

Changed Pages to Disclosure Statement With Respect to the Debtors' Amended  
Joint Chapter 11 Plan Of Reorganization

Description and Amount of Claims and Interests	Summary of Treatment
	<p>collateral and granting adequate protection entered by the Bankruptcy Court on August 6, 2013 (the "<u>Final Cash Collateral Order</u>") [Docket No. 133] and the Stipulation and Consent Order (I) Authorizing the Debtors to Continue to Use Cash Collateral and (II) Granting Adequate Protection entered on November 25, 2013 (the "<u>Stipulated Cash Collateral Order</u>") [Docket No. 442].</p> <p><b>Estimated Amount: \$579 million</b> <b>Estimated Recovery: 98.6%</b></p>
<p>Class 3 – Christine Shipco Facility Secured Guaranty Claim (Unimpaired)</p>	<p>A Christine Shipco Facility Secured Guaranty Claim is a claim arising under Excel's guaranty of a secured loan agreement, dated as of April 26, 2010 (as amended), between Excel's partially-owned, non-Debtor indirect subsidiary, Christine Shipco LLC, as borrower, and DVB Bank SE, as lender. Christine Shipco LLC owns the <i>M/V Christine</i>. On the Effective Date, each Allowed Class 3 – Christine Shipco Guaranty Claim shall be reinstated, which means that such holder's legal, equitable and contractual rights with respect to its Christine Shipco Guaranty Claim will be left unaltered and paid in the ordinary course.</p> <p><b>Estimated Amount: \$27.9 million</b> <b>Estimated Recovery: 100%</b></p>
<p>Class 4 – Other Secured Claims (Unimpaired)</p>	<p>An Other Secured Claim is any claim that is secured by a lien on collateral, or subject to setoff, other than a Syndicate Credit Facility Secured Claim or Christine Shipco Guaranty Claim. The Debtors do not believe there are any such claims. On the Effective Date, each Allowed Class 4 – Other Secured Claim shall be reinstated, which means that such holder's legal, equitable and contractual rights with respect to its Other Secured Claim will be left unaltered.</p> <p><b>Estimated Amount: \$0.00</b> <b>Estimated Recovery: 100%</b></p>
<p>Class 5 – There is no Class 5.</p>	<p>[Reserved]</p>
<p>Class 6 – Impaired Subsidiary Debtor General Unsecured Claims (Impaired)</p>	<p>An Impaired Subsidiary Debtor General Unsecured Claim means an unsecured claim or cause of action against a subsidiary Debtor that is (i) held by an insider or affiliate of one or more subsidiary Debtors, or (ii) held by a person over whom a United States court could exercise personal jurisdiction. This class does not include (a) Syndicate Credit Facility Secured Claims, (b) Unimpaired Subsidiary Debtor General Unsecured Claims, (c) claims held by any insider or affiliate of one or more of the subsidiary Debtors that relates to the subsidiary Debtors' pre-existing and ordinary course management, employee compensation, consulting or brokerage contracts, (d) <del>(x)</del> causes of action <u>(x)</u> covered under any of the Debtors' insurance policies or (y) held by any person over whom a United States court could not <u>otherwise</u> exercise personal jurisdiction, provided that <del>the holder of any such cause of action</del> <u>person</u> properly filed a proof of claim prior to the bar date if required pursuant to the Bar Date Order, (e) claims that arise from the provision of goods, materials or services by trade vendors and service providers, including commissions related thereto, incurred by one or more of the subsidiary Debtors in the ordinary course of the subsidiary Debtors' business, most of which have already been authorized to be paid by the Bankruptcy Court in the ordinary course of business, or (f) claims that are secured. Holders of Class 6 – Impaired Subsidiary Debtor General Unsecured</p>

