

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	:	Chapter 11
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EXCEL MARITIME CARRIERS LTD., <u>et</u>	:	Case No. 13-23060 (RDD)
<u>al.</u> ,	:	
	:	
Debtors.	:	(Jointly Administered)
	:	
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DISCLOSURE STATEMENT WITH RESPECT TO THE DEBTORS'
AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION

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Dated: November 26, 2013
New York, NY

THIS PROPOSED DISCLOSURE STATEMENT HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT AS CONTAINING ADEQUATE INFORMATION WITHIN THE MEANING OF BANKRUPTCY CODE SECTION 1125(a). THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCES OR REJECTIONS OF THE PLAN WILL NOT BE SOLICITED UNTIL THE BANKRUPTCY COURT HAS APPROVED THIS PROPOSED DISCLOSURE STATEMENT. THE DEBTORS RESERVE THE RIGHT TO AMEND OR SUPPLEMENT THIS PROPOSED DISCLOSURE STATEMENT AT OR BEFORE THE HEARING TO CONSIDER THIS PROPOSED DISCLOSURE STATEMENT.

INTRODUCTION AND DISCLAIMER

A. Overview of Excel's Chapter 11 Filing and Plan Solicitation

On July 1, 2013, Excel Maritime Carriers Ltd. ("Excel"), a company incorporated under the laws of Liberia, and certain of its direct and indirect subsidiaries (collectively with Excel, the "Debtors") commenced cases under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). The Debtors submit this Disclosure Statement to certain holders of claims against the Debtors in connection with the solicitation of acceptances of the Amended Joint Chapter 11 Plan of Reorganization of Excel Maritime Carriers Ltd. and Certain of its Affiliates, dated as of November 26, 2013, a copy of which is annexed hereto as Appendix A (the "Plan"). The Plan memorializes the terms of a consensual restructuring of the Debtors as agreed among the Debtors, their secured lenders holding more than 80% of such lenders' claims, the Official Committee of Unsecured Creditors, Ivory Shipping Inc. and other key constituents.

The Debtors are soliciting acceptances from holders of two classes of claims: (1) holders of secured obligations under Excel's senior secured syndicate credit facility dated April 14, 2008 (as amended, modified and supplemented) (the "Syndicate Credit Facility"), and (2) holders of impaired general unsecured claims against Excel, including but not limited to holders of unsecured convertible notes, swap claims, claims arising under a settlement with certain bareboat charter parties and holders of unsecured deficiency claims arising under the Syndicate Credit Facility.

B. Treatment Of Syndicate Credit Facility Lenders' Secured Claims

As described further below, the Debtors own and operate a fleet of "dry bulk" cargo vessels. The dry bulk shipping industry is cyclical, with attendant volatility in charter hire rates and profitability. Charter rates for dry bulk vessels have been in a significant down cycle since 2008, with current dry bulk freight rates as measured by the Baltic Dry Index -- a composite of time charter rates for moving dry bulk cargo along 23 shipping routes -- 56% below the long-term average over the past ten years and 87% below the highest rates achieved in May 2008. Accordingly, the Debtors' revenues, profitability and value have been very negatively affected. The Debtors' value is significantly below the face amount of their debt, and they are no longer able to sustain their debt service obligations.

The Debtors, with the assistance of their investment banker, estimate their total enterprise value to be between \$605 million and \$655 million, with a mid-point of \$630 million. However, approximately \$765 million is outstanding under the Debtors' Syndicate Credit Facility, after recognition of the adequate protection payment of \$6.2 million made on October 1, 2013. Each of the Debtors is obligated on this Facility, and the Facility is secured by liens on substantially all the Debtors' assets. Because the value of the collateral securing the Facility is less than the amount outstanding under the Facility, under the Bankruptcy Code, the claims arising under the Facility are bifurcated into (i) a secured claim equal to the Debtors' estimated enterprise value, prior to the new money investment described below (the "Syndicate Credit Facility Secured Claim") and (ii) an unsecured deficiency claim equal to the balance of the claims under the Facility (the "Syndicate Credit Facility Deficiency Claim"). Assuming that an adequate protection payment is made on or before January 2, 2014 in accordance with the Final Cash Collateral Order and the Stipulated Cash Collateral Order (each as defined below), at the mid-point of the valuation, these two claims are equal to approximately \$579 million and \$180 million, respectively.

The Syndicate Credit Facility lenders' claims are secured by a lien on substantially all of the Debtors' assets, and their claims are significantly underwater. The Syndicate Credit Facility lenders are legally entitled to recover the value of their collateral. The Plan contemplates a restructuring of the Debtors that reduces the secured debt to a serviceable and market-based level. Holders of approximately 82.9% of the Syndicate Credit Facility Claims have signed on to a plan term sheet pursuant to which they agreed to support the Plan to the extent it is consistent in all material respects with the treatment of the Syndicate Credit Facility lenders' claims as described below, including by voting to accept the Plan. Under the Plan, the Syndicate Credit Facility lenders will receive, on account of their Syndicate Credit Facility Secured Claim, a restructured debt obligation in the amount of \$300 million and 83.3% of the equity in reorganized Excel, prior to the co-investment rights described below, based on the mid-point of the valuation range. As set forth in Exhibit A to the Plan, the restructured secured facility will be in

the amount of \$300 million, and will be repaid over a five-year period, amortized quarterly starting in year 2015 with the amount increasing each year and with the unpaid amount due at maturity and at an interest rate per annum equal to LIBOR plus 4.50% subject to such modifications and/or amendments as are satisfactory to the Debtors and each of the Consenting Parties. The loan obligation will be secured by a first priority lien on substantially all of the assets, including vessels, of reorganized Excel and each of the reorganized Debtors who were guarantors under the pre-petition Syndicate Credit Facility. Reorganized Excel, as borrower, will be subject to affirmative, negative and financial covenants and events of default to be determined. The equity in Reorganized Excel distributed to the Syndicate Credit Facility lenders will be subject to dilution on account of the co-investment rights offered to holders of impaired Excel general unsecured claims, described immediately below.

C. Treatment of Impaired Excel General Unsecured Claims

The Debtors, the Syndicate Credit Facility lenders and the Creditors' Committee extensively negotiated and ultimately agreed on the treatment of all claims against Excel. The Creditors' Committee and certain noteholders, in their capacity as holders of impaired Excel general unsecured claims (the "Consenting Noteholders") have signed on to a term sheet agreeing to support the Plan that is consistent in all material respects with the treatment of their claims as described below and otherwise acceptable to the Creditors' Committee and the Consenting Noteholders. By signing the plan term sheet, the Consenting Noteholders have agreed to support the Plan, including by voting to accept the Plan. Under the Plan, holders of impaired general unsecured claims against Excel will receive the following distribution on account of their claims: (i) 8.0% of the stock in reorganized Excel, subject to dilution on account of the co-investment rights offered to such holders (or 7.9% of the fully diluted stock in reorganized Excel representing 1,600,000 shares of stock in reorganized Excel), (ii) the right to purchase up to an additional 1.5% of the total outstanding equity in reorganized Excel, at an offering price equal to \$16.25 per share or a total purchase price of \$5 million, and (iii) the right to purchase up to an additional 1.4% of the total outstanding equity, at an offering price equal to \$17.25 per share or a total purchase price of \$5 million. The price of each tranche of rights offered is based on a total post new money equity value of reorganized Excel of \$330 million (with reorganized Excel having \$300 million of funded indebtedness on the Effective Date). Additionally, to the extent the first tranche of rights offered is not fully subscribed, holders of impaired Excel general unsecured claims who are Accredited Investors will be entitled to participate in a separate rights offering for an aggregate number of shares equal to the number of shares not subscribed for as part of the first tranche.

