

LEAP WIRELESS INTERNATIONAL INC  
Form 10-Q  
November 03, 2011

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended September 30, 2011

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number: 001-34865

Leap Wireless International, Inc.

(Exact name of registrant as specified in its charter)

Delaware

33-0811062

(State or other jurisdiction of

(I.R.S. Employer

incorporation or organization)

Identification No.)

5887 Copley Drive, San Diego, CA

92111

(Address of Principal Executive Offices)

(Zip Code)

(858) 882-6000

(Registrant's telephone number, including area code)

Not Applicable

(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

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Large accelerated filer  R      Accelerated filer  o      Non-accelerated filer  o      Smaller reporting company  o  
(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  o No  R

The number of shares outstanding of the registrant's common stock on October 28, 2011 was 78,712,785.

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LEAP WIRELESS INTERNATIONAL, INC.

QUARTERLY REPORT ON FORM 10-Q  
For the Quarter Ended September 30, 2011

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## PART I

## FINANCIAL INFORMATION

## Item 1. Financial Statements

## LEAP WIRELESS INTERNATIONAL, INC.

## CONDENSED CONSOLIDATED BALANCE SHEETS

(In thousands, except share amounts)

	September 30, 2011 (Unaudited)	December 31, 2010
Assets		
Cash and cash equivalents	\$424,739	\$350,790
Short-term investments	375,292	68,367
Inventories	88,303	104,241
Deferred charges	46,316	47,343
Other current assets	143,653	91,010
Total current assets	1,078,303	661,751
Property and equipment, net	1,929,498	2,036,645
Wireless licenses	1,940,824	1,968,075
Assets held for sale (Note 10)	30,409	—
Goodwill (Note 2)	31,654	31,094
Intangible assets, net	46,689	64,843
Other assets	62,770	72,415
Total assets	\$5,120,147	\$4,834,823
Liabilities and Stockholders' Equity		
Accounts payable and accrued liabilities	\$325,927	\$346,869
Current maturities of long-term debt	8,500	8,500
Other current liabilities	290,867	221,077
Total current liabilities	625,294	576,446
Long-term debt	3,218,856	2,832,070
Deferred tax liabilities	325,286	295,703
Other long-term liabilities	163,908	114,534
Total liabilities	4,333,344	3,818,753
Redeemable non-controlling interests	93,510	104,788
Commitments and contingencies (Note 14)		
Stockholders' equity:		
Preferred stock - authorized 10,000,000 shares, \$.0001 par value; no shares issued and outstanding	—	—
Common stock - authorized 160,000,000 shares, \$.0001 par value; 78,712,496 and 78,437,309 shares issued and outstanding at September 30, 2011 and December 31, 2010, respectively	8	8
Additional paid-in capital	2,176,730	2,155,712
Accumulated deficit	(1,482,747	) (1,243,740
Accumulated other comprehensive loss	(698	) (698
Total stockholders' equity	693,293	911,282

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Total liabilities and stockholders' equity	\$5,120,147	\$4,834,823
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See accompanying notes to condensed consolidated financial statements.

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## LEAP WIRELESS INTERNATIONAL, INC.

## CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

(Unaudited and in thousands, except per share data)

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2011	2010	2011	2010
Revenues:				
Service revenues	\$717,296	\$600,583	\$2,099,794	\$1,846,015
Equipment revenues	45,983	37,478	203,937	143,152
Total revenues	763,279	638,061	2,303,731	1,989,167
Operating expenses:				
Cost of service (exclusive of items shown separately below)	255,899	215,389	736,714	620,737
Cost of equipment	190,364	120,273	602,836	399,367
Selling and marketing	79,895	98,942	276,908	307,275
General and administrative	83,899	89,202	271,387	270,402
Depreciation and amortization	144,904	114,055	407,715	333,950
Impairments and other charges (Note 8)	23,693	477,327	24,324	477,327
Total operating expenses	778,654	1,115,188	2,319,884	2,409,058
Loss on sale or disposal of assets	(678)	(923)	(5,673)	(3,864)
Operating loss	(16,053)	(478,050)	(21,826)	(423,755)
Equity in net income (loss) of investees, net	764	(316)	2,953	1,142
Interest income	59	212	182	934
Interest expense	(67,028)	(60,471)	(187,770)	(181,062)
Other income, net	32	135	—	3,207
Loss before income taxes	(82,226)	(538,490)	(206,461)	(599,534)
Income tax (expense) benefit	(11,899)	5,154	(32,546)	(18,537)
Net loss	(94,125)	(533,336)	(239,007)	(618,071)
Accretion of redeemable non-controlling interests and distributions, net of tax	25,295	(2,947)	8,755	(4,484)
Net loss attributable to common stockholders	\$(68,830)	\$(536,283)	\$(230,252)	\$(622,555)
Loss per share attributable to common stockholders:				
Basic	\$(0.90)	\$(7.06)	\$(3.01)	\$(8.21)
Diluted	\$(0.90)	\$(7.06)	\$(3.01)	\$(8.21)
Shares used in per share calculations:				
Basic	76,537	75,965	76,470	75,869
Diluted	76,537	75,965	76,470	75,869

See accompanying notes to condensed consolidated financial statements.

## LEAP WIRELESS INTERNATIONAL, INC.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS  
(Unaudited and in thousands)

	Nine Months Ended September 30,	
	2011	2010
Operating activities:		
Net cash provided by operating activities	\$268,134	\$326,254
Investing activities:		
Acquisition of a business	(850 )	—
Purchases of property and equipment	(289,304 )	(298,927 )
Change in prepayments for purchases of property and equipment	(2,281 )	57
Purchases of wireless licenses and spectrum clearing costs	(3,535 )	(2,969 )
Proceeds from sales of wireless licenses and operating assets	1,887	—
Purchases of investments	(521,909 )	(481,435 )
Sales and maturities of investments	214,726	621,449
Purchase of membership units of equity investment	—	(967 )
Dividend received from equity investee	11,606	—
Change in restricted cash	(920 )	811
Net cash used in investing activities	(590,580 )	(161,981 )
Financing activities:		
Proceeds from issuance of long-term debt	396,772	—
Repayment of long-term debt	(15,089 )	(6,000 )
Payment of debt issuance costs	(7,177 )	—
Purchase of non-controlling interest	—	(24,161 )
Proceeds from issuance of common stock, net	712	660
Proceeds from sale lease-back financing	25,815	—
Other	(4,638 )	(1,476 )
Net cash provided by (used in) financing activities	396,395	(30,977 )
Net increase in cash and cash equivalents	73,949	133,296
Cash and cash equivalents at beginning of period	350,790	174,999
Cash and cash equivalents at end of period	\$424,739	\$308,295
Supplementary disclosure of cash flow information:		
Cash paid for interest	\$(123,653 )	\$(136,477 )
Cash paid for income taxes	\$(3,494 )	\$(3,022 )
Non-cash investing and financing activities:		
Contribution of wireless licenses in exchange for an equity interest	\$—	\$2,381

See accompanying notes to condensed consolidated financial statements.

LEAP WIRELESS INTERNATIONAL, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)

Note 1. The Company

Leap Wireless International, Inc. (“Leap”), a Delaware corporation, together with its subsidiaries and consolidated joint ventures, is a wireless communications carrier that offers digital wireless services in the United States under the “Cricket” brand. Cricket service offerings provide customers with unlimited nationwide wireless services for a flat rate without requiring a fixed-term contract or a credit check. The Company's primary service is Cricket Wireless, which offers customers unlimited nationwide voice and data services for a flat monthly rate. Leap conducts operations through its subsidiaries and has no independent operations or sources of income other than interest income and through dividends, if any, from its subsidiaries.

Cricket service is offered by Cricket Communications, Inc. (“Cricket”), a wholly-owned subsidiary of Leap. Cricket service is also offered in South Texas by the Company's joint venture, STX Wireless Operations, LLC (“STX Operations”), which Cricket controls through a 75.75% controlling membership interest in its parent company STX Wireless, LLC (“STX Wireless”). In addition, Cricket owns an 85% non-controlling membership interest in Savary Island Wireless, LLC (“Savary Island”), which holds wireless spectrum in the upper Midwest portion of the U.S. and which leases a portion of that spectrum to Cricket. For more information regarding the ventures described above, see “Note 10. Significant Acquisitions and Other Transactions.”

Leap, Cricket and their subsidiaries and consolidated joint ventures are collectively referred to herein as the “Company.”

Note 2. Basis of Presentation and Significant Accounting Policies

Basis of Presentation

The accompanying interim condensed consolidated financial statements have been prepared without audit, in accordance with the instructions to Form 10-Q and therefore do not include all information and footnotes required by accounting principles generally accepted in the United States of America (“GAAP”) for a complete set of financial statements. These condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and notes thereto included in the Company's Annual Report on Form 10-K for the year ended December 31, 2010. In the opinion of management, the unaudited financial information for the interim periods presented reflects all adjustments necessary for a fair presentation of the Company's results for the periods presented, with such adjustments consisting only of normal recurring adjustments. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities and the reported amounts of revenues and expenses. By their nature, estimates are subject to an inherent degree of uncertainty. Actual results could differ from management's estimates and operating results for interim periods are not necessarily indicative of operating results for an entire fiscal year.

Principles of Consolidation

The condensed consolidated financial statements include the operating results and financial position of Leap and its wholly-owned subsidiaries and consolidated joint ventures. The Company consolidates its non-controlling interest in Savary Island in accordance with the authoritative guidance for the consolidation of variable interest entities because Savary Island is a variable interest entity and, among other things, the Company has entered into an agreement with Savary Island's other member which establishes a specified purchase price in the event that it exercises its right to sell its membership interest to the Company. The Company consolidates STX Wireless in accordance with the



authoritative guidance for consolidations based on the voting interest model. All intercompany accounts and transactions have been eliminated in the condensed consolidated financial statements.

#### Segment and Geographic Data

The Company operates in a single operating segment and a single reporting unit as a wireless communications carrier that offers digital wireless services in the United States. As of and for the three and nine months ended September 30, 2011, all of the Company's revenues and long-lived assets related to operations in the United States.

## Revenues

The Company's business revenues principally arise from the sale of wireless services, devices (handsets and broadband modems) and accessories. Wireless services are provided primarily on a month-to-month basis. The Company's customers are required to pay for their service in advance and the Company does not require customers to sign fixed-term contracts or pass a credit check. Service revenues are recognized only after payment has been received and services have been rendered.

When the Company activates service for a new customer, it typically sells that customer a device along with a period of service. In accordance with the authoritative guidance for revenue arrangements with multiple deliverables, the sale of a device along with service constitutes a multiple element arrangement. Under this guidance, once a company has determined the fair value of the elements in the sales transaction, the total consideration received from the customer must be allocated among those elements on a relative fair value basis. Applying the guidance to these transactions results in the Company recognizing the total consideration received, less amounts allocated to the wireless service period (generally the customer's monthly rate plan), as equipment revenue.

Amounts allocated to equipment revenues and related costs from the sale of devices are recognized when service is activated by new customers. Revenues and related costs from the sale of devices and accessories to existing customers are recognized at the point of sale. The costs of devices and accessories sold are recorded in cost of equipment. In addition to devices that the Company sells directly to its customers at Cricket-owned stores, the Company sells devices to third-party dealers, including mass-merchant retailers. These dealers then sell the devices to the ultimate Cricket customer, similar to the sale made at a Cricket-owned store. Sales of devices to third-party dealers are recognized as equipment revenues only when service is activated by customers, since the level of price reductions and commissions ultimately available to such dealers is not reliably estimable until the devices are sold by such dealers to customers. Thus, revenues from devices sold to third-party dealers are recorded as deferred equipment revenue and the related costs of the devices are recorded as deferred charges upon shipment of the devices by the Company. The deferred charges are recognized as equipment costs when the related equipment revenue is recognized, which occurs when service is activated by the customer.

