

ONYX ACCEPTANCE CORP

Form S-3/A

January 28, 2004

Table of Contents

As filed with the Securities and Exchange Commission on January 27, 2004

Registration No. 333-109545

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

AMENDMENT NO. 2
TO

FORM S-3

REGISTRATION STATEMENT
Under
THE SECURITIES ACT OF 1933

ONYX ACCEPTANCE CORPORATION
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation or organization)

6141
(Primary Standard Industrial
Classification Code Number)

33-0577635
(I.R.S. Employer
Identification Number)

27051 Towne Centre Drive, Suite 100
Foothill Ranch, California 92610
(949) 465-3900
(Address, including zip code, and telephone number,
including area code, of registrant's principal executive offices)

Don P. Duffy
Executive Vice President and Chief Financial Officer
27051 Towne Centre Drive, Suite 100
Foothill Ranch, California 92610
(949) 465-3900
(Name, address, including zip code, and telephone
number, including area code, of agent for service)

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Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this Registration Statement as determined by market conditions.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box. []

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.:

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If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. []

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. []

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. []

Title of Each Class of Securities to Be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Security	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Renewable Unsecured Subordinated Notes	\$ 50,000,000	(1)	\$ 50,000,000	\$ 4,045.00(2)

- (1) The Renewable Unsecured Subordinated Notes will be issued in denominations selected by the purchasers in any amount equal to or exceeding \$1,000.
- (2) Paid to the Commission in connection with the initial filing of this Registration Statement on October 7, 2003. As noted below, this Registration Statement also relates to \$1,932,173.23 of Renewable Unsecured Subordinated Notes registered pursuant to Registration Statement No. 333-71238. The registration fee relating to those notes was paid at the time of filing of Registration Statement No. 333-71238. The registration fee paid with the original filing of this Registration Statement relates only to the \$50,000,000 of Renewable Unsecured Subordinated Notes registered pursuant hereto.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

Pursuant to Rule 429 under the Securities Act, the Prospectus which is a part of this Registration Statement is a combined Prospectus that also relates to \$1,932,173.23 of Renewable Unsecured Subordinated Notes registered under the Company's Registration Statement No. 333-71238 and remaining unissued as of the date hereof.

Table of Contents

The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

PRELIMINARY PROSPECTUS

SUBJECT TO COMPLETION; dated January __, 2004

\$51,932,173.23

Onyx Acceptance Corporation**Three and Six Month Renewable Unsecured Subordinated Notes****One, Two, Three, Four, Five and Ten Year Renewable Unsecured Subordinated Notes**

We are offering up to \$51,932,173.23 aggregate principal amount of our renewable unsecured subordinated notes. We may offer the notes from time to time with maturities ranging from three months to ten years. However, depending on our capital needs, notes with certain terms may not always be available. We will establish interest rates on the securities offered in this prospectus from time to time in prospectus supplements. The notes are unsecured obligations and your right to payment is subordinated in right of payment to all of our existing or future senior, secured, unsecured and subordinate indebtedness. Upon maturity, the notes will be automatically renewed for the same term as your maturing note and at an interest rate that we are offering at that time to other investors for notes of the same term, unless we or you elect not to have them renewed. If notes of the same term are not then being offered, the interest rate upon renewal will be the rate specified by us on or before maturity, or the rate of the existing note if no such rate is specified. The interest rate on your renewed note may be different than the interest rate on your original note. After giving you thirty days advance notice, we may redeem all or a portion of the notes for their original principal amount plus accrued and unpaid interest. You also may request us to repurchase your notes prior to maturity; however, unless the request is due to your death or disability, we will charge you a penalty of up to three months interest on notes with three month maturities and up to six months interest on all other notes. Our obligation to repurchase notes for any reason is limited to \$1 million per calendar quarter.

The notes will be marketed and sold through Sumner Harrington Ltd., which is acting as our selling agent for the notes. The notes will not be listed on any securities exchange or quoted on Nasdaq or any over-the-counter market and will not be rated. Sumner Harrington Ltd. does not intend to make a market in the notes and we do not anticipate that a market in the notes will develop. There will be significant restrictions on your ability to transfer or resell the notes. Sumner Harrington Ltd. also will act as our servicing agent in connection with our ongoing administrative responsibilities for the notes.

The notes are not certificates of deposit or similar obligations of, and are not guaranteed or insured by, any depository institution, the Federal Deposit Insurance Corporation or any other governmental or private fund or entity. Investing in the notes involves risks which are described in Risk Factors beginning on page 7 of this prospectus.

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

	<u>Per Note</u>	<u>Total</u>
Public offering price	100.00%	100.00%
Selling agent commissions	3.00%	3.00%
Proceeds to Onyx, before expenses	97.00%	97.00%

The selling agent will not receive the entire 3.0% gross commission on notes with terms of one year or less unless the notes are successively renewed for a total term of two years. See Plan of Distribution for a description of additional compensation payable to the selling agent and its affiliate in connection with services rendered in offering and selling the notes, serving as the servicing agent and providing and managing the advertising and marketing functions related to the sale of the notes. There will be no underwriting discount.

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Sumner Harrington Ltd. is not required to sell any specific number or dollar amount of notes but will use its best efforts to sell the notes offered.

We will issue the notes in book-entry or uncertificated form. Subject to certain limited exceptions, purchasers will not receive a certificated security or a negotiable instrument that evidences their notes. Sumner Harrington Ltd. will deliver written confirmations to purchasers of the notes. U.S. Bank National Association, St. Paul, Minnesota, will act as trustee for the notes.

SUMNER HARRINGTON LTD.

The date of this Prospectus is January __, 2004.

Table of Contents

Onyx Acceptance Corporation is a specialized consumer finance company engaged in the purchase, origination, securitization and servicing of motor vehicle retail installment contracts originated by franchised and select independent automobile dealerships in the United States. We focus our efforts on acquiring contracts that are collateralized by late model used and, to a lesser extent, new automobiles, that are entered into with purchasers whom we believe have a favorable credit profile. Since we started purchasing, originating and servicing motor vehicle contracts in February 1994 through September 30, 2003, we have acquired more than \$9.9 billion in auto receivables, and we currently have relationships with over 11,000 dealerships. We have expanded our operations from a single office in California to 18 auto finance centers serving many regions of the United States.

	Years Ended December 31,					Nine Months Ended
	1998	1999	2000	2001	2002*	September 30, 2003
(In thousands, except for per share amounts)						
Total revenues	\$ 64,811	\$ 94,670	\$ 100,857	\$ 101,002	\$ 92,125	\$ 82,168
Net income	6,076	9,792	5,835	4,410	1,883	3,491
Net income per diluted share	\$ 0.95	\$ 1.50	\$ 1.00	\$ 0.84	\$ 0.36	\$ 0.63
Diluted shares outstanding	6,425	6,514	5,811	5,232	5,179	5,514
Total assets	\$ 275,422	\$ 393,835	\$ 331,380	\$ 386,285	\$ 367,157	\$ 401,519
Stockholders equity	43,824	53,108	55,593	59,701	64,913	73,944
Servicing portfolio at period end	\$ 1,345,961	\$ 2,133,460	\$ 2,690,607	\$ 2,864,338	\$ 2,905,968	\$ 2,849,201
Contracts purchased	\$ 1,038,535	\$ 1,559,004	\$ 1,671,703	\$ 1,606,330	\$ 1,614,041	\$ 1,204,616

[Bar chart showing dollar amount of revenues for the years ended December 31, 1998, 1999, 2000, 2001, 2002* and the nine months ended September 30, 2003]

[Bar chart showing the number of contracts purchased for the years ended December 31, 1998, 1999, 2000, 2001, 2002 and the nine months ended September 30, 2003]

[Bar chart showing dollar amount of servicing portfolio for the years ended December 31, 1998, 1999, 2000, 2001, 2002 and the nine months ended September 30, 2003]

[Bar chart showing the number of dealer relationships for each quarter from the first quarter of 2001 through the third quarter of 2003]

* Results for 2002 as restated in the Company's 10-K/A for December 31, 2002, filed on September 23, 2003.

TABLE OF CONTENTS

PROSPECTUS SUMMARY

Onyx

Business

The Offering

RISK FACTORS

Risk Factors Relating to the Notes

Risk Factors Relating to Onyx

FORWARD-LOOKING STATEMENTS

RATIOS OF EARNINGS TO FIXED CHARGES

USE OF PROCEEDS

CAPITALIZATION

DESCRIPTION OF THE NOTES

MATERIAL FEDERAL INCOME TAX CONSEQUENCES

PLAN OF DISTRIBUTION

WHERE YOU CAN FIND MORE INFORMATION

LEGAL MATTERS

EXPERTS

GLOSSARY

SIGNATURES

INDEX TO EXHIBITS

EXHIBIT 1.1

EXHIBIT 4.1(B)

EXHIBIT 5.1

EXHIBIT 8.1

EXHIBIT 23.5

Table of Contents

TABLE OF CONTENTS

PROSPECTUS SUMMARY	1
Onyx	1
Business	1
The Offering	3
RISK FACTORS	7
Risk Factors Relating to the Notes	7
Risk Factors Relating to Onyx	10
FORWARD-LOOKING STATEMENTS	18
RATIOS OF EARNINGS TO FIXED CHARGES	18
USE OF PROCEEDS	18
CAPITALIZATION	19
DESCRIPTION OF THE NOTES	20
MATERIAL FEDERAL INCOME TAX CONSEQUENCES	31
PLAN OF DISTRIBUTION	32
WHERE YOU CAN FIND MORE INFORMATION	34
LEGAL MATTERS	35
EXPERTS	35
GLOSSARY	36

Table of Contents

PROSPECTUS SUMMARY

This summary highlights selected information from this prospectus and may not contain all the information that may be important to you. You should read the entire prospectus before making an investment decision. Certain industry terms that we use are defined in the Glossary which begins on page 36.

Onyx

We are a specialized consumer finance company engaged in purchasing, securitizing and servicing motor vehicle retail installment contracts originated by franchised and select independent automobile dealerships in the United States. We focus our efforts on acquiring contracts that are secured by late model used and, to a lesser extent, new automobiles entered into with purchasers whom we believe have a favorable credit profile. Since we started purchasing, originating and servicing motor vehicle contracts in February 1994 through September 30, 2003, we have acquired more than \$9.9 billion in auto receivables, and we have established relationships with over 11,000 dealerships. We have expanded our operations from a single office in California to 18 auto finance centers serving many regions of the United States.

Business

Our principal objective is to become one of the leading sources of near-prime auto lending in the United States by leveraging the experience of our senior management team in this industry. We seek to attain and increase profitability by implementing the following strategies:

Targeted Market and Product Focus. We have positioned ourselves as one of the lowest loan-to-value and payment-to-income lenders in the near-prime auto finance market. We target the near-prime auto lending market because we believe that it produces greater origination and operating efficiencies than does the sub-prime lending market. We focus primarily on late model used motor vehicles because we believe the risk of loss on used vehicles is lower due to lower depreciation rates. Furthermore, motor vehicle contracts secured by used motor vehicles generally bear interest at rates that are higher than new motor vehicle contracts. In addition, we believe that the late model used motor vehicle finance market is growing at a faster rate than is the finance market for new motor vehicles.

Localized Dealership Service. We provide a high level of service to our dealership base by marketing to and servicing dealerships on a local level through our auto finance centers. Our credit and account manager teams service our dealers locally and are able to provide a quick decision process with respect to potential motor vehicle contracts submitted to us by our dealers for purchase. These teams use our proprietary credit evaluation system based on our underwriting standards. We strategically locate our auto finance centers in geographic areas with many dealerships to facilitate personal service.

Expansion of Dealership Customer Base. We establish active relationships with a substantial percentage of franchised dealerships in the regions in which we do business through our existing auto finance centers. We intend to establish additional dealer relationships as we continue our expansion plans in the future.

