGER LLC

By: /s/ William Carstanjen
Name: William Carstanjen
Title: President

YOUBET.COM, INC.

By: /s/ David Goldberg
Name: David Goldberg
Title: Chief Executive Officer

[Signature Page to Agreement and Plan of Merger]

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ANNEX B

YOUBET FAIRNESS OPINION

November 10, 2009

Board of Directors

Youbet.com, Inc.

5901 De Soto Avenue

Woodland Hills, CA 91367

Members of the Board of Directors:

You have requested our opinion as to the fairness from a financial point of view to the stockholders (other than the Acquiror (as defined below) and its affiliates) of Youbet.com, Inc. (the Company) of the Consideration (as defined below) to be received by such stockholders pursuant to the terms and subject to the conditions set forth in the Agreement and Plan of Merger (the Agreement) to be entered into by the Company, Churchill Downs Inc. (the Acquiror), Tomahawk Merger LLC, a wholly owned subsidiary of Acquiror, and Tomahawk Merger Corp., a wholly owned subsidiary of Acquiror (the Acquisition Sub). As more fully described in the Agreement, Acquisition Sub will be merged with and into the Company (the Transaction) and each issued and outstanding share of the common stock of the Company, par value of $0.001 per share (the Company Common Stock), will be converted into $0.97 in cash (the Cash Consideration) and 0.0598 shares of common stock of the Acquiror (the Acquiror Common Stock and, together with the Cash Consideration, the Consideration).

We have acted as your financial advisor in connection with the Transaction and will receive a fee for our services, a significant portion of which is contingent upon the consummation of the Transaction. We will also receive a fee upon delivery of this opinion which is not contingent upon the consummation of the Transaction. In addition, the Company has agreed to reimburse us for expenses and indemnify us for certain liabilities arising out of our engagement. In the past, we have provided investment banking and other services to the Company and received compensation for the rendering of such services including, within the past two years, acting as your financial advisor in connection with the potential acquisition by you of entities unaffiliated with the Acquiror, which transaction was not consummated, and have received fees for such services.

Our opinion does not address the Company s underlying business decision to effect the Transaction or the relative merits of the Transaction as compared to any alternative business strategies or transactions that might be available to the Company and does not constitute a recommendation to any stockholder of the Company as to how such stockholder should vote with respect to the Transaction. At your direction, we have not been asked to, nor do we, offer any opinion as to the material terms of the Agreement or the form of the Transaction. We express no opinion as to what the value of the Acquiror Common Stock will be when issued pursuant to the Agreement or the prices at which it or the Company Common Stock will trade at any time.

In arriving at our opinion, we have, among other things: (i) reviewed certain publicly available business and financial information relating to the Company and the Acquiror that we deemed relevant; (ii) reviewed certain internal information relating to the Company, including financial forecasts, earnings, cash flow, assets, liabilities and prospects of the Company, furnished to us by the Company; (iii) reviewed certain internal information relating to the Acquiror, including financial forecasts, earnings, cash flow, assets, liabilities and prospects of the Acquiror and information relating to anticipated cost savings from the Transaction, all furnished to us by the Acquiror; (iv) conducted discussions with members of senior management and representatives of the Company and the Acquiror concerning the matters described in clauses (i), (ii) and (iii) of this paragraph, as well as their respective businesses and prospects before and after giving effect to the Transaction; (v) reviewed publicly available financial and stock market data, including valuation multiples, for the Company and the Acquiror and

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compared them with those of certain other companies in lines of business that we deemed relevant; (vi) contacted third parties to solicit indications of interest in a possible transaction with the Company and held discussions with certain of these parties; (vii) compared the proposed financial terms of the Transaction with the financial terms of certain other transactions that we deemed relevant; (viii) considered certain potential pro forma effects of the Transaction; (ix) reviewed a draft of the Agreement, dated November 10, 2009; (x) participated in certain discussions and negotiations among representatives of the Company and the Acquiror and their financial and legal advisors; and (xi) conducted such other financial studies and analyses and took into account such other information as we deemed appropriate.