Through a third-party provider, the Company's customers may elect to participate in an extended warranty program for devices they purchase. The Company recognizes revenue on replacement devices sold to its customers under the program when the customer purchases the device.

Sales incentives offered to customers and commissions and sales incentives offered to the Company's third-party dealers are recognized as a reduction of revenue when the related service or equipment revenue is recognized. Customers have limited rights to return devices and accessories based on time and/or usage, and customer returns of devices and accessories have historically been insignificant.

Amounts billed by the Company in advance of customers' wireless service periods are not reflected in accounts receivable or deferred revenue since collectability of such amounts is not reasonably assured. Deferred revenue consists primarily of cash received from customers in advance of their service period and deferred equipment revenue related to devices sold to third-party dealers.

Universal Service Fund, E-911 and other telecommunications-related regulatory fees are assessed by various federal and state governmental agencies in connection with the services that the Company provides to its customers. Regulatory fees and telecommunications taxes collected from customers are recorded in service revenues and amounts owed and remitted to government agencies are recorded in cost of service. During the three and nine months ended September 30, 2011, the total amount of regulatory fees and telecommunications taxes separately billed and collected

from customers and recorded in service revenues was \$6.4 million and \$27.3 million, respectively. During the three and nine months ended September 30, 2010, the total amount of regulatory fees and telecommunications taxes separately billed and collected from customers and recorded in service revenues was \$28.9 million and \$89.7 million, respectively. Sales, use and excise taxes for all service plans are reported on a net basis.

#### Restricted Cash, Cash Equivalents and Short-Term Investments

The Company has set aside certain amounts of cash, cash equivalents and short term investments to satisfy certain contractual obligations and has classified such amounts as restricted in its condensed consolidated balance sheets. Restricted cash, cash equivalents and short-term investments are included in either other current assets or other assets, depending on the nature of the underlying contractual obligation. As of September 30, 2011, the Company had approximately \$3.6 million and \$8.7 million of restricted cash, cash equivalents and short-term investments, included in other current assets and other assets, respectively. As of December 31, 2010, the Company had approximately \$3.6 million and \$7.8 million of restricted cash, cash equivalents and short-term investments, included in other current assets and other assets, respectively.

## Goodwill

The Company records the excess of the purchase price over the fair value of net assets acquired in a business combination as goodwill. As of December 31, 2010, goodwill of \$31.1 million represented the excess of the purchase price over the fair values of the assets acquired (net of liabilities assumed, including the related deferred tax effects) by STX Wireless in connection with the formation of the joint venture. For more information regarding the joint venture, see "Note 10. Significant Acquisitions and Other Transactions."

On January 3, 2011, the Company acquired a customer assistance call center from various entities doing business as Pocket Communications ("Pocket") for \$850,000. The Company accounted for this transaction as a business purchase combination in accordance with the authoritative guidance for business combinations. A portion of the purchase price was assigned to property and equipment and the remaining amount was allocated to goodwill.

The following table summarizes the changes in the carrying amount of the Company's goodwill during the nine months ended September 30, 2011 (in thousands):

	Nine Months Ended September 30, 2011
Beginning balance, January 1	\$31,094
Goodwill acquired	560
Ending balance, September 30	\$31,654

## Impairment of Long-Lived Assets

The Company assesses potential impairments to its long-lived assets, including property and equipment and certain intangible assets, when there is evidence that events or changes in circumstances indicate that their respective carrying values may not be recoverable. An impairment loss may be required to be recognized when the undiscounted cash flows expected to be generated by a long-lived asset (or group of such assets) is less than its carrying value. Any required impairment loss would be measured as the amount by which the asset's carrying value exceeds its fair value and would be recorded as a reduction in the carrying value of the related asset and charged to results of operations. There were no events or circumstances that occurred during the nine months ended September 30, 2011 that indicated that the carrying value of any long-lived assets may not be recoverable.

In the third quarter of 2010, the Company evaluated certain network design, site acquisition and capitalized interest costs relating to the expansion of its network which had been accumulated in construction-in-progress. In August 2010, the Company entered into a wholesale agreement with an affiliate of Sprint Nextel to permit the Company to offer Cricket wireless services outside its current network footprint using Sprint's network. The Company believes that this agreement will allow it to strengthen and expand its distribution and provide it greater flexibility with respect to its network expansion plans. As a result, the Company determined to spend an increased portion of its planned capital expenditures on the deployment of next-generation LTE technology and to defer its previously planned network expansion activities. As a result of these developments, the costs previously accumulated in construction-in-progress were determined to be impaired and the Company recorded an impairment charge of \$46.5 million during the third quarter of 2010.

## Impairment of Indefinite-Lived Intangible Assets

The Company assesses potential impairments to its indefinite-lived intangible assets, including wireless licenses and goodwill, on an annual basis or when there is evidence that events or changes in circumstances indicate an impairment condition may exist. In addition, on a quarterly basis, the Company evaluates the triggering event criteria outlined in the authoritative guidance for goodwill and other intangible assets to determine whether events or changes in circumstances indicate that an impairment condition may exist. The Company's annual impairment test is conducted each year during the third quarter.

#### Wireless Licenses

The Company's wireless licenses in its operating markets are combined into a single unit of account for purposes of impairment testing because management believes that utilizing these wireless licenses as a group represents the highest and best use of the

assets, and the value of the wireless licenses would not be significantly impacted by a sale of one or a portion of the wireless licenses, among other factors. The Company's and Savary Island's non-operating licenses are tested for impairment on an individual basis because these licenses are not functioning as part of a group with licenses in the Company's operating markets. As of September 30, 2011, the carrying values of the Company's and Savary Island's operating and non-operating wireless licenses were \$1,778.6 million and \$162.2 million, respectively. An impairment loss would be recognized on the Company's operating wireless licenses when the aggregate fair value of the wireless licenses is less than their aggregate carrying value and is measured as the amount by which the licenses' aggregate carrying value exceeds their aggregate fair value. An impairment loss would be recognized on the Company's and Savary Island's non-operating wireless licenses when the fair value of a wireless license is less than its carrying value and is measured as the amount by which the license's carrying value exceeds its fair value. Any required impairment loss would be recorded as a reduction in the carrying value of the relevant wireless license and charged to results of operations.

The valuation method the Company uses to determine the fair value of its wireless licenses is the market approach. Under this method, the Company determines fair value by comparing its wireless licenses to sales prices of other wireless licenses of similar size and type that have been recently sold through government auctions and private transactions. As part of this market-level analysis, the fair value of each wireless license is also evaluated and adjusted for developments or changes in legal, regulatory and technical matters, and for demographic and economic factors, such as population size, unemployment rates, composition, growth rate and density, household and disposable income, and composition and concentration of the market's workforce in industry sectors identified as wireless-centric (e.g., real estate, transportation, professional services, agribusiness, finance and insurance).

Changes in comparable sales prices would generally result in a corresponding change in fair value. For example, a 10% decline in comparable sales prices would generally result in a 10% decline in fair value. However, a decline in comparable sales would likely require further adjustment to fair value to capture more recent macro-economic changes and changes in the demographic and economic characteristics unique to the Company's wireless licenses. Spectrum auctions and comparable sales transactions in recent periods have resulted in modest increases to the aggregate fair value of the Company's and Savary Island's wireless licenses. In addition, favorable developments in technical matters such as spectrum clearing and device availability have positively impacted the fair value of a significant portion of their wireless licenses. Partially offsetting these increases in value were demographic and economic-related adjustments that were required to capture current economic developments. These demographic and economic factors resulted in a decline in fair value for certain of the Company's and Savary Island's wireless licenses.

As of September 30, 2011, the aggregate fair value and carrying value of the Company's individual operating wireless licenses were \$2,453.0 million and \$1,778.6 million, respectively. No impairment charges were recorded during the three and nine months ended September 30, 2011 with respect to the Company's operating wireless licenses as the aggregate fair value of these licenses exceeded their aggregate carrying value. If the fair value of the Company's operating wireless licenses had declined by 10%, the Company would not have recognized any impairment loss.

As of September 30, 2011, the aggregate fair value and carrying value of the Company's and Savary Island's individual non-operating wireless licenses were \$246.8 million and \$162.2 million, respectively. The Company recorded an impairment charge of \$0.4 million during the three and nine months ended September 30, 2011 to reduce the carrying values of certain non-operating wireless licenses to their estimated fair values. If the fair value of the Company's and Savary Island's non-operating wireless licenses had each declined by 10%, the Company would have recognized an impairment loss of approximately \$2.2 million.

Goodwill

The Company assesses its goodwill for impairment annually at the reporting unit level by applying a fair value test. This fair value test involves a two-step process. The first step is to compare the book value of the Company's net assets to the fair value of such net assets. If the fair value is determined to be less than book value, a second step is performed to measure the amount of the impairment, if any.

In connection with the annual test in 2011, the Company based its determination of fair value primarily upon its average market capitalization for the month of August 2011, plus a control premium. Average market capitalization is calculated based upon the average number of shares of Leap common stock outstanding during such month and the average closing price of Leap common stock during such month. The Company considered the month of August to be an appropriate period over which to measure average market capitalization in 2011 because trading prices during that period reflected market reaction to the Company's most recently announced financial and operating results, announced early in the month of August.

**Fundamental Change Requires Purchase of Notes by Us at the Option of the Holder**

If a Fundamental Change (as defined below in this section) occurs at any time prior to maturity, holders will have the right, at their option, to require us to purchase for cash all or any portion of their notes that is equal to \$1,000 or an integral multiple of \$1,000. The cash price we are required to pay is equal to 100% of the principal amount of the notes to be purchased plus accrued and unpaid interest, including additional amounts, if any, to, but excluding, the Fundamental Change purchase date. For a discussion of the United States federal income tax treatment of a holder receiving cash upon requiring us to purchase the notes upon a Fundamental Change, see Certain United States Federal Income Tax Considerations.

A Fundamental Change will be deemed to have occurred at the time after the notes are originally issued that any of the following occurs:

(1) our common stock or other common stock into which the notes are convertible is neither listed for trading on a United States national securities exchange nor approved for trading on the Nasdaq National Market or another established automated over-the-counter trading market in the United States,

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(2) a person or group within the meaning of Section 13(d) of the Securities Exchange Act of 1934 other than us, our subsidiaries or our or their employee benefit plans, files a Schedule TO or any schedule, form or report under the Securities Exchange Act of 1934 disclosing that such person or group has become the direct or indirect ultimate beneficial owner, as defined in Rule 13d-3 under the Securities Exchange Act of 1934, of our common equity representing more than 50% of the voting power of our common equity entitled to vote generally in the election of directors,

(3) consummation of any share exchange, consolidation or merger of us pursuant to which our common stock will be converted into cash, securities or other property or any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of us and our subsidiaries, taken as a whole, to any person other than us or one or more of our subsidiaries; provided, however, that a transaction where the holders of our common equity immediately prior to such transaction have, directly or indirectly, more than 50% of the aggregate voting power of all classes of common equity of the continuing or surviving corporation or transferee entitled to vote generally in the election of directors immediately after such event shall not be a Fundamental Change, or

(4) continuing directors (as defined below in this section) cease to constitute at least a majority of our board of directors.

A Fundamental Change will not be deemed to have occurred in respect of any of the foregoing, however, if either:

(1) the last reported sale price of our common stock for any five trading days within the 10 consecutive trading days ending immediately before the later of the Fundamental Change or the public announcement thereof, equals or exceeds 105% of the conversion price of the notes in effect immediately before the Fundamental Change or the public announcement thereof, or

(2) at least 90% of the consideration, excluding cash payments for fractional shares, in the transaction or transactions constituting the Fundamental Change consists of shares of capital stock traded on a national securities exchange or quoted on the Nasdaq National Market or which will be so traded or quoted when issued or exchanged in connection with a Fundamental Change (these securities being referred to as publicly traded securities ) and as a result of this transaction or transactions the notes become convertible into such publicly traded securities, excluding cash payments for fractional shares.