The funds from the offering, coupled with the Ivory investment described below, will be used by Excel for general working capital of the reorganized Company. To the extent the class of impaired general unsecured claims against Excel votes in favor of the Plan, on the Effective Date of the Plan and without any further actions, the holders of the Syndicate Credit Facility Deficiency Claims shall be deemed to waive their entitlement to any distribution on account of such deficiency claims, and the other holders of impaired Excel general unsecured claims pro rata participation in the co-investment rights shall be increased accordingly. The Creditors' Committee recommends that general unsecured creditors vote in favor of the Plan.

D. Ivory Investment; Go-Forward Management

Excel's management team is highly regarded in the industry, and is led by Mr. Gabriel Panayotides, who has been involved in the shipping industry since 1978. Mr. Panayotides and entities associated with him hold stock representing approximately 47% of the voting power of the capital stock in Excel. Ms. Ismini Panayotides, the Secretary of Excel's Board of Directors and the daughter of Mr. Panayotides, and entities associated with her, hold stock representing approximately 9% of the voting power of the capital stock in Excel. One of the entities associated with the Panayotides family is Ivory. Mr. Panayotides has no ownership interest in Ivory, which is owned by certain of his family members.

The Debtors' businesses will continue to be managed, as of the Effective Date, by existing management. Mr. Gabriel Panayotides shall serve as Chief Executive Officer of Reorganized Excel. In light of Mr. Panayotides' expertise and that of Excel's existing senior management, the Syndicate Credit Facility lenders have agreed to afford them incentives through a combination of a management incentive plan and the offer to Ivory to purchase between 7.1% and up to approximately 10.1% of the stock in reorganized Excel for \$25 million and up to \$35 million, respectively based on the exercise of the co-investment rights offered to holders of Excel impaired general unsecured claims. The Ivory investment consists of a new cash investment of at least \$5 million and up to \$15

million (subject to the exercise of the co-investment rights offered to holders of Excel impaired general unsecured claims) and Ivory's agreement to consent to, and waive any rights in connection with, the release to reorganized Excel of \$20 million in cash currently held in escrow which Ivory previously deposited to backstop an equity offering of Excel. The terms of the Management Incentive Plan will be summarized in the Plan Supplement.

E. Summary of Treatment of All Stakeholders

The chart below summarizes in greater detail the treatment of all classes of claims and interests under the Plan.

Description and Amount of Claims and Interests	Summary of Treatment
Unclassified Claims	
Administrative Claims (Unimpaired)	<p>An Administrative Claim is a claim for costs and expenses of administration of the chapter 11 cases. All Allowed Administrative Claims will be paid in full in cash on the Effective Date of the Plan, or as soon thereafter as such claim is allowed, unless the holder and the Debtors agree to different treatment. The estimated amount below only includes restructuring expenses that the Debtors estimate will remain unpaid upon conclusion of the Debtors' chapter 11 cases, and does not include Trade Claims or any diminution claim of the Debtors' secured lenders.</p> <p>Estimated Amount: \$22.1 million Estimated Recovery: 100%</p>
Priority Tax Claims (Unimpaired)	<p>A Priority Tax Claim is any claim owed by the Debtors to governmental units for taxes that are entitled to priority under the Bankruptcy Code. On the Petition Date, the Debtors obtained Bankruptcy Court authority to pay all such claims in the ordinary course. To the extent any such claim is not so paid, then on the Effective Date, or as soon as reasonably practicable thereafter, each holder of an Allowed Priority Tax Claim shall have its claim reinstated, which means that such holder's legal, equitable and contractual rights with respect to its Priority Tax Claim will be left unaltered and paid in the ordinary course, unless such holder and the Debtors agree to different treatment.</p> <p>Estimated Amount: \$0.00 Estimated Recovery: 100%</p>
Intercompany Claims (Unimpaired or Impaired at the election of the Debtors)	<p>An Intercompany Claim is a claim of a Debtor against another Debtor. On or prior to the Effective Date, all Intercompany Claims shall either be reinstated, in full or in part, or cancelled and discharged, in full or in part.</p> <p>Estimated Recovery: 100%</p>
Classified Claims	
Class 1 – Non-Tax Priority Claims (Unimpaired)	<p>A Non-Tax Priority Claim is a pre-petition claim entitled to priority under the Bankruptcy Code other than an Administrative Claim or a Priority Tax Claim. Such claims include claims by employees for unpaid wages, salaries or commissions earned within 180 days before the Petition Date. The Debtors do not believe they have any Non-Tax Priority Claims. To the extent any such claim has not been paid, on the Effective Date, or as soon as reasonably practicable thereafter, each holder of an Allowed Class 1 – Non-Tax Priority Claim will have such claim reinstated and paid in full.</p> <p>Estimated Amount: \$0.00 Estimated Recovery: 100%</p>
Class 2 – Syndicate Credit Facility	A Syndicate Credit Facility Secured Claim is a claim outstanding under

Description and Amount of Claims and Interests	Summary of Treatment
Secured Claims (Impaired)	<p>Excel's Syndicate Credit Facility in an amount equal to the mid-point of the estimated enterprise value of reorganized Excel, prior to the new investments by Ivory and unsecured creditors and excluding the value of Excel's equity interest in <i>M/V Christine</i>: \$579 million.</p> <p>Upon the Effective Date, the Syndicate Credit Facility Secured Claim will be Allowed by the Plan for all purposes in the aggregate amount of \$579 million.</p> <p>On the Effective Date, each holder of an Allowed Syndicate Credit Facility Secured Claim shall receive, in full and final satisfaction, release, discharge of, and in exchange for, such Syndicate Credit Facility Secured Claim, its <i>pro rata</i> share of (i) a restructured loan with a face amount of \$300 million, and (ii) 16.7 million shares of common stock of reorganized Excel, representing 83.3% of all such stock to be issued under the Plan, prior to dilution on account of the rights offering to holders of Class 8 Impaired Excel General Unsecured Claims described below.¹ Additional terms of the restructured loan are contained in Exhibit A to the Plan.</p> <p>Additionally, the Debtors will pay the reasonable fees and documented expenses of (i) Oaktree in its capacity as a secured lender, including the fees and expenses of Paul, Weiss, Rifkind, Wharton & Garrison LLP, its counsel, incurred prior to and subsequent to the commencement of the Chapter 11 Cases in connection with the restructuring of the Debtors, (ii) Angelo Gordon in its capacity as a secured lender and primarily related to the negotiation and documentation of corporate governance related to Holdco, up to \$400,000, including those of Wachtell, Lipton, Rosen & Katz, its counsel, and (iii) the Agent for the Syndicate Credit Facility, including those of Blackstone Group International Partners LLP, Freshfields Bruckhaus Deringer US LLP, and Holland & Knight LLP as advisors to the Agent and the Secured Lenders, incurred in connection with the restructuring of the Debtors, to the extent not previously paid in connection with the final order authorizing the Debtors to use cash 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>Estimated Amount: \$579 million Estimated Recovery: 98.6%</p>
Class 3 – Christine Shipco Facility Secured Guaranty Claim (Unimpaired)	<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</p>

¹ If fully diluted, such New Common Stock shall represent 82% of all New Common Stock issued under the Plan as set forth in the Plan Term Sheet.