In connection with our review, we have not assumed any responsibility for independent verification of any of the information supplied to, discussed with, or reviewed by us for the purpose of this opinion and have, with your consent, relied on such information being complete and accurate in all material respects. In addition, at your direction we have not made any independent evaluation or appraisal of any of the assets or liabilities (contingent, derivative, off-balance-sheet, or otherwise) of the Company or the Acquiror, nor have we been furnished with any such evaluation or appraisal. With respect to the forecasted financial information referred to above, we have assumed, with your consent, that they have been reasonably prepared on a basis reflecting the best currently available estimates and judgments of the management of the Company or the Acquiror, as applicable, as to the future performance of the Company and the Acquiror.

Our opinion is necessarily based on economic, monetary, market and other conditions as in effect on, and the information made available to us as of, the date hereof. We have assumed, with your consent, that all governmental, regulatory or other consents and approvals necessary for the consummation of the Transaction will be obtained without the imposition of any material delay, limitation, restriction, divestiture or condition that would have an adverse effect on the Company or Acquiror or on the expected benefits of the Transaction. We have also assumed, with your consent, that the final executed form of the Agreement does not differ in any material respect from the draft that we have examined, that the representations and warranties of all parties to the Agreement are true and correct, that each party to the Agreement will perform all of the covenants and agreements required to be performed by such party, that all conditions to the consummation of the Transaction will be satisfied without material waiver thereof, and that the Transaction will be consummated in a timely manner in accordance with the terms described in the Agreement, without any material modifications or amendments thereto or any adjustment to the Consideration (through indemnification claims, offset, purchase price adjustments or otherwise, except with respect to the mix of consideration as contemplated by the Agreement).

This opinion is for the use and benefit of the Board of Directors of the Company in its evaluation of the Transaction and, except as specified in the immediately succeeding sentence, may not be disclosed to any person without our prior consent and is not to be quoted or referred to, in whole or in part, or used or relied upon for any other purpose, without our prior written consent, such consent not to be unreasonably withheld. We acknowledge that the text of this opinion and a description thereof may be included in certain materials required to be filed by the Company with the Securities and Exchange Commission and/or required to be delivered to the Company s stockholders in connection with the Transaction; provided, however, that this opinion may be included in any such materials only if (i) it is reproduced in such materials in its entirety, and (ii) the context of any such inclusion, and the inclusion of any related description of this opinion or of us (including, without limitation, any reference to the Company s engagement of us, the services provided by us in connection with the Transaction or this opinion or the analyses performed by us in support of this opinion), is subject to our prior specific review and written consent. In addition, you have not asked us to address, and this opinion does not address, the fairness to, or any other consideration of, the holders of any class of securities, creditors or other constituencies of the Company, other than the holders of the Company Common Stock.

In addition, we do not express any opinion as to the fairness of the amount or nature of any compensation to be received by any of the Company s officers, directors or employees, or any class of such persons, relative to the Consideration. The Fairness Opinion and Valuation Review Committee of Moelis & Company LLC has approved the issuance of this opinion.

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We are a securities firm engaged in a number of merchant banking and investment banking activities. We have no duty to disclose to the Company or use for the Company s benefit any non-public information acquired in the course of providing services to any other person, engaging in any transaction (on our own account or otherwise) or carrying out our other business. Our employees, officers and partners may at any time own your securities or those of the Acquiror, its affiliates or any other entity involved in the Transaction.

Based upon and subject to the foregoing, it is our opinion that, as the date hereof, the Consideration to be received by the stockholders of the Company (other than the Acquiror and its affiliates) in the Transaction is fair from a financial point of view to such stockholders.

Very truly yours,

/s/ MOELIS & COMPANY LLC

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ANNEX C

SECTION 262 OF THE GENERAL CORPORATION LAW OF THE

STATE OF DELAWARE

§ 262. Appraisal Rights.

(a) Any stockholder of a corporation of this State who holds shares of stock on the date of the making of a demand pursuant to subsection (d) of this section with respect to such shares, who continuously holds such shares through the effective date of the merger or consolidation, who has otherwise complied with subsection (d) of this section and who has neither voted in favor of the merger or consolidation nor consented thereto in writing pursuant to § 228 of this title shall be entitled to an appraisal by the Court of Chancery of the fair value of the stockholder s shares of stock under the circumstances described in subsections (b) and (c) of this section. As used in this section, the word stockholder means a holder of record of stock in a stock corporation and also a member of record of a nonstock corporation; the words stock and share mean and include what is ordinarily meant by those words and also membership or membership interest of a member of a nonstock corporation; and the words depository receipt mean a receipt or other instrument issued by a depository representing an interest in one or more shares, or fractions thereof, solely of stock of a corporation, which stock is deposited with the depository.