Maintenance of Underwriting Standards and Portfolio Performance. We have developed an underwriting process that is designed to achieve attractive yields while minimizing delinquencies and losses. The underwriting process emphasizes a personal, hands-on analysis of the creditworthiness of each applicant rather than sole reliance on a credit scoring system. We also audit many motor vehicle contracts that we purchase within days of their origination to further assure adherence to our underwriting guidelines.

Technology-Supported Operational Controls. We have developed and instituted control and review systems that enable us to monitor both our operations and the performance of the motor

Table of Contents

vehicle contracts we service. These systems allow us to monitor motor vehicle contract production, yields and performance on a continuous and real-time basis.

Liquidity Through Warehousing and Securitizations. Our strategy is to complete securitizations on a regular basis and to use warehouse credit facilities to fund the acquisition or origination of motor vehicle contracts prior to securitization. We also utilize both securitization and hedging strategies to leverage our capital efficiently and substantially reduce our interest rate risk.

As these strategies indicate, our focus is on controlled growth, rather than increasing our volume at any cost. We are committed to a long-term profitable growth strategy in the near-prime auto lending market.

We were incorporated in California in 1993, and reincorporated in Delaware in 1996 in connection with our initial public offering of common stock in March 1996. Our principal executive offices are located at 27051 Towne Centre Drive, Suite 100, Foothill Ranch, California 92610, and our telephone number is (949) 465-3900.

Table of Contents

The Offering

Issuer	Onyx Acceptance Corporation.
Trustee	U.S. Bank National Association.
Selling and Servicing Agent	Sumner Harrington Ltd.
Paying Agent	Wells Fargo Bank Minnesota, N.A.
Securities Offered	Renewable Unsecured Subordinated Notes. The notes represent our unsecured promise to repay principal at maturity and to pay interest during the term or at maturity. By purchasing a note, you are lending money to us.
Method of Purchase	Prior to your purchase of notes, you will be required to complete a subscription agreement that will set forth the principal amount of your purchase, the term of the notes and certain other information regarding your ownership of the notes. The form of subscription agreement is filed as an exhibit to the registration statement of which this prospectus is a part. We will mail you written confirmation that your subscription has been accepted.
Denomination	You can choose the denomination of the notes you purchase in any principal amount of \$1,000 or more, including odd amounts.
Offering Price	100% of the principal amount per note.
Rescission Right	You will have three business days following your receipt of a written confirmation that evidences the valid issuance of the note to rescind your subscription. See Description of the Notes Rescission Right for additional information on your rescission right, including the ways in which you may provide notice to us of your rescission and the time by which notice must be received.
Maturity	You can generally choose maturities for your notes of 3 or 6 months or 1, 2, 3, 4, 5 or 10 years; however, depending on our capital requirements at the time, we may not always sell notes of all maturities.
Interest Rate	The interest rate of the notes will be established at the time you purchase them, or at the time of renewal, based upon the rates we are offering in our latest supplement to this prospectus, and will remain fixed throughout the term of the notes. We will generally offer higher rates of interest to investors with larger aggregate note portfolios, as set forth in the then current prospectus supplement.

Table of Contents

Interest Payment Dates	You can choose to receive interest payments monthly, quarterly, semiannually, annually or at maturity. If you choose to receive interest payments monthly, you can choose the day on which you will be paid, subject to our approval. You may change this interest payment date once during the term of your note.
Principal Payment	We will not pay principal over the term of the notes. We are obligated to pay the entire principal balance of the outstanding notes upon maturity.
Payment Date	Principal and interest payments will be made by an electronic funds transfer to a depository account you designate in your subscription documents.
Renewal or Redemption at Maturity	Upon maturity, the notes will be automatically renewed for the same term at the interest rate we are offering for notes of the same maturity at that time to other investors, unless we notify you prior to maturity that we intend to repay the notes or you notify us within 15 days after maturity that you want your notes repaid. The interest rate being offered upon renewal may be different than the interest rate on your original note. See Description of the Notes Renewal or Redemption on Maturity.
Optional Redemption or Repurchase	<p>After giving you 30 days prior notice, we may redeem the notes at a price equal to their original principal amount plus accrued and unpaid interest.</p> <p>You may request us to repurchase your notes prior to maturity; however, unless the request is due to your death or disability, we will charge you a penalty of up to three months interest on notes with three month maturities and up to six months interest on all other notes. The total principal amount of notes that we will be required to repurchase, for any reason, in any calendar quarter will be limited to \$1 million.</p> <p>See Description of Notes Redemption or Repurchase Prior To Stated Maturity.</p>
Consolidation, Merger or Sale	Upon any consolidation, merger or sale of our company, we will either redeem all of the notes or our successor will be required to assume our obligations to pay principal and interest on the notes pursuant to the indenture. For a description of these provisions see Description of the Notes - Consolidation, Merger or Sale.
Ranking; No Security	<p>The notes:</p> <p>are unsecured;</p> <p>rank junior to our existing and future senior debt, including debt we may incur under our</p>

Table of Contents

existing and future credit facilities and debt held by our special purpose entities;

rank junior to our existing and future secured debt;

rank junior to our existing and future subordinated debt, except for offerings of additional renewable unsecured subordinated notes which will rank equally with the notes;

rank junior to our existing and future unsecured debt, except for offerings of additional renewable unsecured subordinated notes which will rank equally with the notes; and

rank senior to our existing and future debt that is primarily held by our affiliates, subsidiaries or control persons, except for debt held by our special purpose entities.

As of September 30, 2003, we had approximately \$294.1 million of outstanding debt senior to the notes, including debt held by our special purpose entities. As of September 30, 2003, we also had approximately \$33.4 million of renewable unsecured subordinated notes outstanding. See Capitalization.

Restrictive Covenants

The indenture governing the notes contains only limited restrictive covenants. These covenants:

require us to maintain a positive net worth, which includes stockholders' equity and subordinated debt;

prohibit us from paying dividends on our capital stock if there is an event of default with respect to the notes or a payment of the dividend would result in an event of default; and

restrict us from entering into certain transactions with affiliates.

The covenants set forth in the indenture are more fully described under Description of Notes Restrictive Covenants. These covenants have significant exceptions.

Use of Proceeds

If all the notes are sold, with maturities of two years or more, we would expect to receive approximately \$50.0 million of net proceeds from this offering after deducting the selling agent's commissions and estimated offering expenses payable by us. We intend to use the net proceeds to expand our business and for other

Table of Contents

Absence of Public Market and Restrictions on Transfers	<p>general corporate purposes. See Use of Proceeds.</p> <p>There is no existing market for the notes.</p> <p>Sumner Harrington Ltd. has advised us that it does not intend to make a market in the notes after the completion of this offering and we do not anticipate that a secondary market for the notes will develop. We do not intend to apply for listing of the notes on any securities exchange or for quotation of the notes in any automated dealer quotation system.</p> <p>You will be able to transfer or pledge the notes only with our prior written consent. See Description of the Notes - Transfers.</p>
Book Entry	<p>The notes will be issued in book entry or uncertificated form only. Except under limited circumstances, the notes will not be evidenced by certificated securities or negotiable instruments. See Description of the Notes Book Entry Registration and Transfers.</p>

Table of Contents

RISK FACTORS

The risk factors discussed below, as well as additional factors that may be incorporated by reference from time to time, could cause our actual results to differ materially from those expressed in any forward-looking statements. See Forward-Looking Statements. Although we have attempted to list comprehensively these important factors, we caution you that other factors may in the future prove to be important in affecting our results of operations. New factors emerge from time to time and it is not possible for us to predict all of these factors, nor can we assess the impact of each such factor on the business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statement.

The risks described below set forth the material risks associated with the purchase of notes. Before you invest in the notes, you should carefully consider these risk factors, as well as the other information contained in this prospectus and in the documents incorporated by reference into this prospectus.

Risk Factors Relating to the Notes

The Notes May Not Be a Suitable Investment for All Investors

The notes may not be a suitable investment for you, and we advise you to consult your investment, tax and other professional financial advisors prior to purchasing notes. The characteristics of the notes, including maturity, interest rate and lack of liquidity, may not satisfy your investment objectives. The notes may not be a suitable investment for you based on your ability to withstand a loss of interest or principal or other aspects of your financial situation, including your income, net worth, financial needs, investment risk profile, return objectives, investment experience and other factors. Prior to purchasing any notes, you should consider your investment allocation with respect to the amount of your contemplated investment in the notes in relation to your other investment holdings and the diversity of those holdings.

You Lack Priority in Payment on the Notes

Your right to receive payments on the notes is junior to substantially all of our existing indebtedness and future borrowings (including debt of our special purpose entities). Your notes will be subordinated to the prior payment in full of all of our other debt obligations except loans from affiliates, subsidiaries, other than our special purpose entity subsidiaries, or control persons. Your notes are also senior to the company's financial obligations to its stockholders in that capacity. As of September 30, 2003, we had approximately \$294.1 million of indebtedness, including indebtedness held by our special purpose entities, which will rank senior to your notes. In addition, we may incur substantial additional indebtedness in the future which would also rank senior to your notes. Because of the subordination provisions of the notes, in the event of our bankruptcy, liquidation or dissolution, our assets would be available to make payments to you under the notes only after all payments had been made on all of our secured and unsecured indebtedness that is senior to the notes. Sufficient assets may not remain after all such senior payments have been made to make any payments to you under the notes, including payments of interest when due or principal upon maturity.

There Will be No Trading Market for the Notes Which May Make it Difficult to Transfer Your Notes

Your ability to liquidate your investment is limited because of transfer restrictions, the lack of a trading market and the limitation on repurchase requests prior to maturity. Your notes may not be transferred without our prior written consent. In addition, there will be no trading market for the notes. Due to the restrictions on transfer of the notes and the lack of a market for the sale of the notes, even if we permitted a transfer, you might be unable to sell, pledge or otherwise liquidate your investment. Also, repurchases of the notes prior to maturity at the request of the holders of the notes are subject to repurchase penalties of up to three months interest on notes with three month maturities and up to six months interest on notes with maturities of six months or longer. The total principal amount of notes that we will be required to repurchase in any calendar quarter, for any reason, will be limited to \$1 million. See Description of the Notes.

Table of Contents

The Notes will have No Sinking Fund, Security, Insurance or Guarantee

There is no sinking fund, security, insurance or guarantee for our obligation to make payments on the notes, so you will have to rely on our cash flow from operations and other sources of funds for repayment. The notes are not secured by any of our assets. We do not contribute funds to a separate account, commonly known as a sinking fund, to make interest or principal payments on the notes. The notes are not certificates of deposit or similar obligations of, and are not guaranteed or insured by, any depository institution, the Federal Deposit Insurance Corporation, or any other governmental or private fund or entity. Therefore, if you invest in the notes, you will have to rely only on our cash flow from operations and other sources of funds for repayment of principal at maturity or redemption and for payment of interest when due. If our cash flow from operations and other sources of funds are not sufficient to pay the notes, then you may lose all or part of your investment.

The Notes Will Automatically Renew Unless You Request Repayment

Upon maturity, the notes will be automatically renewed for the same term as your maturing note and at an interest rate that we are offering at that time to other investors for notes of the same term, unless we notify you prior to maturity that we intend to repay the notes or you notify us within 15 days after maturity that you want your notes repaid. If notes with the same term are not then being offered, the interest rate upon renewal will be the rate specified by us on or before the maturity date, or the rate of the existing note if no such rate is specified. The interest rate on your renewed note may be lower than the interest rate of your original note. In addition, if you fail to notify us of your desire not to have your notes renewed within the specified time period, your notes will automatically renew and any requests for repurchases after your notes are renewed will be subject to early repurchase penalties and the limitations on the amount of notes we will repurchase in any calendar quarter.