Description and Amount of Claims and Interests	Summary of Treatment
	unaltered and paid in the ordinary course. Estimated Amount: \$27.9 million Estimated Recovery: 100%
Class 4 – Other Secured Claims (Unimpaired)	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. Estimated Amount: \$0.00 Estimated Recovery: 100%
Class 5 – There is no Class 5.	[Reserved]
Class 6 – Impaired Subsidiary Debtor General Unsecured Claims (Impaired)	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) causes of action (x) covered under any of the Debtors' insurance policies or (y) held by any person over whom a United States court could not otherwise exercise personal jurisdiction, provided that such person 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 Claims will receive no recovery under the Plan. Estimated Amount: N/A Estimated Recovery: 0%
Class 7 – Unimpaired Subsidiary Debtor General Unsecured Claims (Unimpaired)	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) a cause of action to the extent such cause of action (x) is covered under any of the Debtors' insurance policies or (y) is held by a person over whom a United States court could not otherwise 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

Description and Amount of Claims and Interests	Summary of Treatment
	<p>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>Estimated Amount: N/A Estimated Recovery: 100%</p>
Class 8 – Impaired Excel General Unsecured Claims (Impaired)	<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) causes of action (x) covered under any of the Debtors' insurance policies or (y) held by any person over whom a United States court could not otherwise 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> <p>The aggregate amount of the Syndicate Credit Facility Deficiency Claims shall be either \$179.8 million, if the Adequate Protection Payment is made on or before January 2, 2014, or \$185,930,760.71, if the Adequate Protection Payment is not made by Excel on or before January 2, 2014, and shall be Allowed solely for voting purposes in such applicable amount in connection with the Plan and such claims shall be, subject to the next sentence, included within the class of Impaired Excel General Unsecured Claims (for the avoidance of doubt, subject to the next sentence, the Holders of Syndicate Credit Facility Claims, on account of and to the extent of the Syndicate Credit Facility Deficiency Claims, shall have all of the rights belonging to the Holders of Class 8 Claims including, without limitation, all rights to distributions and the Co-Investment Rights). The Consenting Parties reserve all rights with respect to the amount, if any, and treatment of a Syndicate Credit Facility Deficiency Claim, if any, held by the Secured Lenders for all other purposes including, but not limited to, voting on and receiving distributions, in each case with respect to any plan of reorganization that is not consistent with the plan of reorganization described in the Plan Term Sheet.</p> <p>On the Effective Date, and immediately prior to the transfer of the New Common Stock to Holdco and the issuance of the Holdco Units in</p>

Description and Amount of Claims and Interests	Summary of Treatment
	<p>accordance with Section 5.7 of the Plan, each Holder of an Allowed Impaired Excel General Unsecured Claim will receive, in full and final satisfaction, release, discharge of, and in exchange for, such Allowed Impaired Excel General Unsecured Claim, (a) its Pro Rata share of 1.6 million shares of New Common Stock, representing 8.0% of the New Common Stock to be issued under the Plan, subject to dilution on account of the Co-Investment Rights and (b) its Pro Rata share of the Tranche A Offered Shares and Tranche B Offered Shares subscribed for pursuant to such Holders' Co-Investment Rights.</p> <p>Holders of Allowed Class 8 Claims may exercise their Co-Investment Rights pursuant to two separate rights offerings: the 1145 Rights Offering and 4(a)(2) Rights Offering. The Co-Investment Rights pursuant to the 1145 Rights Offering shall be split into two \$5.0 million tranches. The Tranche A Subscription Rights shall dilute pro rata the Primary Equity. Each Holder of an Allowed Impaired Excel General Unsecured Claim shall have the right to subscribe for any unsubscribed portion of the Tranche A Offered Shares up to the full amount of the Tranche A Subscription Rights subject to Pro Rata reduction to the extent the Tranche A Subscription Rights are oversubscribed and the individual limits on oversubscription described below, if applicable.</p> <p>The Tranche B Subscription Rights shall reduce the Ivory Investment on a dollar-for-dollar basis. Ivory shall have the exclusive right to purchase shares equal to the number of unsubscribed Tranche B Offered Shares with respect to the full amount of the Tranche B Subscription Rights.</p> <p>Each Holder's aggregate Tranche A Subscription Rights (including oversubscription rights related thereto), when taken together with such Holder's Tranche B Subscription Rights, shall be limited to 75% of such Holder's Pro Rata portion of the Section 1145 Stipulated Value. This limit does not apply to the 4(a)(2) Rights Offering.</p> <p>Additionally, Holders of Allowed Class 8 Claims who are Accredited Investors, and who timely return an Accredited Investor Questionnaire to the Subscription Agent pursuant to the Rights Offering Procedures, will have the opportunity to participate in the 4(a)(2) Rights Offering. Notwithstanding anything to the contrary in the Plan, (i) upon the completion of the 1145 Rights Offering and 4(a)(2) Rights Offering, Ivory shall have the exclusive right to purchase shares equal to the number of 1145 Offered Shares and 4(a)(2) Offered Shares remaining unsubscribed pursuant to section 4(a)(2) of the Securities Act and (ii) in no event shall the fact that the Co-Investment Rights are being offered pursuant to two rights offerings diminish Ivory's right to purchase up to 10.1% of the New Common Stock, subject to the rights of Holders of Impaired Excel General Unsecured Claims to exercise their Co-Investment Rights.</p> <p>Holders of Syndicate Credit Facility Deficiency Claims shall have all of the rights belonging to the holders of Allowed Impaired Excel General Unsecured Claims including, without limitation, all rights to distributions and the co-investment rights. If the class of Impaired Excel General Unsecured Claims votes to accept the Plan, then on the Effective Date, the holders of Syndicate Credit Facility Deficiency Claims shall be deemed automatically and without the need for any action to have waived their</p>