Description and Amount of Claims and Interests	Summary of Treatment
	<p>Claims will receive no recovery under the Plan.</p> <p><b>Estimated Amount: N/A</b> <b>Estimated Recovery: 0%</b></p>
<p>Class 7 – Unimpaired Subsidiary Debtor General Unsecured Claims (Unimpaired)</p>	<p>An Unimpaired Subsidiary Debtor General Unsecured Claim means an unsecured claim or cause of action against a subsidiary Debtor, other than an Impaired Subsidiary General Unsecured Claim, and includes, among other claims, (i) a claim arising from the provision of goods, materials or services by trade vendors and service providers, including commissions related thereto, incurred by the subsidiary Debtors in the ordinary course of the subsidiary Debtors' business, most of which have already been authorized to be paid by the Bankruptcy Court in the ordinary course of business, (ii) <del>(x)</del> a cause of action to the extent such cause of action <u>(x)</u> is covered under any of the Debtors' insurance policies or (y) is held by a person over whom a United States court could not <u>otherwise</u> exercise personal jurisdiction, provided that the holder of any such cause of action properly filed a proof of claim prior to the bar date if required pursuant to the Bar Date Order, and (iii) a claim, including an insider or affiliate claim, relating to the subsidiary Debtors' pre-existing and ordinary course management, employee compensation, consulting or brokerage contracts. On the Effective Date, any unpaid Class 7 – Unimpaired Subsidiary Debtor General Unsecured Claim shall be reinstated, which means that such holder's legal, equitable and contractual rights with respect to its Unimpaired Subsidiary Debtor General Unsecured Claim will be left unaltered and paid in the ordinary course, subject to any defenses or offsets that the subsidiary Debtors may have to such claims.</p> <p><b>Estimated Amount: N/A</b> <b>Estimated Recovery: 100%</b></p>
<p>Class 8 – Impaired Excel General Unsecured Claims (Impaired)</p>	<p>An Impaired Excel General Unsecured Claim means an unsecured claim or cause of action against Excel. This Class includes, but is not limited to, (i) claims arising under the 1.875% unsecured convertible senior notes issued by Excel pursuant to an indenture dated October 10, 2007 and due October 15, 2027 in the unpaid principal amount of \$150 million; (ii) Syndicate Credit Facility Deficiency Claims; (iii) claims arising under certain swap agreements, described below; (iv) claims for damages alleged by Robertson Maritime Investors, LLC; and (v) claims arising under a settlement with certain bareboat charter parties, described below. This Class does not include (a) Section 510(b) Claims, (b) any claim or cause of action held by an insider or affiliate of Excel, (c) <del>(x)</del> causes of action <u>(x)</u> covered under any of the Debtors' insurance policies or (y) held by any person over whom a United States court could not <u>otherwise</u> exercise personal jurisdiction, provided that the holder of any such cause of action properly filed a proof of claim prior to the bar date if required pursuant to the Bar Date Order, (d) claims arising from the provision of goods, materials or services by trade vendors and service providers, including commissions related thereto, incurred by Excel in the ordinary course of Excel's business, most of which have already been authorized to be paid by the Bankruptcy Court in the ordinary course of business, or (e) claims that are otherwise secured.</p>

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	<p>General Unsecured Claim and includes, among other claims, (i) a claim arising from the provision of goods, materials or services by trade vendors and service providers, including commissions related thereto, incurred by Excel in the ordinary course of Excel's business, most of which have already been authorized to be paid by the Bankruptcy Court in the ordinary course of business, (ii) <del>(x)</del> any cause of action to the extent such cause of action <u>(x)</u> is covered under any of Excel's insurance policies or (y) is held by a person over whom a United States court could not <u>otherwise</u> exercise personal jurisdiction, provided that the holder of any such cause of action properly filed a proof of claim prior to the bar date if required pursuant to the Bar Date Order and (iii) a claim, including an insider or affiliate claim, relating to Excel's pre-existing and ordinary course management, employee compensation, consulting or brokerage contracts. On the Effective Date, any unpaid Class 9 – Unimpaired Excel General Unsecured Claims shall be reinstated, which means that such holder's legal, equitable and contractual rights with respect to its Unimpaired Excel General Unsecured Claim will be left unaltered and paid in the ordinary course, subject to any defenses or offsets that Excel may have to such claims.</p> <p><b>Estimated Amount: N/A</b> <b>Estimated Recovery: 100%</b></p>
Class 10 – Section 510(b) Claims (Impaired)	<p>A Section 510(b) Claim is a claim arising from the purchase or sale, or the rescission of the purchase or sale, of equity securities or debt securities of Excel. Holders of Class 10 – Section 510(b) Claims will receive no recovery under the Plan.</p> <p><b>Estimated Amount: \$0.00</b> <b>Estimated Recovery: 0%</b></p>
Class 11 – Interests in Excel (Impaired)	<p>An Interest in Excel is any equity security in Excel, including but not limited to stock, warrants and options. On the Effective Date, all Interests in Excel will be cancelled without further action by the Debtors or reorganized Debtors. Holders of Class 11 – Interests in Excel will not retain any property or receive any recovery under the Plan.</p> <p><b>Estimated Amount: N/A</b> <b>Estimated Recovery: 0%</b></p>
Class 12 – Interests in Debtors Other than Excel (Unimpaired)	<p>This class is comprised of Excel's interests in its subsidiaries. On the Effective Date, these interests will be reinstated.</p> <p><b>Estimated Amount: N/A</b> <b>Estimated Recovery: 100%</b></p>