We have Substantial Indebtedness that is Senior to the Notes, Which May Affect our Ability to Repay the Notes

We have now and, after we sell these notes, will continue to have a substantial amount of indebtedness. Our substantial indebtedness could adversely affect our financial health and prevent us from fulfilling our obligations under the notes by, among other things:

increasing our vulnerability to general adverse economic and industry conditions;

requiring us to dedicate a substantial portion of our cash flow from operations to payments on our indebtedness, thereby reducing amounts available for working capital, capital expenditures and other general corporate purposes;

limiting our flexibility in planning for, or reacting to, changes in our business and the industry in which we operate;

placing us at a competitive disadvantage compared to our competitors that have less debt; and

limiting our ability to borrow additional funds.

We Might Incur Substantially More Indebtedness Which Will be Senior to Your Notes

Subject to limitation contained in our credit facility agreements and in the indenture, we may incur substantial additional indebtedness in the future. While the indenture for the notes requires us to maintain a positive net worth, it does not prohibit us from incurring additional indebtedness. In fact, we expect to enter into additional credit facilities in the future. Any such borrowings would be senior to the notes. If we borrow more money, the risks to noteholders described above could intensify. See [Capitalization](#) and [Description of the Notes](#).

Table of Contents

Our Management has Broad Discretion Over the Use of Proceeds

Our management has broad discretion over how to use the proceeds from the offering and may choose not to use the funds to pay down debt that is senior to the notes. It is expected that we will use the proceeds from the offering primarily to expand our business and for other general corporate purposes, which may include the payment of general and administrative expenses. Because no specific allocation of the proceeds will be required in the indenture, our management will have broad discretion in determining how the proceeds of the offering will be used. Management could use the funds for purposes other than to pay down debt that is senior to the notes. See Use of Proceeds.

We are Subject to Many Restrictions in Our Credit Facilities and the Indenture

The terms of our credit facilities impose significant operating and financial restrictions on us and our subsidiaries and require us to meet certain financial tests. The indenture for the notes also imposes certain limited restrictions on our ability and that of our subsidiaries to take certain actions. These restrictions may have an adverse impact on our business activities, results of operations and financial condition. These restrictions may also significantly limit or prohibit us from engaging in certain transactions, including the following:

incurring or guaranteeing additional indebtedness;

paying dividends or other distributions to our stockholders or redeeming, repurchasing or retiring our capital stock or subordinated obligations;

making investments;

making capital expenditures;

creating liens on our assets;

issuing or selling capital stock of our subsidiaries;

transferring or selling assets currently held by us;

engaging in transactions with affiliates; and

engaging in mergers or consolidations.

These restrictions may limit our ability to obtain additional sources of capital, which may limit our ability to repay the notes. In addition, the failure to comply with any of the covenants of our credit facilities or the indenture or to maintain certain indebtedness ratios would cause a default under our credit facilities and may cause a default under the indenture or our other debt agreements which may be outstanding from time to time. A default, if not waived, could result in acceleration of the related indebtedness, in which case such debt would become immediately due and payable. A continuing default or acceleration of any of our credit facilities, the indenture or any other debt agreement, will likely cause a default under other credit facilities, the indenture and other debt agreements that otherwise would not be in default, and in which case all such related indebtedness could be accelerated. If this occurs, we may not be able to repay our debt or borrow sufficient funds to refinance our indebtedness. Even if any new financing is available, it may not be on terms that are acceptable to us or it may not refinance all of our indebtedness as it becomes due. Complying with these covenants may cause us to take actions that are not favorable to holders of the notes. See Description of the Notes Restrictive Covenants.

You Will Have Only Limited Protection Under the Indenture

The indenture governing the notes contains only limited restrictions on our activities and only limited events of default, and thus, provides only limited protection to you. In comparison to the restrictive covenants that are imposed on us by our other credit facilities and borrowing arrangements, the indenture governing the notes

Table of Contents

contains relatively minimal restrictions on our activities. In addition, the indenture contains only limited events of default other than our failure to pay principal and interest on time. Because there are only very limited restrictions and limited events of default under the indenture, we will not be restricted from issuing additional debt senior to your notes or be required to maintain any ratios of assets to debt in order to increase the likelihood of timely payments to you under the notes. Further, if we default in the payment of the notes or otherwise under the indenture, you may have to rely on the trustee to exercise your remedies on your behalf. You may not be able to seek remedies against us directly. See Description of the Notes Events Of Default.

Our Right to Redeem the Notes Prior to Maturity May Result in Reinvestment Risk For You

We have the right to redeem any note at any time prior to its stated maturity upon 30 days written notice to you. The notes will be redeemed at 100% of the principal amount plus accrued but unpaid interest up to but not including the redemption date. Any such redemption may have the effect of reducing the income or return on investment that any investor may receive on an investment in the notes by reducing the term of the investment. If this occurs, you may not be able to reinvest the proceeds at an interest rate comparable to the rate paid on the notes. See Description of the Notes Redemption or Repurchase Prior To Stated Maturity.

Risk of Termination of Distribution and Management Agreement.

The Distribution and Management Agreement, as amended (all references hereafter, as amended), between us and Sumner Harrington Ltd. may be terminated by either party by prior notice. Therefore, it is not certain Sumner Harrington Ltd. will be responsible for the marketing, sale and administration of the notes for the duration of this offering. Other parties, including our company, may take over the functions currently provided by Sumner Harrington Ltd. Therefore, you should not rely on Sumner Harrington Ltd. continuously being responsible for the marketing, sale and administration of the notes.

You May Be Required to Pay Taxes on Accrued Interest on Notes Prior to Receiving Interest Payments.

If you choose to have interest on your note paid at maturity and the term of your note exceeds one year, you may be required to pay taxes on the accrued interest prior to our making any interest payments to you. You should consult your tax advisor to determine your tax obligations.

Risk Factors Relating to Onyx

We Require a Substantial Amount of Cash to Service our Indebtedness

To service our indebtedness, we require a significant amount of cash. Our ability to generate cash depends on many factors beyond our control, including our successful financial and operating performance. We cannot assure you that our business strategy will continue to succeed or that we will achieve our anticipated financial results. Our financial and operational performance depends upon a number of factors, many of which are beyond our control. These factors include:

- the current economic and competitive conditions in the asset-backed securities market;
- the current credit quality of our motor vehicle contracts;
- any operating difficulties or pricing pressures we may experience;
- our ability to obtain credit enhancement;
- the passage of laws or regulations that affect us adversely; and
- any delays in implementing any strategic projects we may have.

-10-

Table of Contents

Depending upon the outcome of one or more of these factors, we may not be able to generate sufficient cash flow from operations or to obtain sufficient funding to satisfy all of our obligations, including our obligations under the notes. If we are unable to pay our debts, we will be required to pursue one or more alternative strategies, such as selling assets, refinancing or restructuring our indebtedness or selling additional equity capital. These alternative strategies may not be feasible at the time or prove adequate and could require the prior consent of our senior secured and unsecured lenders.

We Need Substantial Liquidity to Operate our Business

If we are unable to access the capital markets or obtain acceptable financing, our results of operations, financial condition and cash flows would be materially and adversely affected and we may be unable to make payments on the notes. We require a substantial amount of cash liquidity to operate our business. Among other things, we use such cash liquidity to:

- acquire motor vehicle contracts;
- pay dealer participation;
- pay securitization costs and fund spread accounts;
- settle hedge transactions;
- satisfy working capital requirements and pay operating expenses; and
- pay interest expense.

When we securitize our motor vehicle contracts, we report a gain on the sale of those contracts. This gain represents a substantial portion of our revenues. However, although we report this gain at the time of sale, we receive the monthly cash payments on these contracts which represent these revenues over the life of the motor vehicle contracts, rather than at the time of sale. Similarly, we recover the cash paid by us for dealer participation over the life of the related motor vehicle contracts, rather than at the time of sale. As a result, a substantial portion of our reported revenues does not represent immediate cash liquidity.

We have historically funded our operations principally through borrowings from financial institutions, the sale of equity securities and sales of subordinated notes. However, we may not be able to obtain sufficient funding for our operations through either or a combination of (1) future access to the capital markets for equity or debt issuances or securitizations or (2) future borrowings or other financings on acceptable terms to us.

We Depend on Warehouse Financing

We depend on credit and warehouse facilities with financial institutions to finance our purchases of motor vehicle contracts. Our business strategy requires that these credit and warehouse financing sources continue to be available to us from the time of purchase or origination of a motor vehicle contract until its sale through a securitization. If we are unable to arrange new warehousing credit facilities or extend our existing credit facilities when they come due, our results of operations, financial condition and cash flows could be materially and adversely affected and we may be unable to make payments on the notes.

We depend substantially on two warehouse lines of credit. We have a warehouse line of credit with Triple-A One Funding Corporation which was renewed in November 2001 (this facility currently has a borrowing capacity of \$300 million). Unless earlier terminated upon the occurrence of certain events, this facility will expire in November 2004. We also have a \$150 million warehouse line of credit with CDC Financial Products Inc. which was executed in January 2003. Unless earlier terminated upon the occurrence of certain events, this facility will expire in January 2005. These warehouse facilities will remain available to us only if, among other things, we comply with certain financial covenants contained in the documents governing these facilities. These warehouse facilities may not be available to us in the future and we may not be able to obtain other credit facilities on favorable terms to fund our operations.

Table of Contents

We Depend on Residual Financing

When we sell our motor vehicle contracts in securitizations, we receive cash and a residual interest in the securitized assets. This residual interest represents the right to receive the future cash flows to be generated by the motor vehicle contracts in excess of the interest and principal paid on the securities issued in the securitization and other costs of servicing the motor vehicle contracts and completing the securitization.

We typically use the residual interest from each securitization as collateral to borrow cash to finance our operations. The amount of cash advanced by our lenders under our residual lines of credit depends on a collateral formula that is determined in large part by how well our securitized motor vehicle contracts are expected to perform based primarily upon our historical performance. If our portfolio of securitized motor vehicle contracts has higher delinquency and loss ratios than expected, then the amount of money we could borrow under the residual lines would be reduced. Our residual lines of credit also include covenants that require us to meet certain minimum net worth and operating loss tests and place limits on allowed levels of delinquencies, losses, prepayments and net yields of the motor vehicle contracts included in the related securitization. The reduction in availability or loss of access to our residual lines of credit could materially and adversely affect our operations, financial condition and cash flows and our ability to make payments on the notes.

We Depend on Securitizations to Generate Revenue

We rely significantly upon securitizations to generate cash proceeds to repay our warehouse credit facilities and to thereby allow us to finance the purchase of additional motor vehicle contracts. Further, the gain on sale of motor vehicle contracts generated by our securitizations represents a significant portion of our revenues. Our ability to complete securitizations of our motor vehicle contracts is affected by the following factors, among others:

- conditions in the securities markets generally;
- prevailing interest rates;
- conditions in the asset-backed securities market specifically;
- the credit quality of our portfolio of motor vehicle contracts; and
- our ability to obtain credit enhancement.

If we are unable to securitize profitably a sufficient number of our motor vehicle contracts in a particular financial reporting period, then our revenues for that period could decline and result in lower income or a loss for that period and we may be unable to make payments on the notes. Unanticipated delays in closing a securitization could also increase our interest rate risk by increasing the warehousing period for our motor vehicle contracts.

We Depend on Credit Enhancement

In each of our securitizations, we utilize credit enhancement in the form of a financial guarantee insurance policy issued by MBIA Insurance Corporation or XL Capital Assurance Inc. Each of these policies unconditionally and irrevocably guarantees certain interest and principal payments on the securities issued in our securitizations. These guarantees enable these securities to achieve the highest credit rating available. This form of credit enhancement reduces the costs of our securitizations relative to alternative forms of credit enhancements currently available to us. Neither MBIA nor XL is required to insure future securitizations. As we pursue future securitizations, we may not be able to obtain:

- credit enhancement in any form from MBIA or XL;
- credit enhancement from any other provider of credit enhancement on acceptable terms; or
- similar ratings for future securitizations.