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

Continuing director means a director who either was a member of our board of directors on October 7, 2003 or who becomes a member of our board of directors subsequent to that date and whose appointment, election or nomination for election by our stockholders is duly approved by a majority of the continuing directors on our board of directors at the time of such approval, either by a specific vote or by approval of the proxy statement issued by us on behalf of the board of directors in which such individual is named as nominee for director.

On or before the 30th day after the occurrence of a Fundamental Change, we will provide to all holders of the notes and the trustee and paying agent a notice of the occurrence of the Fundamental Change and of the resulting purchase right. Such notice shall state, among other things:



the events causing a Fundamental Change,

the date of the Fundamental Change,

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the last date on which a holder may exercise the purchase right,

the Fundamental Change purchase price,

the Fundamental Change purchase date,

the name and address of the paying agent and the conversion agent,

the conversion rate and any adjustments to the conversion rate,

the notes with respect to which a Fundamental Change purchase notice has been given by the holder may be converted only if the holder withdraws the Fundamental Change purchase notice in accordance with the terms of the indenture, and

the procedures that holders must follow to require us to purchase their notes.

Simultaneously with providing such notice, we will issue a press release and publish a notice containing this information in a newspaper of general circulation in The City of New York or publish the information on our website or through such other public medium as we may use at that time.

To exercise the purchase right, holders must deliver, on or before the 35th day after the date of our notice of a Fundamental Change, subject to extension to comply with applicable law, the notes to be purchased, duly endorsed for transfer, together with a written purchase notice and the form entitled *Form of Fundamental Change Purchase Notice* duly completed, to the paying agent. Their purchase notice must state:

if certificated, the certificate numbers of their notes to be delivered for purchase,

the portion of the principal amount of notes to be purchased, which must be \$1,000 or an integral multiple thereof, and

that the notes are to be purchased by us pursuant to the applicable provisions of the notes and the indenture.

If the notes are not in certificated form, their withdrawal notice must comply with appropriate DTC procedures.

Holders may withdraw any purchase notice (in whole or in part) by a written notice of withdrawal delivered to the paying agent prior to the close of business on the business day prior to the Fundamental Change purchase date. The notice of withdrawal shall state:

the principal amount of the withdrawn notes,

if certificated notes have been issued, the certificate numbers of the withdrawn notes, and

the principal amount, if any, which remains subject to the purchase notice.

If the notes are not in certificated form, their notice must comply with appropriate DTC procedures.

We will be required to purchase the notes no later than 35 business days after the date of our notice of the occurrence of the relevant Fundamental Change subject to extension to comply with applicable law. Holders will receive payment of the Fundamental Change purchase price promptly following the later of the Fundamental Change purchase date or the time of book-entry transfer or the delivery of the notes. If the paying agent holds money or securities sufficient to pay the Fundamental Change purchase price of the notes on the business day following the Fundamental Change purchase date, then:

the notes will cease to be outstanding and interest, including additional amounts, if any, will cease to accrue (whether or not book-entry transfer of the notes is made or whether or not the note is delivered to the paying agent), and

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all other rights of the holder will terminate (other than the right to receive the Fundamental Change purchase price upon delivery or transfer of the notes).

The rights of the holders to require us to purchase their notes upon a Fundamental Change could discourage a potential acquirer of us. The Fundamental Change purchase feature, however, is not the result of management's knowledge of any specific effort to accumulate shares of our common stock, to obtain control of us by any means or part of a plan by management to adopt a series of anti-takeover provisions. Instead, the Fundamental Change purchase feature is a standard term contained in other offerings of debt securities similar to the notes that have been marketed by certain of the initial purchasers. The terms of the Fundamental Change purchase feature resulted from negotiations between the initial purchasers and us.

The term Fundamental Change is limited to specified transactions and may not include other events that might adversely affect our financial condition. In addition, the requirement that we offer to purchase the notes upon a Fundamental Change may not protect holders in the event of a highly leveraged transaction, reorganization, merger or similar transaction involving us.

No notes may be purchased at the option of holders upon a Fundamental Change if there has occurred and is continuing an Event of Default other than an Event of Default that is cured by the payment of the Fundamental Change purchase price of the notes.

The definition of Fundamental Change includes a phrase relating to the conveyance, transfer, sale, lease or disposition of all or substantially all of our consolidated assets. There is no precise, established definition of the phrase substantially all under applicable law. Accordingly, the ability of a holder of the notes to require us to purchase its notes as a result of the conveyance, transfer, sale, lease or other disposition of less than all of our assets may be uncertain.

If a Fundamental Change were to occur, we may not have enough funds to pay the Fundamental Change purchase price. See Risk Factors under the caption Risks Related to the Notes. We may not have the ability to raise the funds necessary to purchase the notes upon a Fundamental Change or other purchase date, as required by the indenture governing the notes. Our failure to purchase the notes when required following a Fundamental Change will constitute an Event of Default under the indenture with respect to the notes. In addition, we have, and may in the future incur, other indebtedness with similar change in control provisions permitting holders to accelerate or to require us to purchase our indebtedness upon the occurrence of similar events or on some specific dates.

## **Certain Covenants**

**Limitations on Liens.** We covenant in the indenture that we will not, nor will we permit any Restricted Subsidiary to, issue, assume or guarantee any debt for money borrowed secured by a mortgage, security interest, pledge, lien or other encumbrance (including mortgages) upon any Principal Property of ours or any Restricted Subsidiary or upon any shares of stock or indebtedness of any Restricted Subsidiary without equally and ratably securing the notes. The foregoing restriction, however, will not apply to debt secured by:

mortgages on property, shares of stock or indebtedness of any corporation existing at the time it becomes a Restricted Subsidiary,

mortgages existing at the time of acquisition of property by us or a Restricted Subsidiary or mortgages to secure the payment of all or any part of the purchase price of, or improvements on, property upon the acquisition thereof,

mortgages to secure indebtedness of a Restricted Subsidiary to us or another Restricted Subsidiary,

mortgages existing at the date of the indenture,

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mortgages on property of a corporation existing at the time it is merged into or consolidated with us or a Restricted Subsidiary,

certain mortgages in favor of governmental entities, or

extensions, renewals or replacements (or successive extensions, renewals or replacements) of any mortgage referred to above.

We and our Restricted Subsidiaries will be permitted to issue, assume or guarantee debt for money borrowed secured by a mortgage without equally and ratably securing the notes if, after giving effect thereto, the aggregate amount of all debt so secured by mortgages (other than the mortgages listed above) together with the Attributable Debt of any lease arrangements described in the third bullet under **Limitation on Sale and Leaseback Transactions** does not exceed 10% of our Consolidated Net Tangible Assets.

***Limitation on Sale and Lease-Back Transactions.*** We covenant in the indenture that we will not, nor will we permit any Restricted Subsidiary to, enter into any arrangement with any person that provides for the leasing to us or any Restricted Subsidiary of any Principal Property which has been or is to be sold or transferred by us or such Restricted Subsidiary to such person, unless:

the lease is for a term of not more than three years;

the lease is between us and a Restricted Subsidiary or between Restricted Subsidiaries;

either we or such Restricted Subsidiary would be entitled pursuant to the covenant described under **Limitations on Liens** to incur indebtedness secured by a mortgage on the Principal Property at least equal in amount to the Attributable Debt in respect of such arrangement without equally and ratably securing the outstanding debt securities; or

we shall apply an amount equal to the greater of the net proceeds of such sale or the Attributable Debt in respect of such arrangement within 120 days after the effective date of the arrangement to the retirement of indebtedness that matures at or is extendable or renewable at our option to a date more than twelve months after the creation of such indebtedness.

***Certain Definitions.*** The term **Attributable Debt** means, at the time of determination, the lesser of:

the fair value of such property (as determined by our board of directors); or

the present value (discounted at the annual rate of 9%, compounded semi-annually) of the obligation of the lessee for net rental payments during the remaining term of the lease (including any period for which such lease has been extended).

The term **Consolidated Net Tangible Assets** means as of any particular time the aggregate amount of assets (less applicable reserves and other properly deductible items) after deducting therefrom:

all current liabilities except for

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notes and loans payable;

current maturities of long-term debt; and

current maturities of obligations under capital leases; and

all goodwill, tradenames, trademarks, patents, unamortized debt discount and expenses (to the extent included in said aggregate amount of assets) and other like intangibles, all as set forth on our most recent consolidated balance sheet and computed in accordance with generally accepted accounting principles.

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The term **Principal Property** means any manufacturing plant or manufacturing facility which is:

owned by us or any Restricted Subsidiary;

located within the continental United States; and

in the opinion of our board of directors materially important to the total business conducted by us and our Restricted Subsidiaries, taken as a whole.

The term **Restricted Subsidiary** means any Subsidiary:

substantially all the property of which is located within the continental United States; and

which owns any Principal Property;

provided, however, that the term **Restricted Subsidiary** shall not include any Subsidiary which is principally engaged in leasing or in financing receivables, or which is principally engaged in financing our operations outside the continental United States.

The term **Subsidiary** means any corporation more than 50% of the outstanding stock of which that ordinarily has voting power for the election of directors is owned, directly or indirectly, by us or by one or more other Subsidiaries, or by us and one or more other Subsidiaries.

**Consolidation, Merger and Sale of Assets**

The indenture generally permits us to consolidate with or merge with or into any other corporation, or to convey, transfer or lease our properties substantially as an entirety to, any person, or to acquire the properties and assets of another person substantially as an entirety, if:

either (1) we are the survivor of the merger or (2) the entity that survives the merger or is formed by the consolidation or acquires our assets is a corporation organized and existing under the laws of the United States or any State or the District of Columbia and assumes all of our obligations and covenants under the indenture, including payment obligations;

immediately after the transaction, no Event of Default exists and no event exists which, with the giving of notice or passage of time or both, would be an Event of Default; and

as a result of the transaction any of our properties or assets would become subject to a mortgage or other encumbrance not permitted by the indenture, we or such successor corporation or person, as the case may be, takes such steps as shall be necessary to secure the debt securities equally and ratably with or prior to all indebtedness secured thereby.



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However, certain of these transactions occurring prior to maturity could constitute a Fundamental Change (as defined above) permitting each holder to require us to purchase the notes of such holder as described above.

### **Events of Default**

If an Event of Default with respect to any notes occurs and is continuing, the trustee or the holders of at least 25% in aggregate principal amount of the notes may declare, by notice as provided in the indenture, the principal amount of all of the notes due and payable immediately, except that if an Event of Default occurs due to bankruptcy, insolvency or reorganization as provided in the indenture, then the principal of and accrued interest on the notes shall become due and payable immediately without any act by the trustee or any holder of notes. If all Events of Default with respect to the notes have been cured or waived, and all amounts due otherwise than because of the acceleration have been paid or deposited with the trustee, the holders of a majority in aggregate principal amount of the notes may rescind the acceleration and its consequences.

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The holders of a majority in aggregate principal amount of the notes may waive any past default with respect to the notes, and any Event of Default arising from a past default, except in the case of:

a default in the payment of the principal of or any premium or interest on any note; or

a default in respect of a covenant or provision that may not be amended or modified without the consent of the holder of each note.

Event of Default means the occurrence and continuance of any of the following events with respect to the notes:

failure to pay when due any interest, including additional amounts, if any, on the notes, continued for 30 days;

failure to pay when due the principal of and any premium on any note;

failure to perform when required any other covenant that applies to the notes and continuance of that failure for 60 days after written notice from the trustee or holders of 25% of the outstanding principal amount of the notes as provided in the indenture;

failure to pay when due, or acceleration, of any of our indebtedness in a principal amount in excess of \$10,000,000 if the indebtedness is not discharged, or the acceleration is not rescinded or annulled, within 10 days after written notice from the trustee or holders of 25% of the outstanding principal amount of the notes as provided in the indenture; and

certain events in bankruptcy, insolvency or reorganization.