(b) Appraisal rights shall be available for the shares of any class or series of stock of a constituent corporation in a merger or consolidation to be effected pursuant to § 251 (other than a merger effected pursuant to § 251(g) of this title), § 252, § 254, § 257, § 258, § 263 or § 264 of this title:

(1) Provided, however, that no appraisal rights under this section shall be available for the shares of any class or series of stock, which stock, or depository receipts in respect thereof, at the record date fixed to determine the stockholders entitled to receive notice of and to vote at the meeting of stockholders to act upon the agreement of merger or consolidation, were either (i) listed on a national securities exchange or (ii) held of record by more than 2,000 holders; and further provided that no appraisal rights shall be available for any shares of stock of the constituent corporation surviving a merger if the merger did not require for its approval the vote of the stockholders of the surviving corporation as provided in subsection (f) of § 251 of this title.

(2) Notwithstanding paragraph (1) of this subsection, appraisal rights under this section shall be available for the shares of any class or series of stock of a constituent corporation if the holders thereof are required by the terms of an agreement of merger or consolidation pursuant to §§ 251, 252, 254, 257, 258, 263 and 264 of this title to accept for such stock anything except:

a. Shares of stock of the corporation surviving or resulting from such merger or consolidation, or depository receipts in respect thereof;

b. Shares of stock of any other corporation, or depository receipts in respect thereof, which shares of stock (or depository receipts in respect thereof) or depository receipts at the effective date of the merger or consolidation will be either listed on a national securities exchange or held of record by more than 2,000 holders;

c. Cash in lieu of fractional shares or fractional depository receipts described in the foregoing subparagraphs a. and b. of this paragraph; or

d. Any combination of the shares of stock, depository receipts and cash in lieu of fractional shares or fractional depository receipts described in the foregoing subparagraphs a., b. and c. of this paragraph.

(3) In the event all of the stock of a subsidiary Delaware corporation party to a merger effected under § 253 of this title is not owned by the parent corporation immediately prior to the merger, appraisal rights shall be available for the shares of the subsidiary Delaware corporation.

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(c) Any corporation may provide in its certificate of incorporation that appraisal rights under this section shall be available for the shares of any class or series of its stock as a result of an amendment to its certificate of incorporation, any merger or consolidation in which the corporation is a constituent corporation or the sale of all or substantially all of the assets of the corporation. If the certificate of incorporation contains such a provision, the procedures of this section, including those set forth in subsections (d) and (e) of this section, shall apply as nearly as is practicable.

(d) Appraisal rights shall be perfected as follows:

(1) If a proposed merger or consolidation for which appraisal rights are provided under this section is to be submitted for approval at a meeting of stockholders, the corporation, not less than 20 days prior to the meeting, shall notify each of its stockholders who was such on the record date for such meeting with respect to shares for which appraisal rights are available pursuant to subsection (b) or (c) hereof that appraisal rights are available for any or all of the shares of the constituent corporations, and shall include in such notice a copy of this section. Each stockholder electing to demand the appraisal of such stockholder s shares shall deliver to the corporation, before the taking of the vote on the merger or consolidation, a written demand for appraisal of such stockholder s shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such stockholder s shares. A proxy or vote against the merger or consolidation shall not constitute such a demand. A stockholder electing to take such action must do so by a separate written demand as herein provided. Within 10 days after the effective date of such merger or consolidation, the surviving or resulting corporation shall notify each stockholder of each constituent corporation who has complied with this subsection and has not voted in favor of or consented to the merger or consolidation of the date that the merger or consolidation has become effective; or