Table of Contents

We rely on MBIA's financial guarantee insurance policy to reduce our borrowing cost under our warehouse facility with Triple-A One and on XL's financial guaranty insurance policy to reduce our borrowing cost under our warehouse facility with CDC. If either MBIA's or XL's credit rating is downgraded or if either MBIA or XL withdraws our credit enhancement from the respective warehouse facility, we could be subject to higher interest costs for our future securitizations and higher financing costs during the warehousing period. Higher interest and financing costs could have a material adverse effect on our results of operations, financial condition and cash flows and our ability to make interest payments on, or repay, the notes.

We Are Subject to Interest Rate Fluctuations

Our profitability is largely determined by the difference, or spread, between the effective interest rate received by us on the motor vehicle contracts which we acquire or originate and the interest rates payable under our warehouse credit facility during the warehousing period and on the securities issued in our securitizations.

Several factors affect our ability to manage interest rate risk. First, we purchase or originate motor vehicle contracts at fixed interest rates, while we borrow under our warehouse credit facilities at variable interest rates that are subject to frequent adjustment to reflect prevailing rates for short-term borrowings. If the interest rates applicable to our borrowings under our warehouse credit facilities increase during a warehousing period, our policy is to increase the interest rate that we quote to dealers at which we will purchase motor vehicle contracts from those dealers or to increase the interest rates we make available to consumers for motor vehicle contracts originated by us. However, there is generally a time lag before our increased borrowing costs can be offset by increases in these buy rates. In certain instances, the rates charged by our competitors may limit our ability to pass through all or most of our increased costs of warehousing financing.

Second, our spread can be materially and adversely affected by increases in the prevailing interest rates in the commercial paper markets after a motor vehicle contract is purchased or originated and while it is held during the warehousing period. While our warehouse facilities with Triple-A One and CDC permit us generally to select maturities for commercial paper issued under these facilities, under these circumstances, our spread would be reduced if we selected a shorter maturity or experienced a delay in completing a securitization.

Third, the interest rate demanded by investors in our securitizations is a function of prevailing market rates for comparable transactions and the general interest rate environment. Because the motor vehicle contracts that we purchase or originate have fixed interest rates, we bear the risk of spreads narrowing because of interest rate increases during the period from the date the motor vehicle contracts are purchased or originated until the pricing of our securitization of such motor vehicle contracts. We employ a hedging strategy that is intended to minimize this risk and which historically has involved the execution of forward interest rate swaps or the use of a pre-funding structure for our securitizations. A pre-funding structure utilizes a portion of the proceeds of the sale of securities in a securitization to purchase motor vehicle contracts after the initial closing of the securitization. However, this strategy may not consistently or completely offset adverse interest rate movements during the warehousing period or we may sustain losses on hedging transactions. In order to execute our hedging strategy we must estimate our monthly motor vehicle contract acquisition volume and the timing of our securitizations. If such estimates are wrong, then our gains on sales of motor vehicle contracts, results of operations, financial condition and cash flows could be materially and adversely affected, including our ability to make interest payments on, or repay, the notes.

We also have exposure to interest rate fluctuations under our residual lines of credit. The interest rates under these lines of credit are based on the 30 day London Interbank Offered Rate, or LIBOR. The applicable interest rate under our lines of credit based on LIBOR reset on a monthly basis. In periods of increasing interest rates, our cash flows, results of operations and financial condition could be adversely affected, including our ability to fulfill our obligations under the notes.

In addition, we have some interest rate exposure to falling interest rates to the extent that the interest rates charged on motor vehicle contracts sold in a securitization with a pre-funding structure decline below the rates prevailing at the time of pricing of the securities to be issued in that securitization. This rate decline would reduce the interest rate spread because the interest rate on the securities issued in the securitization would remain fixed, while the interest rates charged on the motor vehicle contracts which are purchased during the pre-funding period would be declining. This would reduce our gain on sale of our motor vehicle contracts and adversely affect our

Table of Contents

results of operations, financial condition and cash flows and our ability to make interest payments on, or repay principal on, the notes.

We Will Be Adversely Affected When Contracts are Prepaid or Defaulted

If motor vehicle contracts that we purchase or service are prepaid or experience defaults, this could materially and adversely affect our results of operations, financial condition and cash flows and our ability to make payments on the notes. Our results of operations, financial condition, cash flows and liquidity, and consequently our ability to make payments on the notes, depend, to a material extent, on the performance of motor vehicle contracts which we purchase, warehouse and securitize. A portion of the motor vehicle contracts acquired by us may default or prepay during the warehousing period. We bear the risk of losses resulting from payment defaults during the warehousing period. In the event of payment default, the collateral value of the motor vehicle securing a motor vehicle contract may not cover the outstanding principal balance on that contract and the related costs of recovery. We maintain an allowance for credit losses on motor vehicle contracts held during the warehousing period which reflects our estimates of anticipated credit losses during that period. If the allowance is inadequate, then we would recognize the losses in excess of the allowance as an expense and our results of operations could be adversely affected. In addition, under the terms of our warehouse facilities with Triple-A One and XL we are not able to borrow against defaulted motor vehicle contracts.

Our servicing income can also be adversely affected by prepayment of, or defaults under, motor vehicle contracts in our servicing portfolio. Our contractual servicing revenue is based on a percentage of the outstanding principal balance of the motor vehicle contracts in our servicing portfolio. If motor vehicle contracts are prepaid or charged-off, then our servicing revenue will decline while our servicing costs may not decline proportionately.

The gain on sale of motor vehicle contracts recognized by us in each securitization and the value of our residual interest in the securitized assets in each securitization reflects our estimate of expected future credit losses and prepayments for the motor vehicle contracts included in such securitization. If actual rates of credit loss or prepayments, or both, on such motor vehicle contracts exceed our estimates, the value of our residual interest and the related cash flow would be impaired. We periodically review our credit loss and prepayment assumptions relative to the performance of the securitized motor vehicle contracts and to market conditions. Our results of operations and liquidity could be adversely affected if actual credit loss or prepayment levels on securitized motor vehicle contracts substantially exceed anticipated levels. Under certain circumstances, we could be required to record an impairment charge through a reduction to gain-on-sale. Further, any impairment of the residual interest value could reduce the amount available to us under our residual lines, thus possibly requiring us to pay down the amounts outstanding under these facilities or provide additional collateral to cure any borrowing base deficiency.

During the nine-month period ended September 30, 2003, we recorded an impairment loss of \$8.7 million, compared to \$9.9 million for the nine-month period ended September 30, 2002. The impairments principally reflect the adverse performance of securitizations executed during 1999 and 2000, stemming from higher than expected losses and delinquency.

Effects of Terrorist Attacks and Military Response.

The long-term economic impact of the events of September 11, 2001 and the United States' continuing military response remain uncertain, but could have a material adverse effect on general economic conditions, consumer confidence, and market liquidity. No assurance can be given as to the effect of these events on the performance of the automobile receivable contracts. Any adverse impact resulting from these events could materially affect our results of operations, financial condition and cash flows. In addition, activation of a substantial number of U.S. military reservists or members of the National Guard may significantly increase the proportion of contracts whose interest rates are reduced by the application of the Soldiers' and Sailors' Civil Relief Act of 1940, which provides, generally, that an obligor who is covered by the relief act may not be charged interest on the related contract in excess of 6% annually during the period of the obligor's active duty.

Table of Contents

We Will Be Adversely Affected If We Lose Servicing Rights

The loss of our servicing rights could materially and adversely affect our results of operations, financial condition and cash flows and our ability to make payments on the notes. Our results of operations, financial condition and cash flows, and our ability to make interest payments on, or repay, the notes, would be materially and adversely affected if any of the following were to occur:

the loss of our servicing rights under the sale and servicing agreements for our warehouse facilities with Triple-A One and CDC;

the loss of our servicing rights under the applicable pooling and servicing or sale and servicing agreement relating to motor vehicle contracts which we have sold in our securitizations; or

the occurrence of certain trigger events under the insurance agreements between us and MBIA or between us and XL in each of our securitizations that would block the release of future servicing cash flows from the spread accounts in those securitizations.

We are entitled to receive servicing income only while we act as servicer under the applicable sale and servicing agreement or pooling and servicing agreement for motor vehicle contracts which we have securitized and sold. Under our warehouse facility with Triple-A One, MBIA can terminate, and under our warehouse facility with CDC, XL can terminate, our right to act as servicer upon the occurrence of certain events, including:

our failure generally to observe and perform covenants and agreements applicable to us;

certain bankruptcy events involving us; or

the occurrence of certain events of default under the documents governing the facilities.

We Depend on Key Personnel

Our future operating results depend in significant part upon the continued service of our key senior management personnel, none of whom is bound by an employment agreement. Our future operating results also depend in part upon our ability to attract and retain qualified management, technical, sales and support personnel for our operations. Competition for such personnel is intense. We cannot assure you that we will be successful in attracting or retaining such personnel. The loss of any key employee, the failure of any key employee to perform in his or her current position or our inability to attract and retain skilled employees, as needed, could materially and adversely affect our results of operations, financial condition and cash flows.

Our Industry is Highly Competitive

Competition in the field of financing retail motor vehicle sales is intense. The automobile finance market is highly fragmented and historically has been serviced by a variety of financial entities including the captive finance affiliates of major automotive manufacturers, banks, savings associations, independent finance companies, credit unions and leasing companies. Many of these competitors have greater financial resources than we do. Many of these competitors also have long-standing relationships with automobile dealerships and offer dealerships or their customers other forms of financing or services not provided by us. Our ability to compete successfully depends largely upon our relationships with dealerships and the willingness of dealerships to offer to us for purchase those motor vehicle contracts that meet our underwriting criteria. We may not be able to continue to compete successfully in the markets we serve.

We May Be Harmed by General Adverse Economic Conditions and, in Particular, Adverse Economic Conditions in California

Our business is dependent upon the sale of motor vehicles. Our ability to continue to acquire motor vehicle contracts in the markets in which we operate and to expand into additional markets is dependent upon the overall

Table of Contents

level of sales of new and used motor vehicles in those markets. A prolonged downturn in the sale of new and used motor vehicles, whether nationwide or in the states where our motor vehicle contracts are geographically concentrated, could have a material adverse impact upon us, our results of operations and our ability to implement our business strategy. Similarly, adverse economic conditions or other factors particularly affecting the states in which our motor vehicle contracts are geographically concentrated might adversely affect the performance of those contracts, including the level of delinquencies, which could materially and adversely affect our results of operation, financial condition and cash flows and our ability to perform our obligations under the notes. In particular, economic conditions or other factors particularly affecting the state of California might adversely affect the performance of the motor vehicle contracts in our serviced portfolio. As of September 30, 2003, approximately 24% of our contracts in our serviced portfolio (based on the number of contracts outstanding) were originated in California. In addition, these contracts represent 25% of the outstanding balance of our serviced portfolio. The contracts in our serviced portfolio originated in any single state other than California did not exceed 8% based on the number of contracts outstanding or on the outstanding balance of our serviced portfolio.

The automobile industry generally is sensitive to adverse economic conditions both nationwide and in California. Periods of rising interest rates, reduced economic activity or higher rates of unemployment generally result in a reduction in the rate of sales of motor vehicles and higher default rates on motor vehicle loans. The United States is currently experiencing a period of reduced economic activity and higher rates of unemployment. These economic conditions could continue or may reoccur in the future and if they continue or reoccur, they may result in severe reductions in our revenues or the cash flows available to us to permit us to remain current on our credit facilities. In addition, these adverse economic conditions could materially and adversely affect our ability to make interest payments on, or repay, the notes.