The trustee is required, within 90 days after the occurrence of any continuing default that it knows of, to notify the holders of the notes of the default. However, unless the default is a payment default, the trustee may withhold the default notice if it in good faith decides that withholding the notice is in the holders' interests. In addition, in the case of any default referred to in the third event listed in the previous paragraph, the trustee will not give notice to holders until at least 30 days after the default occurs.

Subject to its duty to act with the required standard of care in the case of a default, the trustee is not obligated to exercise any of its rights or powers under the indenture at the request, order or direction of any holders of notes unless the holders offer the trustee reasonable indemnification. If reasonable indemnification is provided, then, subject to other limitations, the holders of a majority in aggregate principal amount of the notes may direct the time, method and place of conducting any proceeding for any remedy available to the trustee, or exercising any trust or power of the trustee, with respect to the notes.

No holder of a note may institute any action against us under the indenture, except actions for payment of overdue principal of, premium, if any, or interest on that note, unless:

the holder has previously given written notice to the trustee of a continuing Event of Default with respect to the notes;

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the holders of at least 25% in aggregate principal amount of the notes have previously made a written request of the trustee to institute that action and offered the trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with the request;

the trustee has not instituted the action within 60 days of the notice, request and offer of indemnity; and

the trustee has not received any inconsistent written request within that 60 day period from the holders of a majority in aggregate principal amount of the notes.

The indenture requires us to deliver to the trustee annual statements as to our compliance with all conditions and covenants under the indenture.

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A default in the payment of the notes, or a default with respect to the notes that causes them to be accelerated, may give rise to a cross-default under our credit facilities or other indebtedness.

## **Satisfaction and Discharge**

Except as described below we will be discharged from our obligations in respect of the notes on the 91st day after we deposit in trust with the trustee money and/or Government Obligations sufficient to pay the principal of, and any premium and interest on, the notes on the dates the payments are due if the following conditions have been satisfied:

the deposit will not result in a breach of or constitute a default under the indenture or any other agreement to which we are a party;

no Event of Default or event which, after notice or lapse of time or both, would become an Event of Default shall have occurred and be continuing; and

we have received from, or there has been published by, the United States Internal Revenue Service a ruling to the effect that the discharge will not cause the holders of the notes to recognize income, gain or loss for U.S. federal income tax purposes.

We would not, however, be discharged from the following obligations:

to register the transfer or exchange of notes;

to replace stolen, lost or mutilated notes;

to maintain offices and paying agencies; and

to hold moneys for payment in trust.

In addition to the above provisions, we will be released from any further obligations under the indenture with respect to the notes, except for obligations to register the transfer or exchange of notes and certain obligations to the trustee, when certain conditions are satisfied including that:

all notes either have been delivered to the trustee for cancellation or are due, or are to be called for redemption, within one year; and

with respect to all notes not previously delivered to the trustee for cancellation, we have deposited in trust with the trustee money sufficient to pay the principal of, and any premium and interest on, those notes on the dates the payments are due.

## **Legal Defeasance and Covenant Defeasance**

The notes are not subject to any defeasance provisions under the indenture.

**Modification and Waiver**

The indenture may be modified or amended with the consent of the holders of at least 66 <sup>2</sup>/<sub>3</sub>% in aggregate principal amount of the outstanding debt securities of each series affected by the modification or amendment. However, unless each holder to be affected by the proposed change consents, no modification or amendment may:

change the Stated Maturity of the principal of, or any installment of principal of or interest on, any outstanding debt security;

reduce the principal amount of, or the rate or amount of interest on, or any premium payable with respect to, any debt security;

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reduce the amount of principal of an Original Issue Discount Security that would be due and payable upon acceleration of the Original Issue Discount Security;

change the places or currency of payment of the principal of, or any premium or interest on, any debt security;

impair the right to sue for the enforcement of any payment of principal of, or any premium or interest on, any debt security on or after the date the payment is due;

reduce the percentage in aggregate principal amount of outstanding debt securities of any series necessary to:

modify or amend the indenture with respect to that series,

waive any past default or compliance with certain restrictive provisions; or

otherwise modify the provisions of the indenture concerning modification or amendment or concerning waiver of compliance with certain provisions of, or certain defaults and their consequences under, the indenture, except to:

increase the percentage of outstanding debt securities necessary to modify or amend the indenture or to give the waiver, or

provide that certain other provisions of the indenture cannot be modified or waived without the consent of the holder of each outstanding debt security affected by the modification or waiver.

The holders of at least 66<sup>2</sup>/<sub>3</sub>% in aggregate principal amount of the outstanding notes may waive our obligation to comply with certain restrictive provisions applicable to the notes.

The indenture may be modified or amended without the consent of any holder of outstanding debt securities for any of the following purposes:

to evidence that another corporation is our successor and has assumed our obligations with respect to the indenture and the debt securities;

to add to our covenants for the benefit of the holders of all or any series of debt securities or to surrender any of our rights or powers under the indenture;

to add any Events of Default to all or any series of debt securities;

to add to or change any provision of the indenture so as to permit or facilitate the issuance of debt securities in bearer form;

to change or eliminate any provision of the indenture in respect of one or more series of debt securities, so long as there is no outstanding debt security of any series entitled to the benefit of the provision;

to secure the debt securities;

to establish the form or terms of the debt securities of any series;

to provide for the appointment of a successor trustee with respect to the debt securities of one or more series and to add to or change any of the provisions to facilitate the administration of the trusts under the indenture by more than one trustee; or

to cure any ambiguity or inconsistency in the indenture or to make any other provisions with respect to matters or questions arising under the indenture, so long as the action does not adversely affect the interests of the holders of the debt securities of any series in any material respect.

### **Book-Entry System**

The notes are represented by global securities. Each global security was deposited with, or on behalf of, DTC and registered in the name of a nominee of DTC. Except under circumstances described below, the notes will not be issued in definitive form.

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Ownership of beneficial interests in a global security is limited to persons that have accounts with DTC or its nominee ( participants ) or persons that may hold interests through participants. Ownership of beneficial interests in a global security are shown on, and the transfer of that ownership will be effected only through, records maintained by DTC or its nominee (with respect to interests of persons other than participants). The laws of some states require that some purchasers of securities take physical delivery of the securities in definitive form. Such limits and such laws may impair the ability to transfer beneficial interests in a global security.

So long as DTC or its nominee is the registered owner of a global security, DTC or its nominee, as the case may be, will be considered the sole owner or holder of the notes represented by that global security for all purposes under the indenture. Except as provided below, owners of beneficial interests in a global security will not be entitled to have notes represented by that global security registered in their names, will not receive or be entitled to receive physical delivery of notes in definitive form and will not be considered the owners or holders thereof under the indenture. Principal and interest payments, if any, on notes registered in the name of DTC or its nominee will be made to DTC or its nominee, as the case may be, as the registered owner of the relevant global security. Neither we, the trustee, any paying agent or the security registrar for the notes have any responsibility or liability for any aspect of the records relating to nor payments made on account of beneficial interests in a global security or for maintaining, supervising or reviewing any records relating to such beneficial interests.

We expect that DTC or its nominee, upon receipt of any payment of principal or interest will credit immediately participants accounts with payments in amounts proportionate to their respective beneficial interests in the principal amount of the relevant global security as shown on the records of DTC or its nominee. We also expect that payments by participants to owners of beneficial interests in a global security held through these participants will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in street name, and will be the responsibility of the participants.

Beneficial owners of interests in global securities who desire to convert their interests into common stock should contact their brokers or other participants or indirect participants through whom they hold such beneficial interests to obtain information on procedures, including proper forms and cut-off times, for submitting requests for conversion.

Unless and until they are exchanged in whole or in part for notes in definitive form, the global securities may not be transferred except as a whole by DTC to a nominee of DTC or by a nominee of DTC to DTC or another nominee of DTC. Transfers between participants in DTC will be effected in the ordinary way in accordance with DTC rules and will be settled in same-day funds.

If DTC at any time is unwilling or unable to continue as a depository, defaults in the performance of its duties as depository or ceases to be a clearing agency registered under the Securities Exchange Act of 1934 or other applicable statute or regulation, and a successor depository is not appointed by us within 90 days, we will issue notes in definitive form in exchange for the global securities relating to the notes. In addition, we may at any time and in our sole discretion determine not to have the notes or portions of the notes represented by one or more global securities and, in that event, will issue individual notes in exchange for the global security or securities representing the notes. Further, if we so specify with respect to any notes, an owner of a beneficial interest in a global security representing the notes may, on terms acceptable to us and the depository for the global security, receive individual notes in exchange for the beneficial interest. In any such instance, an owner of a beneficial interest in a global security will be entitled to physical delivery in definitive form of notes represented by the global security equal in principal amount to the beneficial interest, and to have the notes registered in its name. Notes so issued in definitive form will be issued as registered notes in denominations of \$1,000 and integral multiples thereof, unless otherwise specified by us.



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### **The Trustee**

The Bank of New York is the initial trustee, conversion agent, paying agent, transfer agent and registrar with respect to the notes. We and certain of our affiliates maintain banking and borrowing relations with The Bank of New York. The address of the trustee is 101 Barclay Street, New York, New York 10286.

### **Governing Law**

The indenture and the notes are governed by, and will be construed in accordance with, the laws of the State of New York of the United States of America.

### **Registration Rights**

On October 10, 2003, we entered into a registration rights agreement with the initial purchasers of the notes for the benefit of such initial purchasers and qualified institutional buyers that purchase the notes and the common stock issuable upon conversion thereof in connection with the private offering. Under this agreement, we agreed to file, on or prior to the 90th day after the date of original issuance of the notes, a shelf registration statement with the SEC covering resales of the notes and the common stock issuable upon conversion thereof. We have timely filed with the SEC a registration statement, of which this prospectus is a part, to satisfy the filing obligation under the registration rights agreement. Under the registration rights agreement, we also agreed to, at our cost, use our reasonable best efforts to:

cause the shelf registration statement to be declared effective under the Securities Act of 1933 no later than 180 days after the earliest date of original issuance of the notes, and

keep the shelf registration statement effective after its effective date until the earliest to occur of the following:

the sale pursuant to the registration statement of all of the notes and the common stock issuable upon conversion of the notes registered thereunder,

the date on which all registrable securities, as defined below, have been sold pursuant to Rule 144 under the Securities Act of 1933,

such time as there are no longer any registrable securities outstanding, and

October 10, 2005, which is the second anniversary of the date of original issuance of the notes.

The registration rights agreement defines registrable securities as the notes and the common stock issuable upon conversion of the notes, except that notes and common stock issuable upon conversion of the notes shall cease to be registrable securities when (a) they have been disposed of pursuant to an effective registration statement, (b) they have been distributed to the public pursuant to Rule 144 under the Securities Act of 1933

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or may be sold pursuant to Rule 144(k) under the Securities Act of 1933 or (c) they cease to be outstanding. **Accordingly, upon a sale or other transfer of any notes, or common stock issued upon conversion of the notes, pursuant to the registration statement of which this prospectus is a part, such notes or common stock, as the case may be, shall cease to be registrable securities and the holders thereof will not be entitled to require us to register those notes or common stock, as the case may be, under the Securities Act of 1933. In addition, our obligation to pay additional amounts, if any, in respect of any notes or common stock issuable upon conversion of the notes will terminate when such notes or common stock, as the case may be, cease to be registrable securities.**

We are permitted to suspend the effectiveness of the shelf registration statement or the use of this prospectus during specified periods (not to exceed 45 consecutive days or an aggregate of 90 days in any consecutive 12-month period) in specified circumstances, including circumstances relating to pending corporate developments, without being required to pay additional amounts. We need not specify the nature of the event giving rise to a suspension in any notice to the holders of the notes of the existence of a suspension.