Description and Amount of Claims and Interests	Summary of Treatment
	<p>entitlement to any distributions and the co-investment rights on account of such deficiency claims, and the other holders of Allowed Impaired Excel General Unsecured Claims <i>pro rata</i> participation in the co-investment rights and distributions of primary equity shall be increased accordingly.</p> <p>The Estimated Recoveries set forth below do not include any estimated value on account of the rights offering.</p> <p>Estimated Amount of all Allowed Class 8 Claims: \$343.1 million Estimated Recovery of all Allowed Class 8 Claims: 7.6%²</p> <p>Estimated Amount of all Allowed Class 8 Claims, excluding the Syndicate Credit Facility Deficiency Claim: \$163.4 million</p> <p>Estimated Recovery of all Allowed Class 8 Claims, excluding the Syndicate Credit Facility Deficiency Claim: 15.9%</p>
Class 9 – Unimpaired Excel General Unsecured Claims (Unimpaired)	<p>An Unimpaired Excel General Unsecured Claim means an unsecured claim or cause of action against Excel, other than an Impaired Excel 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) any cause of action to the extent such cause of action (x) is covered under any of Excel's insurance policies or (y) is held by a person over whom a United States court could not otherwise 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>Estimated Amount: N/A Estimated Recovery: 100%</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>Estimated Amount: \$0.00 Estimated Recovery: 0%</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</p>

² This calculation assumes that the Adequate Protection Payment is made by Excel on or before January 2, 2014.

Description and Amount of Claims and Interests	Summary of Treatment
	reorganized Debtors. Holders of Class 11 – Interests in Excel will not retain any property or receive any recovery under the Plan. Estimated Amount: N/A Estimated Recovery: 0%
Class 12 – Interests in Debtors Other than Excel (Unimpaired)	This class is comprised of Excel's interests in its subsidiaries. On the Effective Date, these interests will be reinstated. Estimated Amount: N/A Estimated Recovery: 100%

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 THE EVENT OF ANY INCONSISTENCY BETWEEN THE PLAN AND THIS DISCLOSURE STATEMENT, THE TERMS OF THE PLAN ARE CONTROLLING. A SECONDARY PURPOSE OF THIS DISCLOSURE STATEMENT IS TO PROVIDE HOLDERS OF IMPAIRED EXCEL GENERAL UNSECURED CLAIMS WITH CERTAIN INFORMATION THAT WILL HELP THEM TO DECIDE WHETHER TO EXERCISE THE APPLICABLE CO-INVESTMENT RIGHTS.

IMPORTANT FEDERAL, STATE AND LOCAL LAWS FOR THE PROTECTION OF INVESTORS DO NOT APPLY TO THIS DISCLOSURE STATEMENT. THE SECURITIES DESCRIBED HEREIN WILL BE ISSUED TO CREDITORS WITHOUT REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY SIMILAR FEDERAL, STATE OR LOCAL LAW, IN RELIANCE UPON (A) THE EXEMPTIONS SET FORTH IN SECTION 1145 OF THE BANKRUPTCY CODE TO THE MAXIMUM EXTENT PERMITTED AND APPLICABLE AND (B) TO THE EXTENT THAT SECTION 1145 IS EITHER NOT PERMITTED OR NOT APPLICABLE, THE EXEMPTION SET FORTH IN SECTION 4(2) OF THE SECURITIES ACT OR REGULATION D PROMULGATED THEREUNDER.

CONFIRMATION AND EFFECTIVENESS OF THE PLAN ARE SUBJECT TO THE SATISFACTION OR WAIVER OF CONDITIONS PRECEDENT, AND THERE CAN BE NO ASSURANCE THAT THOSE CONDITIONS PRECEDENT WILL BE SATISFIED. THE DEBTORS CURRENTLY INTEND TO SEEK TO EFFECTUATE THE PLAN PROMPTLY AFTER CONFIRMATION OF THE PLAN. THERE CAN BE NO ASSURANCE, HOWEVER, AS TO WHEN AND WHETHER CONFIRMATION OF THE PLAN AND THE EFFECTIVE DATE ACTUALLY WILL OCCUR. PROCEDURES FOR DISTRIBUTIONS UNDER THE PLAN, INCLUDING MATTERS THAT ARE EXPECTED TO AFFECT (A) THE TIMING OF THE RECEIPT OF DISTRIBUTIONS BY HOLDERS OF CLAIMS IN CERTAIN CLASSES AND (B) THE AMOUNT OF DISTRIBUTIONS ULTIMATELY RECEIVED BY SUCH HOLDERS ARE DESCRIBED IN **SECTION IV — "SUMMARY OF THE PLAN OF REORGANIZATION."** IF THE PLAN IS NOT CONFIRMED AND/OR EFFECTUATED, THEN THE DEBTORS WILL HAVE TO CONSIDER ALL OF THEIR OPTIONS AS DEBTORS IN BANKRUPTCY. *SEE* **SECTION X — "ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN."**

NO PERSON IS AUTHORIZED BY THE DEBTORS IN CONNECTION WITH THE PLAN OR THE SOLICITATION TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATION REGARDING THIS DISCLOSURE STATEMENT OR THE PLAN OTHER THAN AS CONTAINED IN THIS DISCLOSURE STATEMENT AND THE APPENDICES ATTACHED HERETO OR INCORPORATED HEREIN BY

REFERENCE OR REFERRED TO HEREIN. IF SUCH INFORMATION OR REPRESENTATION IS GIVEN OR MADE, IT MAY NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY THE DEBTORS. THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE LEGAL, BUSINESS, FINANCIAL, OR TAX ADVICE. ANY CREDITOR OR INTEREST HOLDER DESIRING ANY SUCH ADVICE OR ANY OTHER ADVICE SHOULD CONSULT WITH ITS OWN ADVISORS. THE DEBTORS MAKE NO RECOMMENDATION AS TO WHETHER OR NOT HOLDERS OF IMPAIRED EXCEL GENERAL UNSECURED CLAIMS WHO ARE ACCREDITED INVESTORS SHOULD PARTICIPATE IN THE RIGHTS OFFERING.

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT, INCLUDING THE INFORMATION REGARDING THE DEBTORS' HISTORY, BUSINESS, AND OPERATIONS, IS INCLUDED FOR PURPOSES OF SOLICITING ACCEPTANCES OF THE PLAN BUT, AS TO CONTESTED MATTERS AND ADVERSARY PROCEEDINGS THAT MAY BE PENDING AS OF THE FILING OF THE DEBTORS' CHAPTER 11 CASES OR COMMENCED AFTER THE FILING OF THE DEBTORS' CHAPTER 11 CASES, IS NOT TO BE CONSTRUED AS AN ADMISSION OR A STIPULATION BUT RATHER AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS.