We Are Subject to System Risks

Problems with our in-house loan accounting and collection systems could materially and adversely affect our collections and cash flows and our ability to make payments on the notes. In 2001, we converted from an external service provider for our loan accounting and collection systems relating to the motor vehicle contracts in our servicing portfolio to an in-house system. If issues with our in-house system arise in the future, we may be unable to maintain the same level of operations with respect to the funding of motor vehicle contracts and the servicing of our outstanding portfolio. Any significant failures or defects with our in-house system could adversely affect our results of operations, financial conditions and cash flows and our ability to perform our obligations under the notes.

We Are Subject to Many Regulations

Failure to materially comply with all laws and regulations applicable to us could materially and adversely affect our ability to operate our business and our ability to make payments on the notes. Our business is subject to numerous federal and state consumer protection laws and regulations, which, among other things:

- require us to obtain and maintain certain licenses and qualifications;

- limit the interest rates, fees and other charges we are allowed to charge;

- limit or prescribe certain other terms of our motor vehicle contracts;

- require specific disclosures;

- define our rights to repossess and sell collateral; and

- maintain safeguards designed to protect the security and confidentiality of customer information.

We believe that we are in compliance in all material respects with all such laws and regulations, and that such laws and regulations have had no material adverse effect on our ability to operate our business. However, we will be materially and adversely affected if we fail to comply with:

Table of Contents

applicable laws and regulations;

changes in existing laws or regulations;

changes in the interpretation of existing laws or regulations; or

any additional laws or regulations that may be enacted in the future.

We are Subject to Litigation Risks

Unfavorable outcomes in any of our current or future litigation proceedings could materially and adversely affect our results of operations, financial conditions and cash flows and our ability to make payments on the notes. As a consumer finance company, we are subject to various consumer claims and litigation seeking damages and statutory penalties based upon, among other things, disclosure inaccuracies and wrongful repossession, which could take the form of a plaintiff's class action complaint. We, as the assignee of finance contracts originated by dealers, may also be named as a co-defendant in lawsuits filed by consumers principally against dealers. We are also subject to other litigation common to the motor vehicle industry and businesses in general. The damages and penalties claimed by consumers and others in these types of matters can be substantial. The relief requested by the plaintiffs varies but includes requests for compensatory, statutory and punitive damages.

While we intend to vigorously defend ourselves against such proceedings, there is a chance that our results of operations, financial condition and cash flows could be materially and adversely affected by unfavorable outcomes, which, in turn, could affect our ability to make interest payments on, or repay, the notes.

Table of Contents**FORWARD-LOOKING STATEMENTS**

This prospectus contains certain statements of a forward-looking nature relating to future events or our future performance. These forward-looking statements are based on our current expectations, assumptions, estimates and projections about us and our industry. When used in this prospectus, the words *expects*, *believes*, *anticipates*, *estimates*, *intends* and similar expressions are intended to identify forward-looking statements. These statements include, but are not limited to, statements of our plans, strategies and prospects under the captions *Prospectus Summary*, *Risk Factors*, *Use of Proceeds*, and other statements contained elsewhere in this prospectus.

These forward-looking statements are only predictions and are subject to risks and uncertainties that could cause actual events or results to differ materially from those projected. The cautionary statements made in this prospectus should be read as being applicable to all related forward-looking statements wherever they appear in this prospectus. We assume no obligation to update these forward-looking statements publicly for any reason. Actual results could differ materially from those anticipated in these forward-looking statements.

RATIOS OF EARNINGS TO FIXED CHARGES

	As of December 31,					As of September 30,
	1998	1999	2000	2001	2002	2003
Ratio of earnings to fixed charges ¹	1.68x	1.86x	1.46x	1.44x	1.19x	1.49x

¹ For purposes of computing our ratios of earnings to fixed charges, we calculated earnings by adding fixed charges to income before income taxes. Fixed charges consist of gross interest expenses and one-third of our rent expense, which is the amount we believe is representative of the interest factor component of our rent expense.

USE OF PROCEEDS

If all of the notes are sold with maturities of two years or more, we would expect to receive approximately \$50.0 million of net proceeds from this offering after deducting the selling agent commissions and estimated offering expenses payable by us. Although we have no specific plan to allocate the proceeds, the general purpose of the offering is to raise capital to expand our business and for other general corporate purposes, which may include payment of general and administrative expenses.

Table of Contents**CAPITALIZATION**

The following table sets forth our capitalization, as of September 30, 2003, and as adjusted to give effect to the sale of \$51,932,173.23 principal amount of the notes. For a description of the application of the net proceeds, assuming all of the notes are sold with maturities of two years or more, see Use of Proceeds and Risk Factors Risk Factors Relating to the Notes Our Management has Broad Discretion Over the Use of Proceeds.

	As of September 30, 2003	
	Actual	As Adjusted
	(In Thousands)	
LIABILITIES		
Debt:		
Warehouse Borrowings	185,005	185,005
Excess Servicing Credit and Residual Lines	33,604	33,604
Subordinated Debt	12,000	12,000
Subtotal of Debt	230,609	230,609
Other Liabilities Capital Lease Obligations	1,259	1,259
Accrued Interest Payable	1,441	1,441
Other Liabilities	60,830	60,830
Subtotal of Other Liabilities	63,530	63,530
Subtotal of Indebtedness Senior to Notes	294,139	294,139
Renewable Unsecured Subordinated Notes	33,436	85,368
Total Liabilities	327,575	379,507
STOCKHOLDERS EQUITY		
Series A Participating Preferred stock, \$.01 par value, 200,000 shares authorized; no shares issued and outstanding		
Preferred stock (undesignated), \$.01 par value, 2,800,000 shares authorized; no shares issued and outstanding		
Common stock, \$.01 par value, 15,000,000 shares authorized; 5,118,206 shares issued and outstanding	51	51
Additional paid-in capital	32,803	32,803
Retained earnings	31,334	31,334
Accumulated other comprehensive loss	9,756	9,756
Total Stockholders Equity:	73,944	73,944
Total Capitalization:	401,519	453,451

Table of Contents

DESCRIPTION OF THE NOTES

General. The notes we are offering in this prospectus will represent subordinated, unsecured debt obligations of Onyx Acceptance Corporation. We will issue the notes under an indenture dated February 11, 2002, between us and U.S. Bank National Association, as trustee, as supplemented pursuant to an indenture supplement to be dated on or about January 29, 2004. The terms and conditions of the notes include those stated in the indenture and those made part of the indenture by reference to the Trust Indenture Act of 1939. The following is a summary of some, but not all, provisions of the notes, the indenture and the Trust Indenture Act. For a complete understanding of the notes, you should review the definitive terms and conditions contained in the actual notes, the indenture and the Trust Indenture Act, which include definitions of certain terms used below. Copies of the form of the notes and the indenture have been filed with the SEC and are available from us at no charge upon request.

The notes will be subordinated in right of payment to the prior payment in full of all our secured, unsecured, senior and subordinate debt, as described in this prospectus, whether outstanding on the date of the indenture or incurred following the date of the indenture. Subject to limited restrictions contained in the indenture discussed below, there is no limit under the indenture on the amount of additional debt we may incur. See **Subordination** below.

The notes are not secured by any collateral or lien and we are not required to establish or maintain a sinking fund to provide for payments on the notes. See **No Security; No Sinking Fund** below. In addition, the notes are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation or any other agency or company.

You may determine the amount (subject to a minimum principal amount of \$1,000) and term (ranging from 3 months to 10 years) of the notes you would like to purchase when you subscribe; however, depending upon our capital requirements, we may not always offer notes of each maturity. See **Denomination** and **Term** below.

With the help of our servicing agent, we will determine the rate at which we will pay you interest on the notes at the time of subscription and the rate will be fixed for the term of your note. Currently available rates will be set forth in supplements to this prospectus. The interest rate will vary based on the term to maturity of the note you purchase and the total principal amount of all notes owned by you and your immediate family. We may change the interest rates at which we are offering new or renewed notes based on market conditions, the demand for notes and other factors. See **Interest Rate** below.

Upon acceptance of your subscription to purchase notes, our servicing agent will create an account in a book-entry registration and transfer system for you and credit the principal amount of your subscription to your account. Our servicing agent will send you a book-entry receipt or confirmation that will indicate our acceptance of your subscription. You will have three business days to rescind your subscription following your receipt of a written confirmation from us that evidences the valid issuances of the notes. If your subscription is rejected by us or our servicing agent, or you rescind your subscription during the three-day revocation period, all funds deposited will be promptly returned to you without any interest. See **Book-Entry Registration and Transfer** and **Rescission Right** below. Investors whose subscriptions for notes have been accepted and anyone who subsequently acquires notes in a qualified transfer are referred to as **holders** or **registered holders** in this prospectus and in the indenture.

We may modify or supplement the terms of the notes described in this prospectus from time to time in a supplement to the indenture and a supplement to this prospectus. Except as set forth under **Amendment, Supplement And Waiver** below, any modification or amendment will not affect notes outstanding at the time of such modification or amendment.

Denomination. You may purchase notes in the minimum principal amount of \$1,000 or any amount in excess of \$1,000. You will determine the original principal amount of each note you purchase when you subscribe. You may not cumulate purchases of multiple notes with principal amounts less than \$1,000 to satisfy the minimum denomination requirement.

Table of Contents

Term. We may offer notes with terms ranging from three months to ten years as follows:

three months	three years
six months	four years
one year	five years
two years	ten years

You will select the term of each note you purchase when you subscribe. You may purchase multiple notes with different terms by filling in investment amounts for more than one term on your subscription agreement. However, we may not always sell notes with all of the above terms.

Interest Rate. The rate of interest we will offer to pay you on notes at any particular time will vary based upon market conditions, and will be determined by the length of the term of the notes, the total principal amount of all notes owned by you and your immediate family and our capital requirements. The interest rate on a particular note will be determined at the time of subscription or renewal, and then remain fixed for the original or renewal term of the note. We will establish and may change the interest rates payable for notes of various terms and at various investment levels in a supplement to this prospectus. Our servicing agent will assist us in establishing these interest rates, including advising us on current market conditions.

The notes will earn incrementally higher interest rates when, at the time they are purchased or renewed, the aggregate principal amount of the note portfolios of the holder and the holder's immediate family is at least \$25,000, \$50,000, \$75,000 or \$100,000. The interest rates payable at each level of investment will be set forth in a supplement to this prospectus. Immediate family members include parents, children, siblings, grandparents, and grandchildren. Members of sibling families are also considered immediate family members if both siblings are note holders. An investor must identify his or her immediate family members in the subscription documents to include their portfolios in determining the interest rate for such investor's notes.

Interest rates we offer on the notes may vary based on numerous factors in addition to length of the term and aggregate principal amount. These factors may include, but are not limited to:

the desire to attract new investors;

whether the notes exceed certain principal amounts;

whether the notes are purchased for IRA and/or Keogh accounts;

whether the notes are being renewed by existing holders; and

whether the notes are beneficially owned by persons residing in particular geographic localities.

Computation of Interest. We will compute interest on notes on the basis of an actual calendar year. Interest will compound daily and accrue from the date of purchase. The date of purchase will be the date we receive funds if the funds are received prior to 12:01 p.m. central time on a business day, or the next business day if the funds are received on a non-business day or at or after 12:01 p.m. central time on a business day. Our business days are Monday through Friday, except for legal holidays in the State of Minnesota.