**H. Disclaimer**

This Disclosure Statement describes certain aspects of the Plan, the Debtors' operations, the Debtors' indebtedness, the restructuring of the Debtors' financial affairs, the Debtors' post-restructuring management and other related matters. THE DEBTORS HAVE PREPARED THIS PROPOSED DISCLOSURE STATEMENT PURSUANT TO BANKRUPTCY CODE SECTION 1125 FOR USE IN THE SOLICITATION OF VOTES ON THE PLAN. FOR A COMPLETE UNDERSTANDING OF THE PLAN, YOU SHOULD READ THIS DISCLOSURE STATEMENT, INCLUDING SECTION V "RISK FACTORS TO BE CONSIDERED," THE PLAN, AND THE APPENDICES AND EXHIBITS HERETO AND THERETO IN THEIR ENTIRETY. IN

2. Dispute Over the \$20 Million Escrow Funds

As described above, on March 29, 2012, Excel entered into a backstop agreement with Ivory pursuant to which the Escrow Funds were placed into the Escrow Account to be held pursuant to the terms of an escrow agreement. See **Section II.E.2(a) "Syndicate Credit Facility Amendments and Failed Equity Offering"**. On August 2, 2013, the Creditors' Committee filed a complaint against Excel and Ivory seeking a Declaratory Judgment that the Escrow Funds are unencumbered property of the Debtors' estates that should be released to the Debtors' estates [Docket No. 1, Adversary case 13-08338]. On August 30, 2013, the Creditors' Committee filed a motion for summary judgment on their complaint [Docket No. 8; Adversary case 13-08338].

On September 9, 2013, the Debtors filed an answer [Docket No. 12; Adversary case 13-08338] and a cross motion for summary judgment [Docket No. 11; Adversary case 13-08338] on the complaint. On September 9, 2013, Ivory filed an answer to the complaint and cross-motion for summary judgment declaring that it owns the Escrow Funds [Docket No. 13; Adversary case 13-08338]. The Creditors' Committee filed a reply and objection to the Debtors' and Ivory's motions for summary judgment on September 18, 2013 [Docket No. 16; Adversary case 13-08338]. The Debtors and Ivory filed their respective replies on September 25, 2013 [Docket Nos. 19 and 18; Adversary case 13-08338]. The Creditors' Committee has agreed to dismiss this adversary proceeding contemporaneous with the Effective Date in partial consideration for the distribution unsecured creditors will receive under the Plan.

3. Dispute with Robertson Maritime Investors

Shortly before the Petition Date, Excel received a notice from RMI relating to Excel's and RMI's respective equity interests in non-Debtor Christine Shipco. The notice alleged, among other things, that the conveyance by Bird, a subsidiary of Excel, of its 71.4% interest in Christine Shipco to Excel in July 2012 was without RMI's knowledge and violated RMI's right of first offer ("ROFO") under the Christine LLC Agreement. Subsequent to the Petition Date, RMI filed its Omnibus Objection to First Day Pleadings and Debtors' Disclosure Statement [Docket No. 25], and Supplemental Objection to Debtors' Disclosure Statement [Docket No. 328] (together, the "RMI Objection").

The RMI Objection alleges (the "RMI Allegations"), among other complaints, that the breach of the ROFO canceled Excel's indirect interest in Christine Shipco, and that as a result the Debtors hold Christine Shipco in trust for RMI. RMI also alleges that Christine Shipco, Bird and Excel signed a loan modification to the Christine Shipco Facility without RMI's knowledge or consent. The Debtors dispute RMI's position and believe RMI's allegations have no merit. RMI further contends that it has a prepetition claim for damages in the amount of \$10-30 million against Excel arising from the alleged breach of the ROFO. The Debtors do not believe there is any basis for this claim or for the claim amount alleged by RMI. ~~This~~Specifically, the Debtors do not believe that the ROFO is triggered by internal corporate reorganizations, especially where, as here, there is no change in the nature of the business enterprise, its ultimate control, or its management. Rather, the Debtors believe that by its terms, the ROFO is only triggered in the event of a proposed transfer to an unaffiliated third party. The Debtors also do not believe that the Plan affects the terms and status of Christine Shipco's operative documents or the members' rights thereunder. The claim asserted by Robertson is a contingent claim for damages and is included in Class 8 – Impaired Excel General Unsecured Claims.