THIS DISCLOSURE STATEMENT MAY NOT BE RELIED ON FOR ANY PURPOSE OTHER THAN TO DETERMINE WHETHER TO VOTE TO ACCEPT OR TO REJECT THE PLAN, AND NOTHING STATED HEREIN CONSTITUTES AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, OR MAY BE DEEMED ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTORS OR ANY OTHER PARTY, OR BE DEEMED A REPRESENTATION OF THE TAX OR OTHER LEGAL EFFECTS OF THE PLAN ON THE DEBTORS OR HOLDERS OF CLAIMS OR INTERESTS. CERTAIN OF THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT, BY THEIR NATURE, ARE FORWARD-LOOKING AND CONTAIN ESTIMATES AND ASSUMPTIONS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL BE REFLECTIVE OF ACTUAL OUTCOMES. ALL HOLDERS OF IMPAIRED CLAIMS SHOULD CAREFULLY READ AND CONSIDER THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY, INCLUDING **SECTION V — "RISK FACTORS TO BE CONSIDERED,"** BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

THIS DISCLOSURE STATEMENT CONTAINS SUMMARIES OF CERTAIN PROVISIONS OF THE PLAN, CERTAIN DOCUMENTS RELATED TO THE PLAN, CERTAIN EVENTS IN THE DEBTORS' CHAPTER 11 CASES AND CERTAIN FINANCIAL INFORMATION. ALTHOUGH THE DEBTORS BELIEVE THAT SUCH SUMMARIES ARE FAIR AND ACCURATE, SUCH SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE FULL TEXT OF SUCH DOCUMENTS. FACTUAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN PROVIDED BY THE DEBTORS' MANAGEMENT, EXCEPT WHERE OTHERWISE SPECIFICALLY NOTED. UNLESS SPECIFICALLY NOTED, THE FINANCIAL INFORMATION CONTAINED HEREIN HAS NOT BEEN AUDITED BY A CERTIFIED PUBLIC ACCOUNTING FIRM. THE DEBTORS DO NOT WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED HEREIN, INCLUDING FINANCIAL INFORMATION, IS WITHOUT ANY INACCURACY OR OMISSION.

THE DEBTORS BELIEVE THAT CONFIRMATION AND IMPLEMENTATION OF THE PLAN IS IN THE BEST INTERESTS OF THE DEBTORS' ESTATES, CREDITORS AND EQUITY INTEREST HOLDERS. ACCORDINGLY, THE DEBTORS URGE HOLDERS OF CLAIMS TO VOTE TO ACCEPT THE PLAN. FOR FURTHER INFORMATION AND INSTRUCTIONS ON VOTING TO ACCEPT OR REJECT THE PLAN, SEE SECTION I OF THIS DISCLOSURE STATEMENT, ENTITLED "PLAN VOTING INSTRUCTIONS AND PROCEDURES."

Except with respect to the "Financial Projections" attached hereto as Appendix E and except as otherwise specifically and expressly stated herein, this Disclosure Statement does not reflect any events that may occur subsequent to the date hereof and that may have a material impact on the information contained in this Disclosure Statement. Accordingly, the delivery of this Disclosure Statement will not, under any circumstance, imply that the information herein is correct or complete as of any time subsequent to the date hereof.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS: This Disclosure Statement contains certain forward-looking statements, all of which are based on various estimates and assumptions. Such forward-looking statements are subject to inherent uncertainties and to a wide variety of significant business, economic, and competitive risks, including, among others, those summarized herein. *See Section V — "Risk Factors To Be Considered."* When used in this Disclosure Statement, the words "anticipate," "believe," "estimate," "will," "may," "intend," and "expect" and similar expressions generally identify forward-looking statements. Although the Debtors believe that their plans, intentions, and expectations reflected in the forward-looking statements are reasonable, they cannot be sure that they will be achieved. These statements are only predictions and are not guarantees of future performance or results. Forward-looking statements are subject to risks and uncertainties that could cause actual results to differ materially from those contemplated by a forward-looking statement. All forward-looking statements attributable to the Debtors or persons acting on their behalf are expressly qualified in their entirety by the cautionary statements set forth in this Disclosure Statement. Forward-looking statements speak only as of the date on which they are made. Except as required by law, the Debtors expressly disclaim any obligation to update any forward-looking statement, whether as a result of new information, future events, or otherwise.

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I. PLAN VOTING AND RIGHTS OFFERING INSTRUCTIONS AND PROCEDURES

A. Notice To Holders Of Claims

On [●], 2013, the Bankruptcy Court entered an order (the "Disclosure Statement Approval Order") approving, among other things, this Disclosure Statement as containing "adequate information" within the meaning of Bankruptcy Code section 1125(a) [Docket No. [●]]. Significant dates and deadlines relating to voting and confirmation of the Plan as set forth in the Disclosure Statement Approval Order are:

Event	Date
Deadline for Objections to Disclosure Statement	December 2, 2013 at 4:00 p.m.
Deadline for Replies to Objections to Disclosure Statement	December 5, 2013 at 12:00 p.m.
Disclosure Statement Hearing Date	December 6, 2013 at 2:00 p.m.
Voting Record Date and Rights Offering Record Date	December 9, 2013
Solicitation Commencement	December 12, 2013, 2013 at 11:59 p.m.
Mailing of 1145 Subscription Agreements	December 12, 2013 at 11:59 p.m.
Confirmation Hearing Notice Publication Date	December 12, 2013
Deadline to Return Accredited Investor Forms with Respect to the 4(a)(2) Rights Offering	December 27, 2013 at 5:00 p.m.
Deadline to File Plan Supplement	January 10, 2014
Voting Deadline	January 16, 2014 at 4:00 p.m.
Deadline to Return Shareholder Release Form	January 16, 2014 at 4:00 p.m.
Deadline for Objections to Confirmation	January 16, 2014 at 5:00 p.m.
Deadline to File 3018(a) Motion	January 16, 2014 at 5:00 p.m.
Deadline for Submission of 1145 Subscription Agreements, 4(a)(2) Subscription Agreements and Wire Transfers	January 17, 2014 at 5:00 p.m.
Voting Certification Deadline	January 17, 2014 at 11:59 p.m.
Deadline for Replies to Objections to Confirmation	January 23, 2014 at 5:00 p.m.
Rule 3018 Hearing Deadline	January 27, 2014 at 10:00 a.m.
Confirmation Hearing	January 27, 2014 at 10:00 a.m.

This Disclosure Statement is being transmitted to holders of claims that are entitled under the Bankruptcy Code to vote on the Plan. Only two classes are entitled to vote on the Plan: (1) holders of secured obligations under the Syndicate Credit Facility; and (2) holders of Impaired Excel General Unsecured Claims, including "Noteholder Claims" with respect to the 1.875% unsecured convertible senior notes issued by Excel pursuant to an indenture dated October 10, 2007 and due October 15, 2027 (the "Convertible Notes"), swap claims, claims arising under a settlement with certain bareboat charter parties and Syndicate Credit Facility Deficiency Claims.

The purpose of this Disclosure Statement is to provide adequate information to enable such holders to make a reasonably informed decision with respect to the Plan prior to exercising their right to vote to accept or reject the

Plan. All other classes are either unimpaired under the Plan, in which case the holders of claims in such classes are deemed to have accepted the Plan, or are receiving no distribution under the Plan, in which case the holders of claims in such classes are deemed to have rejected the Plan. Another purpose of this Disclosure Statement is to provide holders of Impaired Excel General Unsecured Claims with certain information that will help them decide whether to purchase shares of common stock in Reorganized Excel pursuant to the co-investment rights.