Interest Payment Dates. Holders of notes may elect at the time a subscription agreement is completed to have interest paid either monthly, quarterly, semiannually, annually or at maturity. If you choose to have interest paid monthly, you may elect the day of the month on which interest will be paid, subject to our approval. For all other payment periods, interest will be paid on the same day of the month as the purchase date of your note. You

Table of Contents

will not earn interest on any rescinded note. See **Rescission Right** below for additional information on your right to rescind your investment.

The election of the period or day of interest payment for each note may be changed one time only by the holder during the term of the note, subject to our approval. Requests to change the election must be made in writing to our servicing agent and will be effective on the first business day following the 45th day after the election change request is received. No specific change in election form is required and there is no charge to change the election once during the term of a note. Any interest not paid on an interest payment date will be paid at maturity.

Place and Method of Payment. We will pay principal and interest on the notes through our paying agent by electronic funds transfer to a depository account you specify in your subscription documents. If the foregoing payment method is not available, principal and interest on the notes will be payable at our principal executive office or at such other place as we may designate for payment purposes.

Servicing Agent. We have engaged Sumner Harrington Ltd., the investment banking firm that is helping us sell the notes, to act as our servicing agent for the notes. Sumner Harrington Ltd.'s responsibilities as servicing agent will involve the performance of certain administrative and customer service functions for the notes that we are responsible for performing as the issuer of the notes. For example, as our servicing agent, Sumner Harrington Ltd. will serve as our registrar and transfer agent and will manage all aspects of the customer service function for the notes, including handling all phone inquiries, mailing investment kits, meeting with investors, processing subscription agreements, issuing quarterly investor statements and redeeming and repurchasing notes. In addition, as servicing agent, Sumner Harrington Ltd. will provide us with monthly reports and analysis regarding the status of the notes, the marketing efforts and the amount of notes that remain available for purchase and also will have the ability to exercise certain limited discretion with respect to waiving early repurchase penalties, changing interest payment dates and rejecting subscription agreements. Other duties of Sumner Harrington Ltd. as our servicing agent under the distribution and management agreement are described throughout this section and under **Plan of Distribution**.

As compensation for its services as servicing agent, we will pay Sumner Harrington Ltd. an annual portfolio management fee equal to 0.25% of the weighted average principal balance of the notes so long as Sumner Harrington Ltd. is engaged as our servicing agent. The ongoing fee will be paid monthly. The distribution and management agreement may be terminated by either party by prior notice. Sumner Harrington Ltd.'s duties and compensation as selling agent under the same agreement are described under **Plan of Distribution**.

You may contact our servicing agent with any questions about the notes at the following address and telephone number:

Sumner Harrington Ltd.
Attn.: Onyx Notes Department
11100 Wayzata Boulevard, Suite 170
Minneapolis, MN 55305
Telephone: (800) 234-5777

Book-Entry Registration and Transfer. The notes are issued in book entry form, which means that no physical note is created. Evidence of your ownership is provided by written confirmation. Except under limited circumstances described below, holders will not receive or be entitled to receive any physical delivery of a certificated security or negotiable instrument that evidences their notes. The issuance and transfer of notes will be accomplished exclusively through the crediting and debiting of the appropriate accounts in our book-entry registration and transfer system. Our book-entry system will be maintained by our servicing agent.

The holders of the accounts established upon the purchase or transfer of notes will be deemed to be the owners of the notes under the indenture. The holder of the notes must rely upon the procedures established by the trustee to exercise any rights of a holder of notes under the indenture. On a monthly basis, our servicing agent will provide the trustee with information regarding the establishment of new accounts and the transfer of existing accounts.

Table of Contents

Our servicing agent will regularly provide the trustee with information regarding the total amount of any principal and/or interest due to holders with regard to the notes on any interest payment date or upon redemption.

On each interest payment date, the servicing agent will credit interest due on each account and direct our paying agent to make such payments to the holders. The servicing agent will determine the interest payments to be made to the book-entry accounts and maintain, supervise and review any records relating to book-entry beneficial interests in the notes.

Book-entry notations in the accounts evidencing ownership of the notes are exchangeable for actual notes in principal denominations of \$1,000 and any amount in excess of \$1,000 and fully registered in those names as we direct only if:

we, at our option, advise the trustee in writing of our election to terminate the book-entry system, or

after the occurrence of an event of default under the indenture, holders of more than 50% of the aggregate outstanding principal amount of the notes advise the trustee in writing that the continuation of a book-entry system is no longer in the best interests of the holders of notes and the trustee notifies all registered holders of the occurrence of any such event and the availability of certificated securities that evidence the notes. Subject to the exceptions described above, the book-entry interests in these securities will not be exchangeable for fully registered certificated notes.

Rescission Right. The holder has the right to rescind his or her investment, without penalty, upon written request to our servicing agent within the first three business days following the receipt by the holder of a written confirmation from us that evidences the valid issuance of the note, at the time of original purchase (but not upon transfer or automatic renewal of a note). No interest will be earned for the time the rescinded note is outstanding. We will promptly return any funds sent with a subscription that is subsequently properly rescinded. The limitations on the amount of notes that can be redeemed early in a single calendar quarter described under Redemption or Repurchase Prior to Stated Maturity below does not affect your rescission right.

Right to Reject Subscriptions. Our servicing agent may reject any subscription for notes in its sole discretion. If a subscription for notes is rejected, we will promptly return any funds sent with that subscription, without interest.

Renewal or Redemption On Maturity. Approximately 15, but not less than 10, days prior to maturity of your note, our servicing agent will send you a notice at your registered address indicating that your note is about to mature and whether we will allow automatic renewal of your note. If we allow you to renew your note, our servicing agent will also send to you a current prospectus supplement and a current prospectus if the prospectus has changed since the delivery of this prospectus in connection with your original subscription or any prior renewal. The prospectus supplement will set forth the interest rates then in effect. The notice will recommend that you review the prospectus, along with the prospectus supplement, prior to exercising one of the below options. If we do not send you a new prospectus, a new prospectus will be sent to you upon request. You will have until 15 days after the maturity date to exercise one of the following options:

You can do nothing, in which case your note will automatically renew for a new term equal to the original term at the interest rate in effect at the time of renewal. If your note pays interest only at maturity, all accrued interest will be added to the principal amount of your note upon renewal. For notes with other payment options, interest will be paid on the renewed note on the same schedule as the original note.

You can require repayment of your note, in which case the principal amount will be repaid in full along with any accrued and unpaid interest. If you choose this option, your note will not earn interest on or after the maturity date.

Table of Contents

You can require repayment of your note and use all or part of the proceeds to purchase a new note with a different term. To exercise this option, you will need to complete a subscription agreement for the new note and mail it along with your request to our servicing agent. The issue date of the new note will be the maturity date of the old note. Any proceeds from the old note that are not applied to the new note will be sent to you.

If your note pays interest only at maturity, you can receive the accrued interest that you have earned during the note term just ended while allowing the principal amount of your note to roll over and renew for the same term at the interest rate then in effect. To exercise this option, call, fax or send a written request to our servicing agent.

The foregoing options will be available to holders until termination or redemption under the indenture and the notes by either the holder or us. Interest will accrue from the first day of each renewed term. Each renewed note will retain all its original provisions, including provisions relating to payment, except that the interest rate payable during any renewal term will be the interest rate that is being offered to other holders of notes with the same term at the time of renewal, as set forth in the prospectus supplement delivered with the maturity notice. If similar notes are not then being offered, the interest rate upon renewal will be the rate specified by us on or before the maturity date, or the rate of the existing note if no such rate is specified.

If we notify the holder of our intention to repay a note at maturity, we will pay the holder the principal amount and any accrued and unpaid interest on the stated maturity date. Similarly, if, within 15 days after its stated maturity date, a holder requests repayment with respect to a note, we will pay the holder the principal amount of the note plus accrued and unpaid interest up to, but not including, the note's stated maturity date. In the event that a holder's regularly scheduled interest payment date falls after the maturity date of the note but before the date on which the holder requests repayment, the holder may receive an interest payment that includes interest for periods after the maturity date of the note. If this occurs, the excess interest will be deducted from our final payment of the principal amount of the note to the holder. We will pay the holder upon the later of the maturity date or five business days after the date on which we receive such notice from the holder. Requests for repayment should be made to our servicing agent in writing.

Redemption or Repurchase Prior To Stated Maturity. The notes may be redeemed prior to stated maturity only as set forth in the indenture and described below. The holder has no right to require us to prepay or repurchase any note prior to its maturity date as originally stated or as it may be extended, except as indicated in the indenture and described below.

Redemption By Us. We have the right to redeem any note at any time prior to its stated maturity upon 30 days written notice to the holder of the note. The holder of the note being redeemed will be paid a redemption price equal to the outstanding principal amount thereof plus accrued and unpaid interest up to but not including the date of redemption without any penalty or premium. We may use any criteria we choose to determine which notes we will redeem if we choose to do so. We are not required to redeem notes on a pro rata basis.

Repurchase Election Upon Death Or Total Permanent Disability. Notes may be repurchased prior to maturity, in whole and not in part, at the election of a holder who is a natural person (including notes held in an individual retirement account), by giving us written notice within 45 days following the holder's total permanent disability, as established to our satisfaction, or at the election of the holder's estate, by giving written notice within 45 days following his or her death. Subject to the limitations described below, we will repurchase the notes within 10 days after receipt of notice or satisfactory establishment of the holder's death or disability. The repurchase price, in the event of such a death or disability, will be the principal amount of the notes, plus interest accrued and not previously paid up to but not including the date of repurchase. If spouses are joint registered holders of a note, the election to repurchase will apply when either registered holder dies or suffers a total permanent disability. If the note is held jointly by two or more persons who are not legally married, none of these persons will have the right to request that we repurchase the notes unless all joint holders have either died or suffered a total permanent disability. If the

Table of Contents

note is held by a person who is not a natural person such as a trust, partnership, corporation or other similar entity, the right to request repurchase upon death or disability does not apply.

Repurchase At Request of Holder. In addition to the right to elect repurchase upon death or disability, a holder may elect repurchase of notes prior to maturity, in whole and not in part, at any time by giving us written notice. Subject to the \$1 million limitation described below, we will repurchase the holder's note(s) specified in the notice within 10 days of receipt of the notice. The repurchase price, in the event of such election, will be the principal amount of the note, plus interest accrued and not previously paid (up to but not including the date of repurchase), minus a repurchase penalty. The early repurchase penalty for a note with a three month maturity is the interest accrued on such note up to the date of repurchase, not to exceed three months of simple interest at the existing rate. The early repurchase penalty for a note with a maturity of six months or longer is the interest accrued on such note up to the date of repurchase, not to exceed six months of simple interest at the existing rate. The penalty for early repurchase may be waived or reduced at the limited discretion of our servicing agent.

Limitations on Requirements to Repurchase. Our obligation to repurchase notes prior to maturity will be subject to a limit of \$1 million aggregate principal amount for all holders per calendar quarter. This limit includes any notes we repurchase upon death or total permanent disability of the holder and any notes that we repurchase pursuant to the holder's right to elect repurchase. For purposes of the \$1 million limit, repurchase requests will be honored in the order in which they are received and any repurchase request not honored in a calendar quarter will be honored in the next calendar quarter, to the extent possible, since repurchases in the next calendar quarter are also subject to the \$1 million limitation.

Modifications to Repurchase Policy. We may modify the policies on repurchase in the future. However, no modification will affect the right of repurchase applicable to any note outstanding at the time of any such modification.

Transfers. The notes are not negotiable debt instruments and, subject to certain exceptions, will be issued only in book-entry form. The book-entry receipt issued upon our acceptance of a subscription is not a certificated security or negotiable instrument, and no rights of record ownership can be transferred without our prior written consent. Ownership of notes may be transferred on our register only as follows:

The holder must deliver written notice requesting a transfer to our servicing agent signed by the holder(s) or such holder's duly authorized representative on a form to be supplied by our servicing agent.