RMI has advised the Debtors that it intends to contest confirmation of the Plan. Specifically, RMI contends that the Plan exceeds the jurisdiction of the Bankruptcy Court by purporting to adjust the rights of non-debtors and third parties. The Debtors disagree with these contentions and will provide a detailed response to these confirmation objections in connection with their brief in support of confirmation of the Plan.

**C. Potential Adverse Effects of Chapter 11**

Although the Debtors have sought to make their stay in chapter 11 as brief as possible and to obtain relief from the Bankruptcy Court so as to minimize any potential disruption to their business operations, it is possible that the chapter 11 cases could materially adversely affect the relationship among the Debtors and their customers, employees, contractors and vendors.

Moreover, because the Debtors' business operations implicate maritime law, various foreign creditors could assert maritime liens against the Debtors' assets. The determination of what claim constitutes a maritime lien is determined by local law on a case by case basis. Thus, various interested parties may attempt to seize assets located outside of the United States to the detriment of the Debtors, their estates and creditors, or take other actions in contravention of the automatic stay of section 362 of the Bankruptcy Code. In addition, counterparties to leases and executory contracts, including charterparties, may attempt to terminate those leases or contracts pursuant to *ipso facto* provisions in contravention of section 365 of the Bankruptcy Code.

**D. Risks Relating to the 4(a)(2) Rights Offering**

*The 4(a)(2) Subscription Rights and the 4(a)(2) Offered Shares have not been registered under applicable federal and state securities laws.*

The exemption from registration pursuant to Rule 1145 does not apply to the 4(a)(2) Rights Offering and the 4(a)(2) Subscription Rights and the 4(a)(2) Offered Shares have not been registered under the Securities Act or any state securities laws. The 4(a)(2) Subscription Rights and the 4(a)(2) Offered Shares are being granted and sold pursuant to an exemption from registration under the applicable securities laws and, therefore, may not be publicly offered, sold or otherwise transferred in any jurisdiction where registration may be required. By subscribing for the 4(2)(2) Offered Shares, Eligible Holders participating in the 4(a)(2) Rights Offering should be aware that they may be required to bear the financial risk of an investment in the 4(a)(2) Offered Shares for an indefinite period of time. [See also Article V.F. -- "You may be restricted from selling the 1145 Offered Shares and Holdco Units you receive upon exercise of your Co-Investment Rights pursuant to the 1145 Rights Offering."](#)

**E. Risks Related to Becoming a Holder of Reorganized Excel's New Common Stock/Holdco's Holdco Units**

*Holdco's cash flow will be dependent on the cash flows of Reorganized Excel.*

Holdco is a holding company with no direct operations. Its sole asset will be the New Common Stock of Reorganized Excel. Accordingly, its cash flow and its ability to make payments on, or repay or refinance, any indebtedness and to fund any planned capital expenditures and other cash needs will be dependent upon the cash flows of Reorganized Excel and any payment of dividends, distributions, loans or other advances to Holdco by Reorganized Excel. Distributions to Holdco from Reorganized Excel will depend on Reorganized Excel's operating results, which are subject to numerous risks, including those described more particularly under "— H. Other Risks Relating to the Debtors' Business and the Debtors' Ability to Satisfy their Debt Obligations After the Effective Date" below. In addition, such distributions may be subject to restrictions under, among other things, the laws of Liberia and other jurisdictions in which Reorganized Excel will operate; agreements Reorganized Excel has entered, and may enter, into, including agreements governing its indebtedness; and applicable regulatory orders. Reorganized Excel has no obligation, contingent or otherwise, to make funds available, whether in the form of loans, dividends or other distributions, to Holdco. Any inability to receive distributions from Reorganized Excel could have a material adverse impact on the business, financial condition, results of operations, and liquidity of Holdco and/or the market price or value of the Holdco Units.