(2) If the merger or consolidation was approved pursuant to § 228 or § 253 of this title, then either a constituent corporation before the effective date of the merger or consolidation or the surviving or resulting corporation within 10 days thereafter shall notify each of the holders of any class or series of stock of such constituent corporation who are entitled to appraisal rights of the approval of the merger or consolidation and that appraisal rights are available for any or all shares of such class or series of stock of such constituent corporation, and shall include in such notice a copy of this section. Such notice may, and, if given on or after the effective date of the merger or consolidation, shall, also notify such stockholders of the effective date of the merger or consolidation. Any stockholder entitled to appraisal rights may, within 20 days after the date of mailing of such notice, demand in writing from the surviving or resulting corporation the appraisal of such holder s shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such holder s shares. If such notice did not notify stockholders of the effective date of the merger or consolidation, either (i) each such constituent corporation shall send a second notice before the effective date of the merger or consolidation notifying each of the holders of any class or series of stock of such constituent corporation that are entitled to appraisal rights of the effective date of the merger or consolidation or (ii) the surviving or resulting corporation shall send such a second notice to all such holders on or within 10 days after such effective date; provided, however, that if such second notice is sent more than 20 days following the sending of the first notice, such second notice need only be sent to each stockholder who is entitled to appraisal rights and who has demanded appraisal of such holder s shares in accordance with this subsection. An affidavit of the secretary or assistant secretary or of the transfer agent of the corporation that is required to give either notice that such notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein. For purposes of determining the stockholders entitled to receive either notice, each constituent corporation may fix, in advance, a record date that shall be not more than 10 days prior to the date the notice is given, provided, that if the notice is given on or after the effective date of the merger or consolidation, the record date shall be such effective date. If no record date is fixed and the notice is given prior to the effective date, the record date shall be the close of business on the day next preceding the day on which the notice is given.

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(e) Within 120 days after the effective date of the merger or consolidation, the surviving or resulting corporation or any stockholder who has complied with subsections (a) and (d) of this section hereof and who is otherwise entitled to appraisal rights, may commence an appraisal proceeding by filing a petition in the Court of Chancery demanding a determination of the value of the stock of all such stockholders. Notwithstanding the foregoing, at any time within 60 days after the effective date of the merger or consolidation, any stockholder who has not commenced an appraisal proceeding or joined that proceeding as a named party shall have the right to withdraw such stockholder s demand for appraisal and to accept the terms offered upon the merger or consolidation. Within 120 days after the effective date of the merger or consolidation, any stockholder who has complied with the requirements of subsections (a) and (d) of this section hereof, upon written request, shall be entitled to receive from the corporation surviving the merger or resulting from the consolidation a statement setting forth the aggregate number of shares not voted in favor of the merger or consolidation and with respect to which demands for appraisal have been received and the aggregate number of holders of such shares. Such written statement shall be mailed to the stockholder within 10 days after such stockholder s written request for such a statement is received by the surviving or resulting corporation or within 10 days after expiration of the period for delivery of demands for appraisal under subsection (d) of this section hereof, whichever is later. Notwithstanding subsection (a) of this section, a person who is the beneficial owner of shares of such stock held either in a voting trust or by a nominee on behalf of such person may, in such person s own name, file a petition or request from the corporation the statement described in this subsection.

(f) Upon the filing of any such petition by a stockholder, service of a copy thereof shall be made upon the surviving or resulting corporation, which shall within 20 days after such service file in the office of the Register in Chancery in which the petition was filed a duly verified list containing the names and addresses of all stockholders who have demanded payment for their shares and with whom agreements as to the value of their shares have not been reached by the surviving or resulting corporation. If the petition shall be filed by the surviving or resulting corporation, the petition shall be accompanied by such a duly verified list. The Register in Chancery, if so ordered by the Court, shall give notice of the time and place fixed for the hearing of such petition by registered or certified mail to the surviving or resulting corporation and to the stockholders shown on the list at the addresses therein stated. Such notice shall also be given by 1 or more publications at least 1 week before the day of the hearing, in a newspaper of general circulation published in the City of Wilmington, Delaware or such publication as the Court deems advisable. The forms of the notices by mail and by publication shall be approved by the Court, and the costs thereof shall be borne by the surviving or resulting corporation.

(g) At the hearing on such petition, the Court shall determine the stockholders who have complied with this section and who have become entitled to appraisal rights. The Court may require the stockholders who have demanded an appraisal for their shares and who hold stock represented by certificates to submit their certificates of stock to the Register in Chancery for notation thereon of the pendency of the appraisal proceedings; and if any stockholder fails to comply with such direction, the Court may dismiss the proceedings as to such stockholder.