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If:

the shelf registration statement is not declared effective by the SEC within 180 days following the date of original issuance of the notes,

after effectiveness of the shelf registration statement, we fail to file a prospectus supplement or report with the SEC within five business days (or, if a post-effective amendment to the shelf registration statement is required, file a post-effective amendment within 10 business days) after a holder of registrable securities provides us with a Selling Securityholder Notice and Questionnaire, if such filing is necessary to enable such holder to deliver this prospectus to purchasers of such holder's registrable securities,

the registration statement ceases to be effective or fails to be usable without being succeeded within 30 days by a post-effective amendment, prospectus supplement or report filed with the SEC pursuant to the Securities Exchange Act of 1934 that cures the failure of the registration statement to be effective or usable or by an additional registration statement filed and declared effective, or

the aggregate duration of any suspension periods in any period exceeds the limits described above,

then, in each case, we will pay additional amounts, until such failure is cured, with respect to all notes that are registrable securities equal to 0.25% of the aggregate principal amount of such notes per annum for the first 90 days following such failure, increasing by 0.25% per annum at the beginning of the subsequent 90-day period. With respect to shares of common stock that are registrable securities that were issued upon conversion of notes, we will pay additional amounts equal to 0.25% per annum of the then applicable conversion price for the first 90 days, increasing by 0.25% per annum at the beginning of the subsequent 90-day period. Additional amounts on the registrable securities will not, however, exceed 0.50% per annum at any time. Any additional amounts due will be payable in cash semiannually in arrears on the same dates as the interest payment dates for the notes.

The term "applicable conversion price" means, as of any date of determination, \$1,000 principal amount of notes divided by the conversion rate in effect as of such date of determination or, if no notes are then outstanding, the conversion rate that would be in effect were notes then outstanding.

The foregoing summary of certain provisions of the registration rights agreement is not complete and is subject to, and is qualified entirely by reference to, the provisions of the registration rights agreement, a copy of which is filed as an exhibit to the registration statement.

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**DESCRIPTION OF OUR COMMON STOCK**

The following is a brief description of our common stock:

**Dividend Rights**

Each share of our common stock ranks equally with all other shares of our common stock with respect to dividends. Dividends may be declared by our board of directors and paid by us at such times as the board of directors determines, all pursuant to the provisions of the New Jersey Business Corporation Act.

**Voting Rights**

Each holder of our common stock is entitled to one vote per share. Our common stock does not have cumulative voting rights. Holders of our common stock are entitled to vote on all matters requiring shareholder approval under New Jersey law and our restated certificate of incorporation and amended and restated bylaws, and to elect the members of the board of directors. Directors are divided into three classes, with each class, as nearly as possible, having the same number of directors. At each annual meeting of the shareholders, the directors chosen to succeed those whose terms have then expired are identified as being of the same class as the directors they succeeded and are elected by the shareholders for a term expiring at the third succeeding annual meeting of shareholders.

**Liquidation Rights**

Holders of our common stock are entitled to receive all assets that remain after payment to creditors and holders of preferred stock.

**Preemptive or Other Rights**

Holders of our common stock are not entitled to preemptive rights. There are no provisions for redemption, conversion rights, sinking funds, or liability for further calls or assessments by us with respect to our common stock.

**Anti-Takeover Protection**

Under the New Jersey Shareholders Protection Act, shareholders owning 10% or more of the voting power of some New Jersey corporations, including us, are prohibited from engaging in mergers or other business combination transactions with the corporation for a period of five years, or longer in some circumstances, after the shareholder first acquired at least 10% of the voting power. These restrictions are subject to important

exceptions.

**Transfer Agent and Registrar**

Equiserve Trust Company, N.A. serves as the registrar and transfer agent for our common stock.

**Stock Exchange Listing**

Our common stock is listed on the New York Stock Exchange. The trading symbol for our common stock on this exchange is EK.

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**CERTAIN UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS**

The following is a general discussion of certain U.S. federal income tax considerations to a holder of a note with respect to the purchase, ownership and disposition of the notes and, with respect to non-U.S. holders (as defined below), of our common stock acquired upon conversion of a note. This summary is generally limited to holders that hold the notes as capital assets (generally, property held for investment) for U.S. federal income tax purposes. This discussion does not describe all of the U.S. federal income tax consequences that may be relevant to a holder in light of its particular circumstances or to holders subject to special rules, such as tax-exempt organizations, holders subject to the U.S. federal alternative minimum tax, dealers in securities, financial institutions, insurance companies, regulated investment companies, certain former citizens or former long-term residents of the United States, partnerships or other pass-through entities, U.S. holders (as defined below) whose functional currency is not the U.S. dollar and persons that hold the notes in connection with a straddle, hedging, conversion or other risk reduction transaction.

The U.S. federal income tax considerations set forth below are based upon the Internal Revenue Code of 1986, as amended (the Code), Treasury regulations promulgated thereunder, court decisions, and rulings and pronouncements of the Internal Revenue Service, referred to as the IRS, now in effect, all of which are subject to change. Prospective investors should particularly note that any such change could have retroactive application so as to result in U.S. federal income tax consequences different from those discussed below. We have not sought any ruling from the IRS with respect to statements made and conclusions reached in this discussion and there can be no assurance that the IRS will agree with such statements and conclusions.

As used herein, the term U.S. holder means a beneficial owner of a note that is for U.S. federal income tax purposes:

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

a corporation, or other entity taxable as a corporation for U.S. federal income tax purposes, created or organized in or under the laws of the United States, any state thereof or the District of Columbia;

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

a trust, if a court within the United States is able to exercise primary supervision over its administration and one or more United States persons have authority to control all of its substantial decisions, or if the trust has a valid election in effect under applicable Treasury regulations to be treated as a United States person.

As used herein, the term non-U.S. holder means a beneficial owner of a note that is not a U.S. holder.

If a partnership is a beneficial owner of a note, the tax treatment of a partner in the partnership will generally depend upon the status of the partner and the activities of the partnership. A beneficial owner that is a partnership and partners in such a partnership should consult their tax advisors about the U.S. federal income tax consequences of the purchase, ownership and disposition of the notes. This discussion does not address the tax consequences arising under any state, local or foreign law. In addition, this summary does not consider the effect of the U.S. federal estate or gift tax laws (except as set forth below with respect to certain U.S. federal estate tax consequences to non-U.S. holders).

**Investors considering the purchase of the notes should consult their own tax advisors with respect to the application of the U.S. federal income tax laws to their particular situations as well as any tax consequences arising under the U.S. federal estate or gift tax laws or under the laws of any state, local or foreign taxing jurisdiction or under any applicable tax treaty.**

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### **U.S. Holders**

#### *Payments of Interest*

A U.S. holder will be required to recognize as ordinary income any interest paid or accrued on the notes (including any accrued and unpaid interest deemed to have been paid in our common stock upon conversion), in accordance with the holder's regular method of tax accounting.

#### *Sale, Exchange, Conversion or Redemption of Notes*

A U.S. holder generally should not recognize income, gain or loss upon conversion of the notes into our common stock, except with respect to any amounts received which are attributable to accrued interest (which will, as discussed above, be treated as such) or cash received in lieu of fractional shares. The U.S. holder's tax basis in the common stock received on conversion should be the same as the holder's adjusted tax basis in the notes exchanged therefor at the time of conversion (reduced by any tax basis allocable to a fractional share), and the holding period for the common stock received on conversion should include the holding period of the notes that were converted. However, a U.S. holder's tax basis in common stock attributable to accrued and unpaid interest should be equal to the amount of such accrued and unpaid interest and the holding period for common stock attributable to accrued and unpaid interest may likely begin no earlier than the date the interest accrued and may begin as late as on the day following the date of conversion. Cash received in lieu of a fractional share of common stock upon conversion of the notes will generally be treated as a payment in exchange for the fractional share of common stock. Accordingly, the receipt of cash in lieu of a fractional share of common stock generally will result in capital gain or loss (subject to the market discount provisions, as discussed below) measured by the difference between the cash received for the fractional share and the U.S. holder's adjusted tax basis in the fractional share and will be long-term capital gain or loss if the holder held the note for more than one year at the time of such conversion.

A U.S. holder generally will recognize capital gain or loss upon a sale, exchange, purchase by us at the option of the holder, redemption, retirement at maturity, or other taxable disposition of a note. The U.S. holder's gain or loss will equal the difference between the proceeds received by the holder (other than proceeds attributable to accrued interest, which will be treated as such) and the holder's adjusted tax basis in the note. The proceeds received by a U.S. holder will include the amount of any cash and the fair market value of any other property received for the note. A U.S. holder's adjusted tax basis in a note generally will equal the cost of the note to that holder increased by any market discount previously included in income by the holder and reduced by any amortized Section 171 premium (as discussed below). The gain or loss recognized by a U.S. holder on a disposition of the note will be long-term capital gain or loss (subject to the market discount provisions, as discussed below) if the holder held the note for more than one year. Long-term capital gains of noncorporate taxpayers are generally taxed at a lower maximum marginal tax rate than the maximum marginal tax rate applicable to ordinary income. The deductibility of capital losses is subject to limitations.

#### *Market Discount*

If a U.S. holder purchases a note for an amount that is less than its stated redemption price at maturity, the amount of the difference will be treated as "market discount" for U.S. federal income tax purposes, unless this difference is less than a specified de minimis amount. Subject to a limited exception, the market discount provisions generally require a U.S. holder who acquires a note at a market discount to treat as ordinary income any gain recognized on the disposition of that note to the extent of the accrued market discount on that note at the time of maturity or disposition, unless the U.S. holder elects to include accrued market discount in income over the life of the note.



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This election to include market discount in income over the life of the note, once made, applies to all market discount obligations acquired on or after the first taxable year to which the election applies and may not be revoked without the consent of the IRS. In general, market discount will be treated as accruing on a straight-line basis over the remaining term of the note at the time of acquisition, or, at the election of the U.S. holder, under a

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constant-yield method. If an election is made to accrue market discount under a constant-yield method, it will apply only to the note with respect to which it is made, and may not be revoked. A U.S. holder who acquires a note at a market discount and who does not elect to include accrued market discount in income over the life of the note may be required to defer the deduction of a portion of the interest on any indebtedness incurred or maintained to purchase or carry the note until maturity or until the note is disposed of in a taxable transaction. If a U.S. holder acquires a note with market discount and receives common stock upon conversion of the note, the amount of accrued market discount not previously included in income with respect to the converted note through the date of conversion should be treated as ordinary income when the holder disposes of the common stock.

### *Amortizable Bond Premium*

A U.S. holder who purchases a note at a premium over its stated principal amount, plus accrued interest, generally may elect to amortize that premium, referred to as Section 171 premium, from the purchase date to the note's maturity date under a constant-yield method that reflects semiannual compounding based on the note's payment period, with a corresponding decrease in tax basis. Section 171 premium, however, will not include any premium attributable to a note's conversion feature. In general, the Section 171 premium attributable to the conversion feature is the excess, if any, of the note's purchase price over what the note's fair market value would be if there were no conversion feature. Amortized Section 171 premium is treated as an offset to interest income on a note and not as a separate deduction. The election to amortize Section 171 premium under the constant-yield method, once made, applies to all debt obligations held or subsequently acquired by the electing U.S. holder on or after the first day of the first taxable year to which the election applies and may not be revoked without the consent of the IRS.