Excel, Holdco or any of these persons. It may also be difficult to enforce, both in and outside the United States, judgments obtained in U.S. courts against Reorganized Excel, Holdco or any of these persons in any action, including actions based upon the civil liability provisions of U.S. federal or state securities laws. Furthermore, there is no guarantee that the courts of the Republic of Liberia, the Republic of the Marshall Islands or of the non-U.S. jurisdictions in which Excel's offices are located would enter judgments in original actions brought in those courts predicated on U.S. federal or state securities laws.

**F. Risks Related to Exercise of the Co-Investment Rights**

*The subscription prices determined for Tranche A Subscription Rights ~~and~~ Tranche B Subscription Rights and 4(a)(2) Subscription Rights is not an indication of the fair value of the New Common Stock or Holdco Units.*

The subscription prices for the Tranche A Subscription Rights and Tranche B Subscription Rights are not intended to bear any relationship to the book value of Reorganized Excel's assets or its past operations, cash flows, losses, financial condition, net worth, or any other established criteria used to value securities. A holder of an Impaired Excel General Unsecured Claim should not consider the subscription prices to be an indication of the fair value of Reorganized Excel's New Common Stock. Further, upon the Effective Date, all New Common Stock in Reorganized Excel will be exchanged for Holdco Units in Holdco, the new parent of Reorganized Excel. The Company cannot give any assurance that these Holdco Units will be tradeable at or above the subscription prices in any given time period. After the date of this Disclosure Statement, Holdco Units may trade at prices above or below the subscription prices, or may not trade at all.

*If the holder of an Impaired Excel General Unsecured Claim does not act promptly and follow the subscription instructions, its exercise of subscription rights may be rejected.*

Holders of Impaired Excel General Unsecured Claims who desire to purchase shares pursuant to the Co-Investment Rights must act promptly to ensure that all required forms and payments are actually received by the deadlines described in the Rights Offering Procedures. If a claimholder is a beneficial owner of Convertible Notes, it must act promptly to ensure that its broker, bank, or other nominee acts for it and that all required forms and payments are actually received by the Subscription Agent before the deadlines described in the Rights Offering Procedures. The Company will not be responsible if a claimholder's broker, bank, or nominee fails to ensure that all required forms and payments are actually received by the Subscription Agent before the expiration date. If a claimholder fails to complete and sign the required subscription forms, sends an incorrect payment amount or otherwise fails to follow the subscription procedures that apply to its exercise of the Co-Investment Rights, the Subscription Agent may, depending on the circumstances, reject such claimholder's subscription or accept it only to the extent of the payment received. Neither the Company nor the Subscription Agent undertakes to contact a claimholder concerning an incomplete or incorrect subscription form or payment, nor is the Company under any obligation to correct such forms or payment. The Company has the sole discretion to determine whether a subscription exercise properly follows the subscription procedures. The Company makes no recommendation as to whether any holder of an Impaired Excel General Unsecured Claim should purchase shares in Reorganized Excel.

*The subscription rights are non-transferable and thus there will be no market for them.*

A claimholder may not sell, transfer or assign its subscription rights to anyone else. The Company does not intend to list the rights on any securities exchange or any other trading market. Because the subscription rights are non-transferable, there is no market or other means for a claimholder to directly realize any value associated with the subscription rights.

*You may be restricted from selling the [1145 Offered Shares and Holdco Units](#) you receive upon exercise of your Co-Investment Rights [pursuant to the 1145 Rights Offering](#).*

Although it is expected that the [1145 Offered Shares and Holdco Units](#) issuable upon exercise of the Co-Investment Rights will be exempt from the registration requirements of the Securities Act in accordance with Section 1145 of the Bankruptcy Code (and the Confirmation Order will so provide), judicial interpretation of Section 1145 has varied. In addition, there may be other restrictions on the Offered Shares and Holdco Units as set forth below. To the extent that persons who receive the [1145 Offered Shares and Holdco Units](#) pursuant to the Co-Investment Rights are deemed to be "underwriters" as defined in Section 1145(b) of the Bankruptcy Code, including as an "affiliate" of the issuer, resales or transfers of the [1145 Offered Shares and Holdco Units](#) by such persons would not be exempt from registration under the Securities Act or other applicable state securities law by virtue of Section 1145 of the Bankruptcy Code. Consequently an "underwriter" or "affiliate" would not be able to transfer or resell the [1145 Offered Shares and Holdco Units](#) absent registration under the Securities Act and any applicable state securities laws, or an alternate exemption therefrom, including Rule 144. Generally, Rule 144 would permit the public sale of the [1145 Offered Shares and Holdco Units](#) received by an "underwriter" or "affiliate" if current information regarding the issuer of such shares is publicly available and if volume limitations, manner of sale requirements and certain other conditions are met. However, the Debtors do not presently intend to make publicly available the requisite current information regarding the Debtors. As a result, Rule 144 will not be available for resales or transfers of [1145 Offered Shares and Holdco Units](#) by persons deemed to be "underwriters" or "affiliates." [See also Article V.D. – "Risks Relating to the 4\(a\)\(2\) Rights Offering."](#)