(h) After the Court determines the stockholders entitled to an appraisal, the appraisal proceeding shall be conducted in accordance with the rules of the Court of Chancery, including any rules specifically governing appraisal proceedings. Through such proceeding the Court shall determine the fair value of the shares exclusive of any element of value arising from the accomplishment or expectation of the merger or consolidation, together with interest, if any, to be paid upon the amount determined to be the fair value. In determining such fair value, the Court shall take into account all relevant factors. Unless the Court in its discretion determines otherwise for good cause shown, interest from the effective date of the merger through the date of payment of the judgment shall be compounded quarterly and shall accrue at 5% over the Federal Reserve discount rate (including any surcharge) as established from time to time during the period between the effective date of the merger and the date of payment of the judgment. Upon application by the surviving or resulting corporation or by any stockholder entitled to participate in the appraisal proceeding, the Court may, in its discretion, proceed to trial upon the appraisal prior to the final determination of the stockholders entitled to an appraisal. Any stockholder whose name appears on the list filed by the surviving or resulting corporation pursuant to subsection (f) of this section and who has submitted such stockholder s certificates of stock to the Register in Chancery, if such is required, may participate fully in all proceedings until it is finally determined that such stockholder is not entitled to appraisal rights under this section.

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(i) The Court shall direct the payment of the fair value of the shares, together with interest, if any, by the surviving or resulting corporation to the stockholders entitled thereto. Payment shall be so made to each such stockholder, in the case of holders of uncertificated stock forthwith, and the case of holders of shares represented by certificates upon the surrender to the corporation of the certificates representing such stock. The Court s decree may be enforced as other decrees in the Court of Chancery may be enforced, whether such surviving or resulting corporation be a corporation of this State or of any state.

(j) The costs of the proceeding may be determined by the Court and taxed upon the parties as the Court deems equitable in the circumstances. Upon application of a stockholder, the Court may order all or a portion of the expenses incurred by any stockholder in connection with the appraisal proceeding, including, without limitation, reasonable attorney s fees and the fees and expenses of experts, to be charged pro rata against the value of all the shares entitled to an appraisal.

(k) From and after the effective date of the merger or consolidation, no stockholder who has demanded appraisal rights as provided in subsection (d) of this section shall be entitled to vote such stock for any purpose or to receive payment of dividends or other distributions on the stock (except dividends or other distributions payable to stockholders of record at a date which is prior to the effective date of the merger or consolidation); provided, however, that if no petition for an appraisal shall be filed within the time provided in subsection (e) of this section, or if such stockholder shall deliver to the surviving or resulting corporation a written withdrawal of such stockholder s demand for an appraisal and an acceptance of the merger or consolidation, either within 60 days after the effective date of the merger or consolidation as provided in subsection (e) of this section or thereafter with the written approval of the corporation, then the right of such stockholder to an appraisal shall cease. Notwithstanding the foregoing, no appraisal proceeding in the Court of Chancery shall be dismissed as to any stockholder without the approval of the Court, and such approval may be conditioned upon such terms as the Court deems just; provided, however that this provision shall not affect the right of any stockholder who has not commenced an appraisal proceeding or joined that proceeding as a named party to withdraw such stockholder s demand for appraisal and to accept the terms offered upon the merger or consolidation within 60 days after the effective date of the merger or consolidation, as set forth in subsection (e) of this section.

(l) The shares of the surviving or resulting corporation to which the shares of such objecting stockholders would have been converted had they assented to the merger or consolidation shall have the status of authorized and unissued shares of the surviving or resulting corporation.

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PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 20. ***Indemnification of Directors and Officers***

Article XI of the CDI s Amended and Restated Articles of Incorporation limits the liability of directors of CDI pursuant to the Kentucky Business Corporation Act. Under this article, directors generally will be personally liable to CDI or its shareholders for monetary damages only for transactions involving conflicts of interest or from which a director derives an improper personal benefit, intentional misconduct or violations of law, and unlawful distributions.

The Amended and Restated Bylaws of CDI require CDI to indemnify and hold harmless each director and officer and permit CDI to indemnify and hold harmless any other employee or agent of the registrant who is, was or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal by reason of the fact that he is or was a director, officer, employee or agent of CDI, or while a director, officer, employee or agent of the registrant, is or was serving CDI or any other legal entity in any capacity (including, without limitation, as a director, officer, partner, manager, trustee, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust, limited liability company, employee benefit plan or other enterprise) at the request of CDI, against all liability and loss suffered and expenses (including any obligation to pay a judgment, settlement, penalty or fine) incurred by such person to the fullest extent permitted by law.