### *Adjustment of Conversion Rate*

The conversion rate of the notes is subject to adjustment under certain circumstances. See *Description of the Notes Conversion Rights Conversion Rate Adjustments*. Certain adjustments to (or the failure to make such adjustments to) the conversion rate of the notes that increase the proportionate interest of U.S. holders in our assets or earnings and profits may result in a taxable constructive distribution to the holders of the notes, whether or not the holders ever convert the notes. This could occur, for example, if the conversion rate is adjusted to compensate holders of notes for certain distributions of cash or property to our stockholders. Such a constructive distribution will be treated as a dividend, resulting in income to the extent of our current or accumulated earnings and profits, as determined under U.S. federal income tax principles. As a result, U.S. holders of notes could have taxable income as a result of an event pursuant to which they receive no cash or property.

## **Non-U.S. Holders**

### *Payments of Interest*

Generally, payments of interest on the notes to, or on behalf of, a non-U.S. holder will be considered *portfolio interest* and will not be subject to U.S. federal income or withholding tax provided such interest is not effectively connected with the conduct of a trade or business within the United States by such non-U.S. holder and:

such non-U.S. holder does not actually or by attribution own 10% or more of the total combined voting power of all classes of our stock entitled to vote;

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such non-U.S. holder is not a controlled foreign corporation for U.S. federal income tax purposes that is related to us, actually or by attribution, through stock ownership;

such non-U.S. holder is not a bank receiving interest described in Section 881(c)(3)(A) of the Code; and

the certification requirements, as described below, are satisfied.

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To satisfy the certification requirements referred to above, either (i) the beneficial owner of a note must certify, on IRS Form W-8BEN under penalties of perjury, to us or our paying agent, as the case may be, that such owner is not a United States person and must provide such owner's name, address, taxpayer identification number, if any, and certain other information or (ii) a securities clearing organization, bank or other financial institution that holds customer securities in the ordinary course of its trade or business, referred to as a Financial Institution, and holds the note on behalf of the beneficial owner thereof must certify, under penalties of perjury, to us or our paying agent, as the case may be, that such certificate has been received from the beneficial owner and generally must furnish the payor with a copy thereof. Special certification rules apply for notes held by foreign partnerships and other intermediaries.

If interest on the note is effectively connected with the conduct of a trade or business in the United States by a non-U.S. holder (and, if certain tax treaties apply, is attributable to a U.S. permanent establishment maintained by the non-U.S. holder in the United States), the non-U.S. holder, although exempt from U.S. federal withholding tax (provided that the certification requirements discussed in the next sentence are met), will generally be subject to U.S. federal income tax on such interest on a net income basis in the same manner as if it were a U.S. holder. In order to claim an exemption from withholding tax, such a non-U.S. holder will be required to provide us with a properly executed IRS Form W-8ECI certifying, under penalties of perjury, that the holder is not a United States person and the interest is effectively connected with the holder's conduct of a U.S. trade or business and is includible in the holder's gross income. In addition, if such non-U.S. holder engaged in a U.S. trade or business is a foreign corporation, it may be subject to a branch profits tax equal to 30% (or such lower rate provided by an applicable treaty) of its effectively connected earnings and profits for the taxable year, subject to certain adjustments.

Interest on notes not effectively connected with a U.S. trade or business and not excluded from U.S. federal withholding tax under the portfolio interest exception described above generally will be subject to withholding at a 30% rate, except where a non-U.S. holder can claim the benefits of an applicable tax treaty to reduce or eliminate such withholding tax and certifies, under penalties of perjury, as to such eligibility by executing an IRS Form W-8BEN.

### *Conversion of the Notes*

A non-U.S. holder generally will not be subject to U.S. federal income or withholding tax on the conversion of a note into our common stock. To the extent a non-U.S. holder receives cash in lieu of a fractional share of common stock, such cash may give rise to gain that would be subject to the rules described below with respect to the sale or exchange of a note or common stock. See *Sale or Exchange of the Notes or Common Stock* below.

### *Adjustment of Conversion Rate*

The conversion rate of the notes is subject to adjustment in certain circumstances. Any such adjustment could, in certain circumstances, give rise to a deemed distribution to non-U.S. holders of the notes which could be treated as a dividend for U.S. federal income tax purposes. See *U.S. Holders' Adjustment of Conversion Rate* above. In such case, the deemed dividend would be subject to the rules below regarding withholding of U.S. federal tax on dividends in respect of common stock. See *Dividends on Common Stock* below.

### *Sale or Exchange of the Notes or Common Stock*

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A non-U.S. holder generally will not be subject to U.S. federal income or withholding tax on gain realized on the sale, exchange, purchase by us at the option of the holder, redemption, retirement at maturity, or other disposition of a note or of common stock received upon conversion thereof unless:

the holder is an individual who was present in the United States for 183 days or more during the taxable year of the disposition and certain other conditions are met;

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the gain is effectively connected with the conduct of a U.S. trade or business by the non-U.S. holder (and, if required by a tax treaty, the gain is attributable to a permanent establishment maintained in the United States); or

we are a United States real property holding corporation at any time within the shorter of the five year period preceding such disposition or such holder's holding period. If we are, or were to become a United States real property holding corporation, a non-U.S. holder might be subject to U.S. federal income and, in certain circumstances, withholding tax with respect to gain recognized on the disposition of notes or shares of common stock. We do not believe that we are or have been, and do not anticipate that we will become, a United States real property holding corporation.

### *Dividends on Common Stock*

If, after a non-U.S. holder converts a note into common stock, we make distributions on our common stock, the distributions will constitute a dividend for U.S. federal income tax purposes to the extent of our current or accumulated earnings and profits, as determined under U.S. federal income tax principles. Except as described below, dividends paid on common stock held by a non-U.S. holder will be subject to U.S. federal withholding tax at a rate of 30% or lower treaty rate, if applicable. A non-U.S. holder generally will be required to satisfy certain IRS certification requirements in order to claim a reduction of or exemption from withholding under a tax treaty by filing IRS Form W-8BEN upon which the non-U.S. holder certifies, under penalties of perjury, its status as a non-United States person and its entitlement to the lower treaty rate with respect to such payments.

If dividends paid to a non-U.S. holder are effectively connected with the conduct of a U.S. trade or business by the non-U.S. holder and, if required by a tax treaty, the dividends are attributable to a permanent establishment maintained in the United States, we and other payors generally are not required to withhold tax from the dividends, provided that the non-U.S. holder furnishes to us a valid IRS Form W-8ECI certifying, under penalties of perjury, that the holder is not a United States person, and the dividends are effectively connected with the holder's conduct of a U.S. trade or business and are includible in the holder's gross income. Effectively connected dividends will be subject to U.S. federal income tax on a net income basis in the same manner that applies to United States persons generally (and, with respect to a non-U.S. holder that is a foreign corporation, under certain circumstances, the 30% branch profits tax, as discussed above).

### *U.S. Estate Tax*

Notes owned or treated as owned by an individual who is not a citizen or resident (as specifically defined for U.S. federal estate tax purposes) of the United States at the time of death, referred to as a nonresident decedent, will not be includible in the nonresident decedent's gross estate for U.S. federal estate tax purposes as a result of such nonresident decedent's death, provided that, at the time of death, the nonresident decedent does not own, actually or by attribution, 10% or more of the total combined voting power of all classes of our stock entitled to vote and payments with respect to such notes would not have been effectively connected with the conduct of a U.S. trade or business by the nonresident decedent.

Common stock owned or treated as owned by a nonresident decedent (or common stock previously held by such an individual who transferred the stock subject to certain retained rights or powers) will be includible in the nonresident decedent's gross estate for U.S. federal estate tax purposes as a result of the nonresident decedent's death. Subject to applicable treaty limitations, if any, a nonresident decedent's estate may be subject to U.S. federal estate tax on property includible in the estate for U.S. federal estate tax purposes.

**The preceding discussion of certain U.S. federal income tax and certain U.S. estate tax consequences is for general information only and is not tax advice. Accordingly, you should consult your own tax adviser as to the particular tax consequences to you of purchasing,**

**holding and disposing of the notes and our common stock, including the applicability and effect of any state, local or foreign tax laws, and of any proposed changes in applicable laws.**

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**Backup Withholding Tax and Information Reporting**

We will comply with applicable information reporting requirements with respect to payments on the notes and our common stock. A U.S. holder may be subject to United States federal backup withholding tax at the applicable statutory rate with respect to payments of interest and dividends on, and proceeds from the disposition of, notes and common stock if the U.S. holder fails to supply an accurate taxpayer identification number or otherwise fails to comply with applicable United States information reporting or certification requirements. A non-U.S. holder may be subject to United States backup withholding tax unless the non-U.S. holder complies with certification procedures to establish that it is not a United States person and certain other conditions are met. Any amounts so withheld will be allowed as a credit against a holder's United States federal income tax liability and may entitle a holder to a refund, provided the required information is timely furnished to the IRS.



**Table of Contents****SELLING SECURITYHOLDERS**

We originally issued the notes in a transaction exempt from or not subject to registration under the Securities Act of 1933. The notes and the common stock issuable upon conversion thereof that may be offered under this prospectus will be offered by the selling securityholders, which includes their donees, pledgees, transferees and other successors-in-interest. Only those notes and shares of common stock issuable upon conversion thereof listed below may be offered for resale by the selling securityholders pursuant to this prospectus.

The following table sets forth certain information, as of March 23, 2004, regarding the principal amount of notes beneficially owned by each selling securityholder and the number of shares of common stock issuable upon conversion of those notes that may be offered from time to time pursuant to this prospectus. We have prepared this table based on information given to us by each selling securityholder listed below prior to the date hereof.

The percentage of notes outstanding beneficially owned by each selling securityholder is based on \$575,000,000 aggregate principal amount of notes outstanding. The number of shares of common stock owned prior to the offering does not include shares of common stock issuable upon conversion of the notes. The number of shares of common stock shown in the table below assumes conversion of the full amount of notes held by such holder at the initial conversion rate of 32.2373 shares per \$1,000 principal amount of notes. This conversion rate is subject to adjustment as described under Description of the Notes Conversion Rights. Accordingly, the number of shares of common stock issuable upon conversion of the notes may increase or decrease from time to time. Under the terms of the indenture, fractional shares will not be issued upon conversion of the notes. Cash will be paid instead of fractional shares, if any.