#### **G. Dependence on Key Management Personnel and Other Employees**

The Debtors' success depends to a significant extent upon the abilities and efforts of their management team. The Debtors' ability to retain key members of their management team and to hire new members as may be necessary will contribute to that success. The loss of the services of any of these individuals for any significant period of time due to death, disability or termination of employment could adversely affect the Debtors' business prospects and financial condition. The Debtors are also dependent on qualified personnel in order to execute their day-to-day operations. The loss of the services of any of these individuals for any significant period of time or the Debtors' inability to attract and retain qualified personnel could have a material adverse effect on their capacity to manage their business. Difficulty in hiring and retaining replacement personnel could have a similar effect. The Debtors do not maintain "key man" life insurance on any of their officers.

#### **H. No Assurance of Ultimate Recoveries; Uncertainty of Financial Projections**

*No assurance of ultimate recoveries.*

The value of the New Common Stock, and the corresponding Holdco Units, cannot be determined with precision, and there can be no assurances of the actual recoveries to holders of Class 2 or Class 8 Claims. The Debtors cannot assure their claimholders that they will be able to resell any consideration received in respect of their claims at current values or at all.



particular person may be an "underwriter," the Debtors make no representations concerning the right of any person to freely resell Plan Securities. Accordingly, the Debtors recommend that potential recipients of Plan Securities consult their own counsel concerning their ability to freely trade such securities without compliance with the federal and state securities laws.

**B. Issuance and Resale of Plan Securities under the Plan Pursuant to Section 4(a)(2)**

1. Exemption from Registration

Section 4(a)(2) of the Securities Act provides that the issuance of securities by an issuer in transactions not involving any public offering are exempt from registration under the Securities Act. Regulation D is a non-exclusive safe harbor from registration promulgated by the SEC under section 4(a)(2) of the Securities Act.

The Debtors believe that the 4(a)(2) Plan Securities are issuable without registration under the Securities Act in reliance upon the exemption from registration provided under section 4(a)(2) of the Securities Act and/or Regulation D promulgated thereunder. These shares will be subject to resale restrictions and may be resold, exchanged, assigned or otherwise transferred only pursuant to registration, or an applicable exemption from registration, under the Securities Act and other applicable law, as described below.

2. Resales of 4(a)(2) Plan Securities

Because the 4(a)(2) Plan Securities will not be issued pursuant to section 1145(a)(1) of the Bankruptcy Code, they will be deemed "restricted securities" that may not be offered, sold, exchanged, assigned or otherwise transferred unless they are registered under the Securities Act, or an exemption from registration under the Securities Act is available.

The Debtors do not plan to register Holdco Units issued in respect of 4(a)(2) Plan Securities held by persons other than affiliates of the Company. Thus, persons who receive 4(a)(2) Plan Securities will not be permitted to offer, sell or otherwise transfer their 4(a)(2) Plan Securities except pursuant to registration or an available exemption from registration.

All 4(a)(2) Plan Securities will be issued in certificated form and will bear a restrictive legend. Each certificate representing, or issued in exchange for or upon the transfer, sale or assignment of, any 4(a)(2) Plan Security shall be stamped or otherwise imprinted with a legend in substantially the following form:

**"THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT AND SUCH THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR AN EXEMPTION THEREUNDER."**

Reorganized Excel will reserve the right to require certification or other evidence of compliance with the Securities Act and the applicable state securities laws as a condition to the removal of such legend or to any resale of the 4(a)(2) Plan Securities. Reorganized Excel will also reserve the right to stop the transfer of any 4(a)(2) Plan Securities if such transfer is not in compliance with the Securities Act and the applicable state securities laws. Any person who purchases 4(a)(2) Plan Securities pursuant to the 4(a)(2) Rights Offering will be deemed to acknowledge and agree not to resell such securities except in accordance with registration or an exemption of registration, and that the securities will be subject to the other restrictions described above.