The Amended and Restated Bylaws of CDI further provide that CDI shall pay expenses (including attorneys fees) incurred by an officer or director in defending any proceeding in advance of its final disposition, provided, however, that the payment of such expenses shall be made only upon receipt of an undertaking by the person to repay all amounts advanced if it shall ultimately be determined that the person is not entitled to be indemnified.

The circumstances under which Kentucky law requires or permits a corporation to indemnify its directors, officers, employees and/or agents are set forth at KRS 271B.8-500, et seq. Generally, under KRS 271B.8-500 et seq., a corporation may indemnify an individual made a party to a proceeding because he is or was a director against liability incurred in the proceeding if:

(1) He conducted himself in good faith; and

(2) He reasonably believed

(a) in the case of conduct in his official capacity with the corporation that his conduct was in its best interests; and

(b) in all other cases, that his conduct was at least not opposed to its best interests.

(3) In the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

A corporation may not indemnify a director:

(a) in connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or

(b) in connection with any other proceeding charging improper personal benefit to him, whether or not involving action in his official capacity, in which he was adjudged liable on the basis that personal benefit was improperly received by him.

Indemnification permitted in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

In addition, CDI maintains directors and officers liability insurance covering certain liabilities which may be incurred by CDI s directors and officers in connection with the performance of their duties.

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Item 21. ***Exhibits and Financial Statement Schedules***

(a) **Exhibits**

Exhibit Number	Description
2.1	Agreement and Plan of Merger, dated as of November 11, 2009, by and among Churchill Downs Incorporated, Tomahawk Merger Corp., Tomahawk Merger LLC and Youbet.com, Inc. (incorporated by reference to Exhibit 2.1 to Churchill Downs Incorporated s Current Report on Form 8-K filed on November 13, 2009)
3.1	Amended and Restated Articles of Incorporation of Churchill Downs Incorporated (incorporated by reference to Exhibit 3.1 to Churchill Downs Incorporated s Current Report on Form 8-K filed on July 27, 2005)
3.2	Amendment to Amended and Restated Articles of Incorporation of Churchill Downs Incorporated (incorporated by reference to Exhibit 3.1 to Churchill Downs Incorporated s Current Report on Form 8-K filed on March 20, 2008)
3.3	Amended and Restated Bylaws of Churchill Downs Incorporated (incorporated by reference to Exhibit 3.1 to Churchill Downs Incorporated s Current Report on Form 8-K filed on September 24, 2009)
4.1	Rights Agreement, dated as of March 19, 2008 by and between Churchill Downs Incorporated and National City Bank (incorporated by reference to Exhibit 4.1 to Churchill Downs Incorporated s Current Report on Form 8-K filed on March 17, 2008)
5.1	Opinion of Rebecca C. Reed regarding the validity of the securities being issued
8.1	Form of Opinion of Sidley Austin LLP as to certain federal income tax matters
8.2	Form of Opinion of Kirkland & Ellis LLP as to certain federal income tax matters
10.1	Voting Agreement, dated as of November 11, 2009, between Churchill Downs Incorporated and Lloyd I. Miller III (incorporated by reference to Exhibit 10.1 to Churchill Downs Incorporated s Current Report on Form 8-K filed on November 13, 2009)
10.2	Voting Agreement, dated as of November 11, 2009, between Churchill Downs Incorporated and New World Opportunity Partners I, L.P. (incorporated by reference to Exhibit 10.2 to Churchill Downs Incorporated s Current Report on Form 8-K filed on November 13, 2009)
10.3	Form of Voting Agreement, dated as of November 11, 2009, between Churchill Downs Incorporated and each director of Youbet.com, Inc. (incorporated by reference to Exhibit 10.3 to Churchill Downs Incorporated s Current Report on Form 8-K filed on November 13, 2009)
23.1	Consent of PricewaterhouseCoopers LLP
23.2	Consent of Piercy Bowler Taylor & Kern
23.3	Consent of Sidley Austin LLP (included in Exhibit 8.1)
23.4	Consent of Kirkland & Ellis LLP (included in Exhibit 8.2)
24.1	Power of Attorney (included in Part II to this Registration Statement)
99.1	Form of Proxy Card of Youbet.com, Inc.
99.2	Consent of Michael Brodsky
99.3	Consent of Moelis & Company LLC

Disclosure schedules have been omitted pursuant to Item 601(b)(2) of Regulation S-K. CDI and Youbet undertake to furnish supplementally to the SEC, upon request, a copy of any omitted schedule.