<b>Name of Selling Securityholder</b>	<b>Principal Amount of Notes Beneficially Owned that May be Sold</b>	<b>Percentage of Notes Outstanding</b>	<b>Number of Shares of Common Stock Owned Prior to the Offering(1)</b>	<b>Number of Shares of Common Stock that May be Sold(2)</b>	<b>Percentage of Common Stock Outstanding(3)</b>
ACIG Insurance Company	\$ 600,000	*	0	19,342	*
AG Domestic Convertibles, L.P.	7,500,000	1.30%	0	241,779	*
AG Offshore Convertibles, LTD	14,000,000	2.43%	0	451,322	*
Akela Capital Master Fund, Ltd.	10,000,000	1.74%	0	322,373	*
Alexandria Global Master Fund, LTD.	5,000,000	*	0	161,186	*
American Fidelity Assurance Co.	530,000	*	0	17,085	*
American Investors Life Insurance Company	700,000	*	0	22,566	*
American Skandia Trust	200,000	*	0	6,447	*
Amerisure Mutual Insurance Company	260,000	*	0	8,381	*
AmerUs Life Insurance Company	5,250,000	*	0	169,245	*
Arbitex Master Fund, L.P.	11,200,000	1.95%	0	361,057	*
Arkansas PERS	765,000	*	0	24,661	*
Astrazeneca Holdings Pension	345,000	*	0	11,121	*
Attorney s Title Insurance Fund	75,000	*	0	2,417	*
B.C. McCabe Foundation	150,000	*	0	4,835	*
Bank of America Pension Plan	3,000,000	*	0	96,711	*

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Bankers Life Insurance Company of New York	100,000	*	0	3,223	*
Barclays Global Investors Limited	500,000	*	0	16,118	*
Bear Stearns & Co. Inc.	2,500,000	*	82,500(4)	80,593	*
BNP Paribas Arbitrage	10,000,000	1.74%	0	322,373	*
Boilermakers Blacksmith Pension Trust	975,000	*	0	31,431	*
BP Amoco PLC Master Trust	625,000	*	0	20,148	*
Buckeye State Mutual Insurance Co.	35,000	*	0	1,128	*
California State Auto Assoc ASN0002902	55,000	*	0	1,773	*
California State Auto Assoc Inter-Insurance	335,000	*	0	10,799	*
California State Auto Assoc Retirement Pension Plan	60,000	*	0	1,934	*
Canyon Capital Arbitrage Master Fund, Ltd.	750,000	*	0	24,177	*
Canyon Value Realization Fund (Cayman), Ltd.	1,025,000	*	0	33,043	*
Canyon Value Realization Fund, L.P.	375,000	*	0	12,088	*
Canyon Value Realization Mac 18, Ltd. (RMF)	150,000	*	0	4,835	*
Century National Insurance Company	1,400,000	*	0	45,132	*
Century Park Trust	1,000,000	*	0	32,237	*
Charitable Convertible Securities Fund	490,000	*	0	15,796	*
Charitable Income Fund	150,000	*	0	4,835	*

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Name of Selling Securityholder	Principal Amount of Notes Beneficially Owned that May be Sold	Percentage of Notes Outstanding	Number of Shares of		Percentage of Common Stock Outstanding(3)
			Common Stock Owned Prior to the Offering(1)	Number of Shares of Common Stock that May be Sold(2)	
Cheyne Fund LP	3,014,000	*	0	97,163	*
Cheyne Leveraged Fund LP	1,991,000	*	0	64,184	*
Chicago Mutual Insurance Co.	70,000	*	0	2,256	*
Christus Health Liability Retention Trust	260,000	*	0	8,381	*
Chrysler Corporation Master Retirement Trust	1,640,000	*	0	52,869	*
Chrysler Insurance Company	2,000,000	*	0	64,474	*
CIP Limited Duration Company	319,000	*	0	10,283	*
Citigroup Global Markets Inc.(5)	5,280,000	*	0	170,212	*
Cleveland News Public Local 473	10,000	*	0	322	*
CNH CA Master Account, L.P.	1,500,000	*	0	48,355	*
CompSource Oklahoma	160,000	*	0	5,157	*
Consulting Group Capital Market Funds	500,000	*	0	16,118	*
Context Convertible Arbitrage Fund, LP	2,500,000	*	0	80,593	*
Context Convertible Arbitrage Offshore, LTD	6,500,000	1.13%	0	209,542	*
Convertible Securities Fund	75,000	*	0	2,417	*
Credit Suisse Asset Management	2,400,000	*	0	77,369	*
Credit Suisse First Boston Europe Limited	11,500,000	2.00%	0	370,728	*
Credit Suisse First Boston LLC	9,000,000	1.57%	0	290,135	*
CRT Capital Group LLC	3,000,000	*	0	96,711	*
CS Alternative Investment Strategy	176,000	*	0	5,673	*
CSA Fraternal Life Ins. Co.	160,000	*	0	5,157	*
Dakota Truck Underwriters	30,000	*	0	967	*
DeAM Convertible Arbitrage	2,200,000	*	0	70,922	*
DB Equity Opportunities Master Portfolio LTD	4,400,000	*	0	141,844	*
DeepRock & Co.	1,000,000	*	0	32,237	*
Delaware PERS	1,100,000	*	0	35,461	*
Delta Airlines Master Trust	390,000	*	0	12,572	*
Deutsche Bank Securities Inc.	2,025,000	*	0	65,280	*
Dodeca Fund, L.P.	1,160,000	*	0	37,395	*
Duke Endowment	190,000	*	0	6,125	*
Durango Investments, L.P.	5,000,000	*	0	161,186	*
EB Convertible Securities Fund	810,000	*	0	26,112	*
Family Service Life Insurance Co.	200,000	*	0	6,447	*
Farmers Mutual Protective Association of Texas	130,000	*	0	4,190	*
Federated Rural Electric Insurance Exchange	750,000	*	0	24,177	*
Field Foundation of Illinois	40,000	*	0	1,289	*
FrontPoint Convertible Arbitrage Fund, L.P.	2,000,000	*	0	64,474	*
Fuji US Income Open	375,000	*	0	12,088	*
Gemini Sammelstiftung zur Foerderung der Personalvorsorge	300,000	*	0	9,671	*
GenCorp Foundation	35,000	*	0	1,128	*
General Motors Welfare Benefit Trust	3,000,000	*	0	96,711	*
Georgia Municipal Employees Retirement Trust Fdn	345,000	*	0	11,121	*
GLG Global Convertible Fund	22,000,000	3.83%	0	709,220	*
GLG Global Convertible UCITS Fund	8,200,000	1.43%	0	264,345	*
GLG Market Neutral Fund	68,000,000	11.83%	0	2,192,136	*
GMAM Group Pension Trust	4,500,000	*	0	145,067	*
Grace Convertible Arbitrage Fund Ltd.	7,950,000	1.38%	0	256,286	*
Growing Oak L.P.	550,000	*	0	17,730	*

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Guarantee Trust Life Ins. Co.	1,300,000	*	0	41,908	*
Guardian Life Insurance Co.	7,000,000	1.22%	0	225,661	*
Guardian Pension Trust	700,000	*	0	22,566	*
Hannover Life Reassurance Co. of America	1,400,000	*	0	45,132	*
Health Foundation of Greater Cincinnati	530,000	*	0	17,085	*
Highbridge International LLC	35,000,000	6.09%	0	1,128,305	*
Hotel Union & Hotel Industry of Hawaii Pension Plan	224,000	*	0	7,221	*
ICI American Holdings Trust	250,000	*	0	8,059	*
IIU Convertible Arbitrage Fund Ltd.	200,000	*	0	6,447	*
IIU Convertible Fund PLC	2,450,000	*	0	78,981	*
IL Annuity and Insurance Company	23,750,000	4.13%	0	765,635	*
Inflective Convertible Opportunity Fund I, L.P.	40,000	*	0	1,289	*
Inner Harbor Corporation	720,000	*	0	23,210	*
Innovest Finanzdienstle	930,000	*	0	29,980	*
Institutional Benchmarks Master Fund Ltd.	1,343,000	*	0	43,294	*

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Name of Selling Securityholder	Principal Amount of Notes Beneficially Owned that May be Sold	Percentage of Notes Outstanding	Number of Shares of		Percentage of Common Stock Outstanding(3)
			Common Stock Owned Prior to the Offering(1)	Number of Common Stock that May be Sold(2)	
Integrity Mutual Ins. Co.	360,000	*	0	11,605	*
Jefferies & Company Inc.	5,000	*	0	161	*
JMG Capital Partners, LP	40,250,000	7.00%	0	1,297,551	*
JMG Triton Offshore Fund, LTD	50,000,000	8.70%	0	1,611,865	*
John Deere Pension Trust	500,000	*	0	16,118	*
KBC Financial Products USA Inc.	4,000,000	*	0	128,949	*
Kesa	230,000	*	0	7,414	*
KeySpan Foundation	45,000	*	0	1,450	*
Key Trust Convertible Securities Fund	160,000	*	0	5,157	*
Key Trust Fixed Income Fund	225,000	*	0	7,253	*
LDG Limited	990,000	*	0	31,914	*
Lebanon Mutual Insurance Co.	160,000	*	0	5,157	*
Lehman Brothers Inc.(6)	16,000,000	2.78%	0	515,796	*
Lexington Vantage Fund	164,000	*	0	5,286	*
Lighthouse Multi-Strategy Master Fund LP	300,000	*	0	9,671	*
Lincoln Heritage Life Ins. Co.	120,000	*	0	3,868	*
Lincoln National Convertible Securities Fund	1,650,000	*	0	53,191	*
Lord Abbett America s Value Fund	150,000	*	0	4,835	*
Lord Abbett Investment Trust LA Convertible Fund	500,000	*	0	16,118	*
Lord Abbett Series Fund America s Value Portfolio	5,000	*	0	161	*
Lord Abbett Series Fund Bond Debenture Portfolio	125,000	*	0	4,029	*
Lyxor Master Fund	300,000	*	0	9,671	*
Lyxor/Context Fund LTD	850,000	*	0	27,401	*
Man Convertible Bond Master Fund, Ltd.	5,671,000	*	0	182,817	*
Marquette Indemnity and Life Ins. Co.	110,000	*	0	3,546	*
Mellon HBV Master Convertible Arbitrage Fund LP	1,188,000	*	0	38,297	*
Mellon HBV Master Multi Strategy Fund LP	281,000	*	0	9,058	*
Merrill Lynch, Pierce, Fenner & Smith Inc.	2,270,000	*	0	73,178	*
Met Investor Series Trust America s Value	10,000	*	0	322	*
Met Investor Series Trust Bond Debenture	800,000	*	0	25,789	*
Midstate Surety Company	45,000	*	0	1,450	*
Midwest Family Mutual Insurance	160,000	*	0	5,157	*
MINT Hite Fund LP	281,000	*	0	9,058	*
MLQA Convertible Securities Arbitrage	5,000,000	*	0	161,186	*
Morgan Stanley Convertible Securities Trust	3,200,000	*	0	103,159	*
National Bank of Canada	1,500,000	*	0	48,355	*
National Fuel & Gas Company Retirement Plan	110,000	*	0	3,546	*
Nations Convertible Securities Fund	13,925,000	2.42%	0	448,904	*
Nevada General Ins. Co.	40,000	*	0	1,289	*
Nicholas Applegate Capital Management Investment Grade Convertible Bond Mutual Fund	10,000	*	0	322	*
Northern Income Equity Fund	2,000,000	*	0	64,474	*
Oppenheimer Convertible Securities Fund	3,000,000	*	0	96,711	*
Oxford, Lord Abbett & Co.	1,275,000	*	0	41,102	*

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Pacific Life Insurance Company	1,000,000	*	0	32,237	*
Park Avenue Life Insurance Co.	100,000	*	0	3,223	*
Peoples Benefit Life Insurance Company					
Teamsters	4,000,000	*	0	128,949	*
Phoenix Lord Abbett Bond Debenture Fund	20,000	*	0	644	*
Physicians Mutual Ins. Co.	700,000	*	0	22,566	*
Potlatch	445,000	*	0	14,345	*
Prudential Insurance Co of America	70,000	*	0	2,256	*
Pyramid Equity Strategies Fund	400,000	*	0	12,894	*
Quest Global Convertible Master Fund Ltd.	2,400,000	*	0	77,369	*
Radian Asset Assurance, Inc.	2,025,000	*	0	65,280	*
Radian Group Convertible Securities	1,095,000	*	0	35,299	*
Radian Guaranty	3,800,000	*	0	122,501	*
Retail Clerks Pension Trust	2,000,000	*	0	64,474	*
Roszel/Lord Abbett Bond Debenture Portfolio	10,000	*	0	322	*
Royal Bank of Canada (Norshield)	700,000	*	0	22,566	*
Satellite Convertible Arbitrage Master Fund, LLC	31,500,000	5.48%	0	1,015,474	*
SG Cowen Securities Convertible Arbitrage	2,500,000	*	0	80,593	*
Siemens Convertible Global Markets	1,750,000	*	0	56,415	*