Our servicing agent must provide its written consent to the proposed transfer, which consent may not be unreasonably withheld.

Our servicing agent may require a legal opinion from counsel satisfactory to the servicing agent that the proposed transfer will not violate any applicable securities laws and a signature guarantee in connection with such transfer.

Upon transfer of a note, our servicing agent will provide the new holder of the note with a book-entry receipt which will evidence the transfer of the account on our records. We or our servicing agent may charge a reasonable service charge in connection with the transfer of any note.

Quarterly Statements. Our servicing agent will provide holders of the notes with quarterly statements, which will indicate, among other things, the account balance at the end of the quarter, interest credited, redemptions or repurchases made, if any, and the interest rate paid during the quarter. These statements will be mailed not later than the tenth business day following the end of each calendar quarter. Our servicing agent will provide additional information as holders of notes may reasonably request from time to time. Our servicing agent may charge such holders a fee to cover the charges incurred in providing such information.

Table of Contents

Subordination. The indebtedness evidenced by the notes, and any interest thereon, are subordinated in right of payment to all of our senior debt. Senior debt means all of our secured, unsecured, senior or subordinate indebtedness, including indebtedness owed by our special purpose entities, whether outstanding on the date of this prospectus or incurred after the date of this prospectus, whether such indebtedness is or is not specifically designated as being senior debt in its defining instruments, other than

the existing notes and future offerings of additional renewable unsecured subordinated notes which will rank equally with the notes; and

existing and future debt that is held by our affiliates, subsidiaries or control persons (other than debt held by our subsidiaries that are special purpose entities).

The indenture does not prevent holders of senior debt from disposing of, or exercising any other rights with respect to, any or all of the collateral securing the senior debt. As of September 30, 2003, we had approximately \$294.1 million of outstanding debt senior to the notes, including debt owed to our subsidiaries that are special purpose entities.

Except for certain limited restrictions, the terms of the notes or the indenture do not impose any limitation on the amount of senior debt or other indebtedness we may incur, although our existing senior debt agreements may restrict us from incurring new senior debt. See Risk Factors Risk Factors Relating to the Notes You Lack Priority in Payment on the Notes.

The notes are not guaranteed by any of our subsidiaries, affiliates or control persons. Accordingly, in the event of a liquidation or dissolution of one of our subsidiaries, creditors of that subsidiary will be paid in full, or provision for such payment be made, from the assets of that subsidiary prior to distributing any remaining assets to us as a shareholder of that subsidiary. Therefore, in the event of liquidation or dissolution of a subsidiary, no assets of that subsidiary may be used to make payment to the holders of the notes until the creditors of that subsidiary are paid in full from the assets of that subsidiary.

Existing and future debt that is primarily held by our affiliates, subsidiaries or control persons, other than debt held by our subsidiaries that are special purpose entities, will be subordinated to the notes. However, as long as we make required payments on the notes and there exists no default under the notes or the indenture, we may also make required payments and pre-payments on, and complete payment of, our debt held by our affiliates, subsidiaries and control persons. As of September 30, 2003, we had no debt outstanding that was owed to our affiliates, subsidiaries or control persons, other than debt held by our special purpose entities. Therefore, none of our current debt is subordinate to the notes. To the extent we incur debt held by our affiliates, subsidiaries or control persons, other than debt held by our special purpose entities, we have no current intention to prepay any such debt obligations in advance of the maturity of those obligations.

The subordination of debt held by our affiliates, subsidiaries and control persons to the notes does not apply to debt held by our special purpose entities, which debt is senior to the notes. As of September 30, 2003, our special purpose entities had an aggregate of \$224.3 million in outstanding principal amount of indebtedness, repayment of which is senior to the notes.

In the event of any liquidation, dissolution or any other winding up of us, or of any receivership, insolvency, bankruptcy, readjustment, reorganization or similar proceeding under the U.S. Bankruptcy Code or any other applicable federal or state law relating to bankruptcy or insolvency, or during the continuation of any event of default on the senior debt, no payment may be made on the notes until all senior debt has been paid in full or provision for such payment has been made to the satisfaction of the senior debt holders. If any of the above events occurs, holders of senior debt may also submit claims on behalf of holders of the notes and retain the proceeds for their own benefit until they have been fully paid, and any excess will be turned over to the holders of the notes. If any distribution is nonetheless made to holders of the notes, the money or property distributed to them must be paid over to the holders of the senior debt to the extent necessary to pay senior debt in full.

Table of Contents

In the event and during the continuation of any default in the payment of principal of or interest on any senior debt, we will not make any payment, direct or indirect, on the notes and any other indebtedness being subordinated to the payment of the notes unless and until

the default has been cured or waived or has ceased to exist; or

the end of the period commencing on the date the trustee receives written notice of default from a holder of the senior debt and ending on the earlier of

179 days after the trustee's receipt of the notice of default;

the trustee's receipt of a valid waiver of default from the holder of senior debt; or

the trustee's receipt of a written notice from the holder of senior debt terminating the payment blockage period.

No Security; No Sinking Fund. The notes are unsecured, which means that none of our tangible or intangible assets or property, nor any of the assets or property of any of our affiliates or subsidiaries, has been set aside or reserved to make payment to the holders of the notes in the event that we default on our obligations to the holders. In addition, we do not contribute funds to any separate account, commonly known as a sinking fund, to repay principal or interest due on the notes upon maturity or default. See Risk Factors Risk Factors Relating to the Notes The Notes will have No Sinking Fund, Security, Insurance or Guarantee.

Restrictive Covenants. The indenture contains certain limited restricted covenants that require us to maintain certain financial standards and restrict us from certain actions as set forth below.

The indenture provides that, so long as the notes are outstanding:

we will maintain a positive net worth, which includes stockholder's equity and any of our debt that is subordinate to the notes;

we will not declare or pay any dividends or other payments of cash or other property to our stockholders (other than a dividend paid in shares of our capital stock on a pro rata basis to all our stockholders) unless no default and no event of default with respect to the notes exists or would exist immediately following the declaration or payment of the dividend or other payment; and

we will not guarantee, endorse or otherwise become liable for any obligations of any of our control persons, or other parties controlled by or under common control with any of our control persons, provided however, that we and our subsidiaries may make investments in and guarantee the obligations of our special purpose entities.

See Risk Factors Risk Factors Relating to the Notes You Will Have Only Limited Protection Under the Indenture.

Consolidation, Merger or Sale. 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 a United States corporation, limited liability company or limited partnership 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; and

immediately after the transaction, and giving effect to the transaction, no event of default under the indenture exists.

Table of Contents

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 the indenture with the same effect as if it had been an original party to the indenture. As a result, the successor entity may exercise our rights and powers under the indenture, in our name and we will be released from all our liabilities and obligations under the indenture and under the notes.

Events Of Default. The indenture provides that each of the following constitutes an event of default:

failure to pay interest on a note within 15 days after the due date for such payment (whether or not prohibited by the subordination provisions of the indenture);

failure to pay principal on a note within 10 days after the due date for such payment (whether or not prohibited by the subordination provisions of the indenture);

our failure to observe or perform any material covenant, condition or agreement or our breach of any material representation or warranty, but only after we have been given notice of such failure or breach and such failure or breach is not cured within 30 days after our receipt of notice;

defaults in certain of our other financial obligations that are not cured within 30 days; and

certain events of bankruptcy or insolvency with respect to us.

If any event of default occurs and is continuing (other than an event of default involving certain events of bankruptcy or insolvency with respect to us), the trustee or the holders of at least a majority in principal amount of the then outstanding notes may declare the unpaid principal of and any accrued interest on the notes to be due and payable immediately. However, so long as any senior debt is outstanding, a declaration of this kind will not become effective until the earlier of

the day which is five business days after the receipt by us and the holders of senior debt of such written notice of acceleration; or

the date of acceleration of any senior debt.

In the case of an event of default arising from certain events of bankruptcy or insolvency, with respect to us, all outstanding notes will become due and payable without further action or notice.

Holders of the notes may not enforce the indenture or the notes except as provided in the indenture. Subject to certain limitations, holders of a majority in principal amount of the then outstanding notes may direct the trustee in its exercise of any trust or power. The trustee may withhold from holders of the notes notice of any continuing default or event of default (except a default or event of default relating to the payment of principal or interest) if the trustee in good faith determines that withholding notice would have no material adverse effect on the holders.

The holders of a majority in aggregate principal amount of the notes then outstanding by notice to the trustee may, on behalf of the holders of all of the notes, waive any existing default or event of default and its consequences under the indenture, except

a continuing default or event of default in the payment of interest on, or the principal of, a note held by a non-consenting holder; or

a waiver that would conflict with any judgment or decree.

We are required to deliver to the trustee within 120 days of the end of our fiscal year a certificate regarding compliance with the indenture, and we are required, upon becoming aware of any default or event of default, to

Table of Contents

deliver to the trustee a certificate specifying such default or event of default and what action we are taking or propose to take with respect to the default or event of default.

Amendment, Supplement and Waiver. Except as provided in this prospectus or the indenture, the terms of the indenture or the notes then outstanding may be amended or supplemented with the consent of the holders of at least a majority in principal amount of the notes then outstanding, and any existing default or compliance with any provision of the indenture or the notes may be waived with the consent of the holders of a majority in principal amount of the then outstanding notes.

Notwithstanding the foregoing, an amendment or waiver will not be effective with respect to the notes held by a holder who has not consented if it has any of the following consequences:

reduces the aggregate principal amount of notes whose holders must consent to an amendment, supplement or waiver;

reduces the principal of or changes the fixed maturity of any note or alters the repurchase or redemption provisions or the price at which we shall offer to repurchase or redeem the note;

reduces the rate of or changes the time for payment of interest, including default interest, on any note;

waives a default or event of default in the payment of principal or interest on the notes, except a rescission of acceleration of the notes by the holders of at least a majority in aggregate principal amount of the then outstanding notes and a waiver of the payment default that resulted from such acceleration;

makes any note payable in money other than that stated in the notes;

makes any change in the provisions of the indenture relating to waivers of past defaults or the rights of holders of notes to receive payments of principal of or interest on the notes;

makes any change to the subordination provisions of the indenture that has a material adverse effect on holders of notes;

modifies or eliminates the right of the estate of a holder or a holder to cause us to repurchase a note upon the death or disability of a holder; or

makes any change in the foregoing amendment and waiver provisions.

Notwithstanding the foregoing, without the consent of any holder of the notes, we and the trustee may amend or supplement the indenture or the notes:

to cure any ambiguity, defect or inconsistency;

to provide for assumption of our obligations to holders of the notes in the case of a merger, consolidation or sale of all or substantially all of our assets;

to provide for additional certificates or certificated securities;

to make any change that does not adversely affect the legal rights under the indenture of any such holder, including but not limited to an increase in the aggregate dollar amount of notes which may be outstanding under the indenture;

to modify our policy regarding repurchases elected by a holder of notes prior to maturity and our policy regarding repurchase of the notes prior to maturity upon the death or total permanent

Table of Contents

disability of any holder of the notes, but such modifications shall not materially adversely affect any then outstanding notes; or

to comply with requirements of the SEC in order to effect or maintain the qualification of the indenture under the Trust Indenture Act.

The Trustee. U.S. Bank National Association has agreed to be the trustee under the indenture. The indenture contains certain limitations on the rights of the trustee, should it become one of our creditors, to obtain payment of claims in certain cases, or to realize on certain property received in respect of any claim as security or otherwise. The trustee will be permitted to engage in other transactions with us.