ALL HOLDERS OF IMPAIRED CLAIMS ENTITLED TO VOTE ON THE PLAN ARE ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND ITS APPENDICES CAREFULLY AND IN THEIR ENTIRETY BEFORE DECIDING TO VOTE TO ACCEPT OR REJECT THE PLAN. THIS DISCLOSURE STATEMENT CONTAINS IMPORTANT INFORMATION ABOUT THE PLAN AND IMPORTANT CONSIDERATIONS PERTINENT TO ACCEPTANCE OR REJECTION OF THE PLAN. THIS DISCLOSURE STATEMENT, THE PLAN, AND BALLOTS ARE THE ONLY DOCUMENTS TO BE USED IN CONNECTION WITH THE SOLICITATION OF VOTES ON THE PLAN. NO PERSON HAS BEEN AUTHORIZED TO DISTRIBUTE ANY INFORMATION CONCERNING THE DEBTORS RELATING TO THE SOLICITATION OTHER THAN THE INFORMATION CONTAINED HEREIN.

B. Solicitation Procedures and Solicitation Packages

The Debtors are causing "Solicitation Packages" to be distributed to holders of claims and interests. With respect to holders of claims entitled to vote on the Plan, each Solicitation Package shall include: (1) a copy of the Disclosure Statement Approval Order, (2) a notice of the hearing to consider confirmation of the Plan (the "Confirmation Hearing Notice"), (3) this Disclosure Statement with the Plan annexed thereto,³ (4) an appropriate form of ballot(s) and appropriate return envelope with postage pre-paid, and (5) a notice of disputed claim status (the "Notice of Disputed Claim Status") as applicable. With respect to holders of claims and interests not entitled to vote on the Plan, each Solicitation Package shall include (1) the Confirmation Hearing Notice, (2) either a notice of such holder's non-voting status – unimpaired classes or a notice of such holder's non-voting status – impaired classes, and (3) such other materials as may be ordered or permitted by the Bankruptcy Court. Holders of Class 11 Interests in Excel, who are not entitled to vote on the Plan, will also receive a notice of the releases set forth in the Plan. Such holders of Class 11 Interests will have the opportunity to opt out of the Plan releases by completing and returning a form to Donlin, Recano & Company, Inc. (the "Voting Agent") by the Voting Deadline.

The Disclosure Statement Approval Order sets forth, among other things, (1) solicitation procedures with respect to holders of claims in voting classes, (2) the deadline for submitting ballots to accept or reject the Plan, (3) the date, time and place of the hearing to consider confirmation of the Plan and the time for filing objections to the Plan, (4) the voting record date, and (5) procedures for tabulation of the ballots cast on the Plan, including assumptions and procedures for tabulating ballots that are not completed fully or correctly. You should read the Disclosure Statement Approval Order and the instructions attached to the ballot you received in this package in connection with this section of the Disclosure Statement.

C. Voting Procedures and Ballots

1. Voting procedures for holders of Syndicate Credit Facility Secured Claims and Impaired Excel General Unsecured Claims other than Noteholder Claims

Holders of Syndicate Credit Facility Secured Claims in Class 2 and Impaired Excel General Unsecured Claims in Class 8, including Syndicate Credit Facility Deficiency Claims will receive a ballot (or beneficial ballot, as explained below) to be used in voting on the Plan. After carefully reviewing the Plan, this Disclosure Statement, and the detailed instructions accompanying your ballot, indicate your acceptance or rejection of the Plan by voting in favor of or against the Plan on the enclosed ballot. Complete and sign your ballot and return your ballot to the

³ Copies of the Disclosure Statement and Plan included in the Solicitation Package will be provided in PDF format on an optical disc, such as a CD-ROM. Hard copies may be obtained by contacting the Voting Agent at (212) 771-1128.

Voting Agent either by first class mail, or by hand delivery, or overnight courier to the address set forth below, so that it is received by the Voting Deadline.

THE VOTING DEADLINE IS JANUARY 16, 2014 AT 4:00 P.M. PREVAILING EASTERN TIME, UNLESS EXTENDED BY THE DEBTORS WITH THE CONSENT OF EACH OF THE CONSENTING PARTIES (AS DEFINED IN THE PLAN). THE VOTING RECORD DATE FOR DETERMINING WHETHER A HOLDER OF AN IMPAIRED CLAIM IS ENTITLED TO VOTE ON THE PLAN IS DECEMBER 9, 2013 PREVAILING EASTERN TIME. FOR YOUR VOTE TO BE COUNTED, YOUR BALLOT MUST BE PROPERLY COMPLETED AS SET FORTH ABOVE AND IN ACCORDANCE WITH THE VOTING INSTRUCTIONS ON THE BALLOT AND RECEIVED NO LATER THAN THE VOTING DEADLINE BY THE VOTING AGENT BY FIRST CLASS MAIL, HAND DELIVERY, OR OVERNIGHT COURIER. PARTIES RETURNING A BALLOT (AS OPPOSED TO A BENEFICIAL BALLOT) SHOULD DELIVER BALLOTS TO THE ADDRESS SET FORTH BELOW.⁴

Regular Mail

**Donlin, Recano & Company, Inc.
Ballot Processing Center
P.O. Box 2034 Murray Hill Station
New York, NY 10156-0701**

If by hand delivery or overnight courier

**Donlin, Recano & Company, Inc.
Ballot Processing Center
419 Park Avenue South, Suite 1206
New York, NY 10016**

Except as provided below, unless the ballot is actually received by the Voting Agent before the Voting Deadline or the Bankruptcy Court orders otherwise, the Debtors may, in their sole discretion, reject such ballot as invalid, and therefore decline to utilize it in connection with seeking confirmation of the Plan. In the event of a dispute with respect to any claim, any vote to accept or reject the Plan cast with respect to such claim will not be counted for purposes of determining whether the Plan has been accepted or rejected, unless the Bankruptcy Court orders otherwise.

2. Voting Procedures for Beneficial Holders of Noteholder Claims in Class 8

Each beneficial holder of Convertible Notes as of the Record Date will receive a beneficial ballot. Beneficial holders of Convertible Notes who wish to vote to accept or reject the Plan must complete the beneficial ballot in accordance with the instructions contained therein and return it to their respective bank, broker, dealer, trust company or other agent or nominee (each, a "Nominee"). Upon receipt of such beneficial ballot, Nominees will execute a master ballot to reflect the votes of their beneficial holders. Nominees must tender master ballots to the Voting Agent at the address listed above by the Voting Deadline. In order to ensure that their vote is counted, beneficial holders must provide their beneficial ballot to their respective Nominees in time to allow such Nominees to execute and deliver master ballots to the Voting Agent by the Voting Deadline, which is 4:00 p.m. prevailing eastern time on January 16, 2014.