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Name of Selling Securityholder	Principal Amount of Notes Beneficially Owned that May be Sold	Percentage of Notes Outstanding	Number of Shares of		
			Common Stock Owned Prior to the Offering(1)	Number of Common Stock that May be Sold(2)	
					Percentage of Common Stock Outstanding(3)
Southern Farm Bureau Life Insurance	570,000	*	0	18,375	*
Special Distribution of Oregon	5,000	*	0	161	*
Sphinx Convertible Fund SPC	339,000	*	0	10,928	*
Sphinx Fund	420,000	*	0	13,539	*
SSI Blended Market Neutral L.P.	449,000	*	0	14,474	*
SSI Hedged Convertible L.P.	493,000	*	0	15,892	*
St. Albans Partners Ltd.	27,165,000	4.72%	0	875,726	*
St. Thomas Trading, Ltd.	9,329,000	1.62%	0	300,741	*
Stamford Police Pension Fund	35,000	*	0	1,128	*
State National Insurance Co.	180,000	*	0	5,802	*
State of Florida Division of Treasury	1,515,000	*	0	48,839	*
State of Oregon/Equity	3,435,000	*	0	110,735	*
Sterling Invest Co	135,000	*	0	4,352	*
SuttonBrook Capital Portfolio LP	23,300,000	4.05%	0	751,129	*
Swiss Re Financial Products Corporation	8,000,000	1.39%	0	257,898	*
Syngenta AG	185,000	*	0	5,963	*
TAA Lyxor/Quest Fund Ltd.	300,000	*	0	9,671	*
Teachers Insurance and Annuity Association of America	4,000,000	*	0	128,949	*
Texas Hospital Insurance Exchange	30,000	*	0	967	*
The Doctor s Company	2,100,000	*	0	67,698	*
Thrivent Financial for Lutherans	2,500,000	*	0	80,593	*
Total Fina Elf Finance USA, Inc.	180,000	*	0	5,802	*
TQA Master Fund, Ltd.	6,375,000	1.11%	0	205,512	*
TQA Master Plus Fund, Ltd.	9,746,000	1.69%	0	314,184	*
UBS O Connor LLC F/B/O O Connor Global Convertible Arbitrage Master Ltd.	10,000,000	1.74%	0	322,373	*
Univest Convertible Arbitrage Fund II LTD	450,000	*	0	14,506	*
Van Kampen Harbor Fund	3,600,000	*	0	116,054	*
Viacom Inc. Pension Plan Master Trust	22,000	*	0	709	*
Victory Convertible Securities Fund	615,000	*	0	19,825	*
Wachovia Capital Markets LLC	2,590,000	*	0	83,494	*
Wachovia Securities International LTD.	12,500,000	2.17%	0	402,966	*
White River Securities L.L.C.	2,500,000	*	82,500(4)	80,593	*
Wisconsin Mutual Insurance Co.	180,000	*	0	5,802	*
Xavex Convertible Arbitrage 7 Fund	1,709,000	*	0	55,093	*
Yield Strategies Fund I, L.P.	8,500,000	1.48%	0	274,017	*
Yield Strategies Fund II, L.P.	8,000,000	1.39%	0	257,898	*
Zazove Convertible Securities Fund Inc.	1,450,000	*	0	46,744	*
Zola Partners, L.P.	250,000	*	0	8,059	*
Zurich Institutional Benchmarks Master Fund Ltd.	1,432,000	*	0	46,163	*
Total(7)	575,000,000	100.00%	165,000	18,536,447(8)	6.07%

\* Less than one percent

(1) Does not include shares of common stock issuable upon conversion of the notes.

(2) Consists of shares of common stock issuable upon conversion of the notes, assuming a conversion rate of 32.2373 shares per \$1,000 principal amount of the notes and a cash payment in lieu of any fractional share interest. The conversion rate is subject to adjustment as described under Description of the Notes Conversion Rights. Accordingly, the number of shares of common stock issuable upon conversion of the notes may increase or decrease from time to time.

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- (3) Calculated based on 286,611,657 shares of common stock outstanding on March 23, 2004. In calculating this amount, we treated as outstanding the number of shares of common stock issuable upon conversion of the specific holder's notes. However, we did not assume the conversion of any other holder's notes.
- (4) Comprises 625 call options to purchase a total of 62,500 shares of our common stock at a strike price of \$30.00, expiring in January 2006, and 200 call options to purchase a total of 20,000 shares of our common stock at a strike price of \$35.00, expiring in January 2005.
- (5) During the past three years, Citigroup Global Markets Inc. and/or its affiliates have provided investment banking, commercial banking and financial advisory services to us, including as a joint book-running manager in connection with the private offering of the notes.
- (6) During the past three years, Lehman Brothers Inc. and/or its affiliates have provided investment banking, commercial banking and financial advisory services to us, including as a joint book-running manager in connection with the private offering of the notes.
- (7) Because certain of the selling securityholders may have sold, transferred or otherwise disposed of all or a portion of their notes either under this prospectus or in transactions exempt from the registration requirements of the Securities Act of 1933 since the date on which they provided to us the information presented in this table, this prospectus may not reflect the exact principal amount of notes held by each selling securityholder on the date hereof. We will identify additional selling securityholders, if any, by prospectus supplement or post-effective amendment before they may offer or sell their securities pursuant to this prospectus. The maximum aggregate principal amount of notes that may be sold pursuant to this prospectus will not exceed \$575,000,000.
- (8) Represents the number of shares of common stock issuable upon conversion of \$575,000,000 of notes at the conversion rate described in footnote (2) above.



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**PLAN OF DISTRIBUTION**

We will not receive any of the proceeds of the sale of the notes and the common stock offered by this prospectus. The aggregate proceeds to the selling securityholders from the sale of the notes or common stock will be the purchase price of the notes or common stock less any discounts and commissions. A selling securityholder reserves the right to accept and, together with their agents, to reject, any proposed purchases of notes or common stock to be made directly or through agents.

The notes and the common stock offered by this prospectus may be sold from time to time to purchasers:

directly by the selling securityholders and their successors, which includes their donees, pledgees or transferees or their successors-in-interest, or

through underwriters, broker-dealers or agents, who may receive compensation in the form of discounts, commissions or agent's commissions from the selling securityholders or the purchasers of the notes and the common stock. These discounts, concessions or commissions may be in excess of those customary in the types of transactions involved.

The selling securityholders and any underwriters, broker-dealers or agents which participate in the distribution of the notes and the common stock may be deemed to be underwriters within the meaning of the Securities Act of 1933. As a result, any profits on the sale of the notes and the common stock by selling securityholders and any discounts, commissions or agent's commissions received by any such broker-dealers or agents may be deemed to be underwriting discounts and commissions under the Securities Act of 1933. Selling securityholders who are underwriters within the meaning of the Securities Act of 1933 will be subject to prospectus delivery requirements of the Securities Act of 1933. If the selling securityholders were deemed to be underwriters, the selling securityholders may be subject to certain statutory liabilities of the Securities Act of 1933 and the Securities Exchange Act of 1934. If the notes and the common stock are sold through underwriters, broker-dealers or agents, the selling securityholders will be responsible for underwriting discounts or commissions or agent's commissions.

The notes and the common stock may be sold in one or more transactions at:

fixed prices,

prevailing market prices at the time of sale,

prices related to such prevailing market prices,

varying prices determined at the time of sale, or

negotiated prices.

These sales may be effected in one or more transactions:

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on any national securities exchange or quotation service on which the notes and common stock may be listed or quoted at the time of the sale,

in the over-the-counter market,

in transactions otherwise than on such exchanges or services or in the over-the-counter market,

through the writing of options (including the issuance by the selling securityholders of derivative securities), whether the options or such other derivative securities are listed on an options exchange or otherwise,

through the settlement of short sales, or

through any combination of the foregoing.

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These transactions may include block transactions or crosses. Crosses are transactions in which the same broker acts as an agent on both sides of the trade.

In connection with the sales of the notes and the common stock issuable upon conversion thereof or otherwise, the selling securityholders may enter into hedging transactions with broker-dealers or other financial institutions that in turn may engage in short sales of the notes or the common stock in the course of hedging their positions, sell the notes and common stock short and deliver the notes and common stock to close out short positions, loan or pledge notes or the common stock to broker-dealers or other financial institutions that in turn may sell the notes and the common stock, enter into option or other transactions with broker-dealers or other financial institutions that require the delivery to the broker-dealer or other financial institution of the notes or the common stock, which the broker-dealer or other financial institution may resell pursuant to the prospectus, or enter into transactions in which a broker-dealer makes purchases as a principal for resale for its own account or through other types of transactions.

To our knowledge, there are currently no plans, arrangements or understandings between any selling securityholders and any underwriter, broker-dealer or agent regarding the sale of the notes and the common stock by the selling securityholders.

Our common stock trades on the New York Stock Exchange under the symbol **EK**. We do not intend to apply for listing of the notes on any securities exchange or for inclusion of the notes in any automated quotation system. Accordingly, no assurances can be given as to the development of liquidity or any trading market for the notes. See **Risk Factors** **An Active Trading Market May Not Develop for the Notes**.

There can be no assurance that any selling securityholder will sell any or all of the notes or the common stock pursuant to this prospectus. Further, we cannot assure you that any such selling securityholder will not transfer, devise or gift the notes and the common stock by other means not described in this prospectus. In addition, any notes or common stock covered by this prospectus that qualify for sale pursuant to Rule 144 or Rule 144A of the Securities Act of 1933 may be sold under Rule 144 or Rule 144A rather than under this prospectus. The notes and the common stock may be sold in some states only through registered or licensed brokers or dealers. In addition, in some states the notes and common stock may not be sold unless they have been registered or qualified for sale or an exemption from registration or qualification is available and complied with.

The selling securityholders and any other person participating in the sale of notes or the common stock will be subject to the Securities Exchange Act of 1934. The Securities Exchange Act of 1934 rules include, without limitation, Regulation M, which may limit the timing of purchases and sales of any of the notes and the common stock by the selling securityholders and any other such person. In addition, Regulation M may restrict the ability of any person engaged in the distribution of the notes and the common stock to engage in market-making activities with respect to the particular notes and the common stock being distributed. This may affect the marketability of the notes and the common stock and the ability of any person or entity to engage in market-making activities with respect to the notes and the common stock.

We and the selling securityholders have agreed to indemnify each other against certain liabilities, including liabilities under the Securities Act of 1933.

We have agreed to pay substantially all of the expenses incidental to the registration, offering and sale of the notes and common stock to the public other than commissions, fees and discounts of underwriters, brokers, dealers and agents.



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**VALIDITY OF SECURITIES**

The validity of the notes and the common stock issuable upon conversion of the notes have been passed upon for us by Gary P. Van Graafeiland, our Senior Vice President and General Counsel.

**EXPERTS**

The consolidated financial statements and the related financial statement schedule incorporated in this prospectus by reference from our Annual Report on Form 10-K for the year ended December 31, 2003 have been audited by PricewaterhouseCoopers LLP, independent accountants, as stated in their report, which is incorporated herein by reference and have been so incorporated in reliance upon the report of PricewaterhouseCoopers LLP given upon the authority of said firm as experts in auditing and accounting.



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/s/ TIMOTHY M. DONAHUE\*

Director

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**Timothy M. Donahue**

/s/ WILLIAM H. HERNANDEZ\*

Director

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**William H. Hernandez**

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<u>Signatures</u>	<u>Title</u>
/s/ DURK I. JAGER*	Director
<b>Durk I. Jager</b>	
/s/ DEBRA L. LEE*	Director
<b>Debra L. Lee</b>	
/s/ DELANO E. LEWIS*	Director
<b>Delano E. Lewis</b>	
/s/ PAUL H. O NEILL*	Director
<b>Paul H. O Neill</b>	
/s/ HECTOR DE J. RUIZ*	Director
<b>Hector de J. Ruiz</b>	
/s/ LAURA D ANDREA TYSON*	Director
<b>Laura D Andrea Tyson</b>	

\*By: /s/ JAMES M. QUINN

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**James M. Quinn,**  
**Attorney-in-Fact**