Subject to certain exceptions, the holders of a majority in principal amount of the then outstanding notes will have the right to direct the time, method and place of conducting any proceeding for exercising any remedy available to the trustee. The indenture provides that in case an event of default specified in the indenture shall occur and not be cured, the trustee will be required, in the exercise of its power, to use the degree of care of a reasonable person in the conduct of his own affairs. Subject to such provisions, the trustee will be under no obligation to exercise any of its rights or powers under the indenture at the request of any holder of notes, unless the holder shall have offered to the trustee security and indemnity satisfactory to it against any loss, liability or expense.

Resignation or Removal of the Trustee. The trustee may resign at any time, or may be removed by the holders of a majority of the aggregate principal amount of the outstanding notes. In addition, upon the occurrence of contingencies relating generally to the insolvency of the trustee or the trustee's ineligibility to serve as trustee under the Trust Indenture Act of 1939, as amended, we may remove the trustee. However, no resignation or removal of the trustee may become effective until a successor trustee has accepted the appointment as provided in the indenture.

Reports to Trustee. Our servicing agent will provide the trustee with quarterly reports containing any information reasonably requested by the trustee. These quarterly reports will include information on each note outstanding during the preceding quarter, including outstanding principal balance, interest credited and paid, transfers made, any redemption or repurchase and interest rate paid.

No Personal Liability of Our or Our Servicing Agent's Directors, Officers, Employees and Stockholders. No director, officer, employee, incorporator or stockholder of ours or our servicing agent, will have any liability for any of our obligations under the notes, the indenture or for any claim based on, in respect to, or by reason of, these obligations or their creation. Each holder of the notes waives and releases these persons from any liability. The waiver and release are part of the consideration for issuance of the notes. We have been advised that the waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the SEC that such a waiver is against public policy.

Service Charges. We and our servicing agent may assess service charges for changing the registration of any note to reflect a change in name of the holder, multiple changes in interest payment dates or transfers (whether by operation of law or otherwise) of a note by the holder to another person.

Additional Securities. We may offer additional classes of securities with terms and conditions different from the notes currently being offered in this prospectus. We will amend or supplement this prospectus if and when we decide to offer to the public any additional class of security under this prospectus. If we sell the entire principal amount of notes offered in this prospectus, we may register and sell additional notes by amending this prospectus, but we are under no obligation to do so.

Variations By State. We may offer different securities and vary the terms and conditions of the offer (including, but not limited to, different interest rates and service charges for all notes) depending upon the state where the purchaser resides.

Interest Withholding. We will withhold 28% (which rate is scheduled to increase to 31% for payments made after December 31, 2010) of any interest paid to any investor who has not provided us with a social security number, employer identification number, or other satisfactory equivalent in the subscription agreement (or another

Table of Contents

document) or where the Internal Revenue Service has notified us that backup withholding is otherwise required. See **Material Federal Income Tax Consequences Reporting and Backup Withholding.**

Liquidity. There is not currently a trading market for the notes, and we do not expect that a trading market for the notes will develop.

Satisfaction and Discharge of Indenture. The indenture shall cease to be of further effect upon the payment in full of all of the outstanding notes and the delivery of an officer's certificate to the trustee stating that we do not intend to issue additional notes under the indenture or, with certain limitations, upon deposit with the trustee of funds sufficient for the payment in full of all of the outstanding notes.

Reports. We currently publish annual reports containing financial statements and quarterly reports containing financial information for the first three quarters of each fiscal year. We will send copies of these reports to any holder of notes who requests them in writing at no charge.

MATERIAL FEDERAL INCOME TAX CONSEQUENCES

The following discussion is our counsel's opinion of the material federal income tax consequences relating to the ownership and disposition of the notes. The discussion is based upon the current provisions of the Internal Revenue Code of 1986, as amended, regulations issued under the Internal Revenue Code and judicial or ruling authority, all of which are subject to change that may be applied retroactively. The discussion assumes that the notes are held as capital assets and does not discuss the federal income tax consequences applicable to all categories of investors, some of which may be subject to special rules such as banks, tax-exempt organizations, insurance companies, dealers in securities or currencies, persons that will hold notes as a position in a hedging, straddle or conversion transactions, or persons that have a functional currency other than the U.S. dollar. If a partnership holds notes, the tax treatment of a partner will generally depend on the status of the partner and on the activities of the partnership. In addition, it does not deal with holders other than original purchasers. You should consult your own tax advisor to determine the specific federal, state, local and any other tax consequences applicable to you relating to your ownership and disposition of the notes.

Interest Income on the Notes

Subject to the discussion below applicable to non-U.S. holders, interest paid on the notes will generally be taxable to you as ordinary income as the income is paid if you are a cash method taxpayer or as the income accrues if you are an accrual method taxpayer.

However, a note with a term of one year or less, which we refer to in this discussion as a short-term note, will be treated as having been issued with original issue discount or OID for tax purposes equal to the total payments on the note over its issue price. If you are a cash method holder of a short-term note you are not required to include this OID as income currently unless you elect to do so. Cash method holders who make that election and accrual method holders of short-term notes are generally required to recognize the OID in income currently as it accrues on a straight-line basis unless the holder elects to accrue the OID under a constant yield method. Under a constant yield method, you generally would be required to include in income increasingly greater amounts of OID in successive accrual periods.

Cash method holders of short-term notes who do not include OID in income currently will generally be taxed on stated interest at the time it is received and will treat any gain realized on the disposition of a short-term note as ordinary income to the extent of the accrued OID generally reduced by any prior payments of interest. In addition, these cash method holders will be required to defer deductions for certain interest paid on indebtedness related to purchasing or carrying the short-term notes until the OID is included in the holder's income.

There are also some situations in which a cash basis holder of a note having a term of more than one year may have taxable interest income with respect to a note before any cash payment is received with respect to the note. If you report income on the cash method and you hold a note with a term longer than one year that pays interest only at maturity, you generally will be required to include OID accrued during the original term (without regard to

Table of Contents

renewals) as ordinary gross income as the OID accrues. OID accrues under a constant yield method, as described above.

Treatment of Dispositions of Notes

Upon the sale, exchange, retirement or other taxable disposition of a note, you will recognize gain or loss in an amount equal to the difference between the amount realized on the disposition and your adjusted tax basis in the note. Your adjusted tax basis of a note generally will equal your original cost for the note, increased by any accrued but unpaid interest (including OID) you previously included in income with respect to the note and reduced by any principal payments you previously received with respect to the note. Any gain or loss will be capital gain or loss, except for gain representing accrued interest not previously included in your income. This capital gain or loss will be short-term or long-term capital gain or loss, depending on whether the note had been held for more than one year or for one year or less.

Non-U.S. Holders

Generally, if you are a nonresident alien individual or a non-U.S. corporation and do not hold the note in connection with a United States trade or business, interest paid and OID accrued on the notes will be treated as portfolio interest and therefore will be exempt from a 30% United States withholding tax. In that case, you will be entitled to receive interest payments on the notes free of United States federal income tax provided that you periodically provide us with a statement on applicable IRS forms certifying under penalty of perjury that you are not a United States person and provide your name and address. In addition, in that case you will not be subject to United States federal income tax on gain from the disposition of a note unless you are an individual who is present in the United States for 183 days or more during the taxable year in which the disposition takes place and certain other requirements are met. Interest paid and OID accrued paid to a non-U.S. person are not subject to withholding if they are effectively connected with a United States trade or business conducted by that person and we are provided a properly executed IRS Form W-8ECI. They will, however, generally be subject to the regular United States income tax.

Reporting and Backup Withholding

We will report annually to the Internal Revenue Service and to holders of record that are not excepted from the reporting requirements any information that may be required with respect to interest or OID on the notes.

Under certain circumstances, as a holder of a note, you may be subject to backup withholding at a 28% rate. After December 31, 2010, the backup withholding rate is scheduled to increase to 31%. Backup withholding may apply to you if you are a United States person and, among other circumstances, you fail to furnish on IRS Form W-9 or a substitute Form W-9 your Social Security number or other taxpayer identification number to us. Backup withholding may apply, under certain circumstances, if you are a non-U.S. person and fail to provide us with the statement necessary to establish an exemption from federal income and withholding tax on interest on the note. Backup withholding, however, does not apply to payments on a note made to certain exempt recipients, such as corporations and tax-exempt organizations, and to certain non-U.S. persons. Backup withholding is not an additional tax and may be refunded or credited against your United States federal income tax liability, provided that you furnish certain required information.

This federal tax discussion is included for general information only and may not be applicable depending upon your particular situation. You should consult your own tax advisor with respect to the specific tax consequences to you of the ownership and disposition of the notes, including the tax consequences under state, local, foreign and other tax laws and the possible effects of changes in federal or other tax laws.

PLAN OF DISTRIBUTION

Under the terms and subject to the conditions contained in a distribution and management agreement between us and Sumner Harrington Ltd., Sumner Harrington Ltd. has agreed to serve as our selling agent and to use its

Table of Contents

best efforts to sell the notes on the terms set forth in this prospectus. The selling agent is not obligated to sell any minimum amount of notes or to purchase any of the notes.

The selling agent proposes to offer the notes to the public on our behalf on the terms set forth in this prospectus and the prospectus supplements that we file from time to time. The selling agent plans to market the notes directly to the public through newspaper, radio, internet, direct mail and other advertising. In addition, our selling agent will manage certain administrative and customer service functions relating to the notes, including handling all inquiries from potential investors, mailing investment kits, meeting with investors, processing subscription agreements and responding to all written and telephonic questions relating to the notes. Upon prior written notice to the selling agent, we may elect to use a different selling agent or perform these duties ourselves. The selling agent's servicing responsibilities are described under Description of the Notes Servicing Agent.

We have agreed to reimburse the selling agent for its out-of-pocket expenses incurred in connection with the offer and sale of the notes, including document fulfillment expenses, legal and accounting fees, regulatory fees and due diligence expenses. Under the terms of the distribution and management agreement, we also will pay our selling agent a commission equal to 3.00% of the principal amount of all notes sold. For notes with maturities exceeding one year, the entire 3.00% commission will be paid to the selling agent at the time of issuance and no additional commission will be paid upon renewal. For notes with maturities of one year or less, the gross 3.00% commission will be paid in equal installments upon the original issuance and each renewal, if any, over the first two years. Accordingly, the selling agent will not receive the entire 3.00% gross commission on notes with terms of one year or less unless the notes are successively renewed for two years. The selling agent may engage or allow selected brokers or dealers to sell notes for a commission, at no additional cost to us. Finally, as our servicing agent, Sumner Harrington Ltd. will be paid an additional and ongoing portfolio management fee that is based on the principal balance of the notes outstanding. See Description of the Notes Servicing Agent.

Under the Distribution and Management Agreement, we have also agreed to pay the selling agent an annual portfolio management fee equal to 0.25% of the weighted average principal balance of the notes outstanding for its services as servicing agent. See Description of the Notes Servicing Agent. The amount of this fee will depend upon a number of variables, including the pace at which notes are sold, the terms of the notes sold and whether the notes are redeemed or repurchased.

The distribution and management agreement may be terminated by either us or Sumner Harrington Ltd. upon giving prior notice.

The selling agent and we have engaged Sumner Harrington Agency, Inc., an advertising and marketing subsidiary of Sumner Harrington Ltd., to directly provide or manage the advertising and marketing functions related to the sale of the notes. These services include media planning, media buying, creative and copy development, direct mail services, literature fulfillment, commercial printing, list management, list brokering, and other similar activities. Sumner Harrington Agency, Inc. is compensated directly by us or its sub-service providers for these advertising and marketing services. This compensation is consistent with accepted normal advertising and marketing industry standards for similar services.

The selling agent and its affiliate will only be compensated to the extent that notes are sold in the offering. The table below summarizes the maximum possible amount of compensation that we will pay the selling agent and its affiliate for services rendered in offering and selling the notes, serving as the servicing agent, and providing and managing the advertising and marketing functions related to the sale of the notes. In no event will the compensation received by the sellin