Any persons receiving "restricted securities" under the Plan should consult with their own counsel concerning the availability of an exemption from registration for resale of these securities under the Securities Act and other applicable law. [See also Article V.D. "Risks Relating to the 4\(a\)\(2\) Rights Offering" and Article V.F. -- "You may be restricted from selling the 1145 Offered Shares and Holdco Units you receive upon exercise of](#)

[your Co-Investment Rights pursuant to the 1145 Rights Offering.](#)

## VII. CERTAIN TAX CONSEQUENCES OF THE PLAN

The following is a summary of certain U.S. federal income tax consequences of the Plan to U.S. Holders and Non-U.S. Holders (as defined below) of allowed Syndicate Credit Facility Claims and of Convertible Notes that are entitled to vote to accept or reject the Plan. This summary is for informational purposes only and is based on the Internal Revenue Code of 1986, as amended (the "Tax Code"), Treasury regulations promulgated thereunder, and administrative and judicial interpretations and practice, all as in effect on the date of this Disclosure Statement and all of which are subject to change or differing interpretations, with possible retroactive effect. Due to the lack of definitive judicial and administrative authority in a number of areas, substantial uncertainty may exist with respect to some of the tax consequences described herein. No opinion of counsel has been obtained as to any of the tax consequences of the Plan and no ruling will be sought from the Internal Revenue Service ("IRS") with respect to any statement or conclusion in this summary. No representations are being made regarding the particular tax consequences of the confirmation or implementation of the Plan as to any creditor or equity interest-holder and there can be no assurance that the IRS would not assert, or that a court would not sustain, positions different from those discussed herein.

The following discussion does not address foreign, state, or local tax consequences of the Plan, nor does it purport to address all aspects of U.S. federal income taxation applicable to special classes of taxpayers (including, without limitation, banks and certain other financial institutions, insurance companies, tax-exempt organizations, governmental entities, partnerships or other pass-through entities, real estate investment trusts (REITs), regulated investment companies (RICs), controlled foreign corporations (CFCs), passive foreign investment companies (PFICs), persons whose functional currency is not the U.S. dollar, dealers subject to the mark-to-market rules of Section 475 of the Tax Code, employees of the Debtors, and persons who received their Syndicate Credit Facility Claims or Convertible Notes, as the case may be, pursuant to the exercise of an employee stock option or otherwise as compensation). This summary assumes that the Syndicate Credit Facility Claims and Convertible Notes are held as capital assets for U.S. federal income tax purposes and that the Holdco Units, the interests in the Amended and Restated Senior Secured Credit Facility, and New Common Stock will each be held as a capital asset for U.S. federal income tax purposes. Furthermore, the following discussion does not address U.S. federal taxes other than income taxes (including, without limitation, estate and gift taxes). U.S. Holders and Non-U.S. Holders should consult their tax advisors regarding the tax consequences to them of the transactions contemplated by the Plan, including U.S. federal, state, local and foreign tax consequences.

For purposes of this discussion, a "U.S. Holder" is a beneficial holder of allowed Syndicate Credit Facility Claims or Convertible Notes that is, for U.S. federal income tax purposes (1) an individual that is a citizen or resident of the United States, (2) a corporation, or other entity treated 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, (3) an estate, the income of which is subject to U.S. federal income taxation regardless of its source, or (4) a trust if (i) a court within the United States is able to exercise primary supervision over its administration and one or more U.S. persons have the authority to control all of the substantial decisions of such trust or (ii) such trust has a valid election in effect under applicable Treasury regulations to be treated as a U.S. person. A "Non-U.S. Holder" is a beneficial holder (other than any entity treated as a partnership for U.S. federal income tax purposes) of allowed Syndicate Credit Facility Claims or Convertible Notes that is not a U.S. Holder.

If a partnership (including any entity treated as a partnership for U.S. federal income tax purposes) holds allowed Syndicate Credit Facility Claims or Convertible Notes, as the case may be, the U.S. federal income tax consequences to the partners of such partnership will depend on the activities of the partnership and the status of the partners. A partnership considering participating in the Plan should consult its tax advisor regarding the consequences to the partnership and its partners of the Plan.

<b>Summary report:</b>	
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