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Item 22. ***Undertakings***

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement.

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933.

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement.

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant s annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan s annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) The undersigned Registrant hereby undertakes as follows: that prior to any public reoffering of the securities registered hereunder through use of a prospectus which is a part of this registration statement, by any person or party who is deemed to be an underwriter within the meaning of Rule 145(c), the issuer undertakes that such reoffering prospectus will contain the information called for by the applicable registration form with respect to reofferings by persons who may be deemed underwriters, in addition to the information called for by the other Items of the applicable form.

(d) The Registrant undertakes that every prospectus (i) that is filed pursuant to paragraph (c) immediately preceding, or (ii) that purports to meet the requirements of Section 10(a)(3) of the Securities Act of 1933 and is used in connection with an offering of securities subject to Rule 415, will be filed as a part of an amendment to the registration statement and will not be used until such amendment is effective, and that, for purposes of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(e) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such

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indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

(f) The undersigned Registrant hereby undertakes to respond to requests for information that is incorporated by reference into the prospectus pursuant to Item 4, 10(b), 11 or 13 of this Form, within one business day of receipt of such request, and to send the incorporated documents by first-class mail or other equally prompt means. This includes information contained in documents filed subsequent to the effective date of the registration statement through the date of responding to the request.

(g) The undersigned Registrant hereby undertakes to supply by means of a post-effective amendment all information concerning a transaction, and the company being acquired involved therein, that was not the subject of and included in the registration statement when it became effective.

(h) The undersigned Registrant hereby undertakes that, for the purpose of determining liability of the Registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, in a primary offering of securities of the undersigned Registrant pursuant to this Registration Statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned Registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned Registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned Registrant or used or referred to by the undersigned Registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned Registrant or its securities provided by or on behalf of the undersigned Registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned Registrant to the purchaser.

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant has duly caused this amendment to the registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Louisville, State of Kentucky, on the 23rd day of December, 2009.

CHURCHILL DOWNS INCORPORATED

By: /s/ Robert L. Evans
Name: Robert L. Evans
Title: President and Chief Executive Officer

POWER OF ATTORNEY

Each of the undersigned officers and directors of Churchill Downs Incorporated does hereby severally constitute and appoint Robert L. Evans, William E. Mudd and Rebecca C. Reed, and each of them acting alone, his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution in each of them for him or her and in his or her name, place and stead, and in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission and any applicable securities exchange or securities self-regulatory body, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite or necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them or their or his or her substitute or substitutes may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this amendment to the registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Robert L. Evans **Robert L. Evans**	President, Chief Executive Officer Officer (Principal Executive Officer) and Director	December 23, 2009
/s/ William E. Mudd **William E. Mudd**	Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	December 23, 2009
/s/ Carl F. Pollard **Carl F. Pollard**	Chairman of the Board	December 23, 2009
/s/ Leonard S. Coleman, Jr. **Leonard S. Coleman, Jr.**	Director	December 23, 2009
/s/ Craig J. Duchossois **Craig J. Duchossois**	Director	December 23, 2009
/s/ Richard L. Duchossois **Richard L. Duchossois**	Director	December 23, 2009

/s/ Robert L. Fealy	Director	December 23, 2009

Robert L. Fealy

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Signature	Title	Date
/s/ J. David Grissom **J. David Grissom**	Director	December 23, 2009
/s/ Daniel P. Harrington **Daniel P. Harrington**	Director	December 23, 2009
/s/ G. Watts Humphrey **G. Watts Humphrey**	Director	December 23, 2009
/s/ James F. McDonald **James F. McDonald**	Director	December 23, 2009
/s/ Susan E. Packard **Susan E. Packard**	Director	December 23, 2009
/s/ R. Alex Rankin **R. Alex Rankin**	Director	December 23, 2009
/s/ Darrell R. Wells **Darrell R. Wells**	Director	December 23, 2009

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99.2	Consent of Michael Brodsky
99.3	Consent of Moelis & Company LLC

Disclosure schedules have been omitted pursuant to Item 601(b)(2) of Regulation S-K. CDI and Youbet undertake to furnish supplementally to the SEC, upon request, a copy of any omitted schedule.