By properly completing and executing beneficial ballots and returning them to their Nominees, beneficial holders of Noteholder Claims are directing their respective Nominees to execute a master ballot on the beneficial holders' behalf that reflects their vote with respect to the Plan.

⁴ Holders of Noteholder Claims who will be returning beneficial ballots should review the instructions set forth in Section 2 below.

D. Confirmation; Acknowledgements

By submitting a ballot to the Voting Agent or submitting a beneficial ballot to a Nominee, as applicable, each holder of an impaired claim entitled to vote will be confirming that (i) such holder or legal and financial advisors acting on its behalf has had the opportunity to ask questions of, and receive answers from, Excel concerning the terms of the Plan, the business of Excel and other related matters, (ii) Excel has made available to such holder or its agents all documents and information relating to the Plan and related matters reasonably requested by or on behalf of such holder, and (iii) except for information provided by Excel in writing, and by its own agents, such holder has not relied on any statements made or other information received from any person with respect to the Plan.

By submitting a ballot to the Voting Agent or submitting a beneficial ballot to a Nominee, as applicable, each holder of an impaired claim entitled to vote also acknowledges that the interests in Reorganized Excel and Holdco being offered pursuant to the Plan, including pursuant to the co-investment rights, are not being offered pursuant to a registration statement filed with the SEC and represents that any such security will be acquired for its own account and not with a view to any distribution of such in violation of the Securities Act. It is expected that if issued pursuant to the Plan the interests in Reorganized Excel and Holdco will be exempt from the registration requirements of the Securities Act by virtue of section 1145 of the Bankruptcy Code and may be resold by the holders thereof subject to the provisions of section 1145.

E. Procedures for Holders of Contingent, Disputed or Unliquidated Claims

If you receive a Notice of Disputed Claim Status, it is because the Debtors scheduled your claim as disputed, contingent or unliquidated, or listed your claim as \$0.00 or in an unknown amount. If you wish to dispute this classification, you may file a motion (the "3018 Motion") seeking to have your claim temporarily allowed for voting purposes in the manner set forth on the Notice of Disputed Claim Status. Under the terms of the Disclosure Statement Approval Order, any such motions must be filed by the Voting Deadline. If you timely file such a motion, you will be provided a ballot and permitted to cast a provisional vote to accept or reject the Plan.

F. Revocation; Waivers of Defects; Irregularities

You may modify your vote on the Plan by submitting a superseding ballot at any time prior to the Voting Deadline. Unless otherwise directed by the Bankruptcy Court, all questions as to the validity, form, eligibility (including time of receipt), acceptance, revocation, or withdrawal of ballots will be determined by the Voting Agent and the Debtors in their sole discretion, which determination will be final and binding. The Debtors with the consent of each of the Consenting Parties also reserve the right to reject any and all ballots not in proper form, the acceptance of which would, in the opinion of the Debtors or their counsel with the consent of each of the Consenting Parties, not be in accordance with the Disclosure Statement Approval Order or the Bankruptcy Code.

The Debtors further reserve the right, with the consent of each of the Consenting Parties, subject to any contrary order of the Bankruptcy Court, to waive any defects or irregularities or conditions of delivery as to any particular ballot, whether before or after the Voting Deadline and without notice. The interpretation (including the ballot and the respective instructions therein) by the Debtors in accordance with the terms of the Plan, unless otherwise directed by the Bankruptcy Court, will be final and binding on all parties. Unless waived, any defects or irregularities in connection with delivery of ballots must be cured within such time as the Debtors (or the Bankruptcy Court) determine. Except as may be provided by Rule 3018-1(b) of the Local Bankruptcy Rules for the Southern District of New York (the "Local Rules") with respect to a ballot received before the Voting Deadline, neither the Debtors nor any other person will be under any duty to provide notification of defects or irregularities with respect to delivery of ballots nor will any of them incur any liabilities for failure to provide such notification. Unless otherwise directed by the Bankruptcy Court, delivery of such ballots will not be deemed to have been made until such irregularities have been cured or waived. Ballots previously furnished (and as to which any irregularities have not theretofore been cured or waived) will be invalidated.

G. Further Information; Additional Copies

If you have any questions about the procedure for voting your claim, the packet of materials that you have received or the amount of your claim; or if you wish to obtain an additional copy of the Plan, this Disclosure Statement, or any appendices or exhibits to such documents, please contact the Voting Agent at:

Donlin, Recano & Company, Inc.
Ballot Processing Center
P.O. Box 2034 Murray Hill Station
New York, NY 10156
Telephone: (212) 771-1128

H. Co-Investment Rights

The Debtors are offering holders of Allowed Impaired Excel General Unsecured Claims, including for the avoidance of doubt Holders of the Syndicate Credit Facility Deficiency Claims ("Eligible Holders"), the opportunity to subscribe for and purchase up to an aggregate of 2.9% of the equity in Reorganized Excel in two separate rights offerings, the 1145 Rights Offering and the 4(a)(2) Rights Offering. The "1145 Rights Offering" will consist of two tranches (the "Tranche A Offered Shares" and the "Tranche B Offered Shares") for an aggregate purchase price of up to \$10.0 million (the "Tranche A Subscription Rights" and "Tranche B Subscription Rights"). In the event that the Tranche A Offered Shares are not fully subscribed, including the Excess Shares (as defined below), there will be a separate rights offering (the "4(a)(2) Rights Offering") to Eligible Holders who are accredited investors and who timely fill out and return to the Subscription Agent (defined below) an accredited investor questionnaire. Such offering will be for an aggregate number of shares equal to the number of Tranche A Offered Shares, including Excess Shares, not subscribed for pursuant to the 1145 Rights Offering (the "4(a)(2) Offered Shares").

Eligible Holders, as applicable, will receive separate materials regarding the 1145 Rights Offering and 4(a)(2) Rights Offering, including a copy of the Rights Offering Procedures, subscription form and other documents relating to such offerings. A holder of an Allowed Impaired Excel General Unsecured Claim that does not duly complete, execute and timely deliver an Accredited Investor questionnaire to the Subscription Agent on or before December 27, 2013 at 5:00 p.m. (Prevailing Eastern Time) cannot participate in the 4(a)(2) Rights Offering. To participate in either the 1145 Rights Offering or 4(a)(2) Rights Offering, an Eligible Holder must submit a duly completed 1145 and/or 4(a)(2) Subscription Agreement and the appropriate payment on or before January 17, 2014 at 5:00 p.m. (Prevailing Eastern Time), or, as applicable, to its nominee with sufficient time for the nominee to return a master subscription form by no later than January 17 at 5:00 p.m. (Prevailing Eastern Time).

The Plan and Confirmation Order will provide (i) that the equity issued pursuant to the 1145 Rights Offering will be exempt from the registration requirements under the Securities Act of 1933 (the "Securities Act") pursuant to section 1145 of the Bankruptcy Code, and (ii) that the equity issued pursuant to the 4(a)(2) Rights Offering will be exempt from the registration requirements under the Securities Act under section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder.

Donlin, Recano & Company, Inc. in its capacity as the subscription agent (the "Subscription Agent") will send agreements to participate in the 1145 Rights Offering ("1145 Subscription Agreements") to the Eligible Holders by no later than December 12, 2013. The 1145 Subscription Agreements are the contracts by which such Eligible Holders will agree to subscribe for and purchase the Tranche A Offered Shares and Tranche B Offered Shares from Reorganized Excel. Each Eligible Holder who wishes to subscribe for the Tranche A Offered Shares and Tranche B Offered Shares pursuant to the 1145 Rights Offering must sign a 1145 Subscription Agreement indicating the number of Tranche A Offered Shares and Tranche B Offered Shares it wishes to purchase and return it to the Subscription Agent by no later than January 17, 2014 at 5:00 p.m.

Eligible Holders may subscribe for up to a maximum of their *pro rata* share of the Tranche A Offered Shares and Tranche B Offered Shares. If Class 8 – Impaired Excel General Unsecured Claims votes to accept the Plan, the *pro rata* share of the Tranche A Offered Shares and Tranche B Offered Shares for each Eligible Holder will be determined by multiplying (a) the total number of Tranche A Offered Shares or Tranche B Offered Shares by

(b) the quotient obtained by dividing (i) the amount of Impaired Excel General Unsecured Claims held by that Eligible Holder by (ii) the total amount of Impaired Excel General Unsecured Claims, other than Syndicate Credit Facility Deficiency Claims, rounded down to the nearest whole share. If Class 8 – Impaired Excel General Unsecured Claims votes to reject the Plan, the *pro rata* share for each Eligible Holder will be determined by multiplying (a) the total number of either Tranche A Offered Shares or Tranche B Offered Shares by (b) the quotient obtained by dividing (i) the amount of Impaired Excel General Unsecured Claims held by that Eligible Holder by (ii) the total amount of Impaired Excel General Unsecured Claims rounded to the nearest whole share.

Eligible Holders interested in subscribing for additional shares of the Tranche A Offered Shares (the "Excess Shares") may also indicate on their 1145 Subscription Agreement that they wish to subscribe for Excess Shares. The number of Excess Shares will be 307,692 minus the number of Tranche A Offered Shares subscribed for by all Eligible Holders. Each Eligible Holder may receive up to its *pro rata* portion of these Excess Shares. The *pro rata* portion of the Excess Shares that electing Eligible Holders may subscribe for will be determined by multiplying (a) the total number of unsubscribed shares by (b) the quotient obtained by dividing (i) the amount of Impaired Excel General Unsecured Claims held by that Eligible Holder by (ii) the total amount of Impaired Excel General Unsecured Claims held by Eligible Holders who elect to subscribe for unsubscribed shares, rounded to the nearest whole share. Each Eligible Holder's aggregate co-investment rights and any stock acquired pursuant to any oversubscription right shall also be limited to 75% of such Holder's Pro Rata portion of the Section 1145 Stipulated Value (as that term is defined in the Plan).

To the extent that the Tranche A Offered Shares, including the Excess Shares, are not fully subscribed, Eligible Holders who are accredited investors and who timely return the accredited investor form will have the opportunity to participate in the 4(a)(2) Rights Offering. By no later than December 12, 2013, the Subscription Agent will mail out accredited investor questionnaires to all Eligible Holders. In order to participate in the 4(2) Rights Offering, an Eligible Holder must return the accredited investor questionnaire to the Subscription Agent by December 27, 2013. The Subscription Agent will, upon receipt of the accredited investor questionnaire and by no later than December 30, 2013, mail a 4(a)(2) Rights Offering subscription agreement (the "4(2) Subscription Agreement") to such Eligible Holders. The 4(2) Subscription Agreements are the contracts by which such Eligible Holders will agree to subscribe for and purchase the 4(a)(2) Offered Shares from Reorganized Excel. Each Eligible Holder who wishes to subscribe for the 4(a)(2) Offered Shares pursuant to the 4(a)(2) Rights Offering must sign a 4(a)(2) Subscription Agreement indicating the number of 4(a)(2) Offered Shares it wishes to purchase and return it to the Subscription Agent by no later than January 17, 2014 at 5:00 p.m. (Prevailing Eastern Time), or, as applicable, to its nominee with sufficient time for the nominee to return a master subscription form by no later than January 17 at 5:00 p.m. (Prevailing Eastern Time).

The 4(a)(2) Subscription Agreement must be received by the Subscription Agent by January 17 at 5:00 p.m. The 4(a)(2) Rights Offering will be for an aggregate number of shares equal to the number of Class A Offered Shares, including Excess Shares, not subscribed for. These shares are being sold pursuant to an exemption from registration under the Securities Act and will bear the legend set forth in Section IV.B.2. below. To the extent this offering is oversubscribed, subscriptions will be reduced pro rata in accordance with the Eligible Holders' participation levels. To the extent that the Tranche A Offered Shares are fully subscribed, these subscriptions will be null and void.

To the extent the Tranche A Offered Shares are not fully subscribed, following the exercise by Eligible Holders of their respective Tranche A Subscription Rights, including any oversubscription rights, and the Section 4(2) Rights Offering is not fully subscribed, Ivory shall have the exclusive right to purchase shares equal to the number of unsubscribed Tranche A Offered Shares. Further, with respect to the Tranche B Subscription Rights, Eligible Holders shall not have over-subscription rights. Ivory shall have the exclusive right to purchase shares equal to the number of unsubscribed Tranche B Offered Shares.

I. Confirmation Hearing And Deadline For Objections To Confirmation

THE BANKRUPTCY COURT HAS SCHEDULED A HEARING TO CONSIDER CONFIRMATION OF THE PLAN ON JANUARY 27, 2013 AT 10:00 A.M. PURSUANT TO THE NOTICE OF CONFIRMATION HEARING PROVIDED TO HOLDERS OF CLAIMS AND INTERESTS OR THEIR REPRESENTATIVES, OBJECTIONS TO CONFIRMATION MUST BE FILED WITH THE BANKRUPTCY COURT BY JANUARY

16, 2014 AT 5:00 P.M. PREVAILING EASTERN TIME AND ARE GOVERNED BY BANKRUPTCY RULES 3020(B) AND 9014 AND LOCAL RULES OF THE BANKRUPTCY COURT. UNLESS AN OBJECTION TO CONFIRMATION IS TIMELY SERVED AND FILED, SUCH OBJECTION TO CONFIRMATION MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT AT THE CONFIRMATION HEARING.

II. OVERVIEW OF THE COMPANY

A. Corporate Structure of the Company

Excel is a holding company and the ultimate parent of each of the Debtors in these chapter 11 cases, in addition to various non-Debtor entities (the Debtors, collectively with their non-Debtor affiliates, the "Company"). A list of the Debtors is attached as Appendix B hereto. A corporate organization chart is attached as Appendix C hereto. The Company's executive offices are located in Nea Kifisia, Greece, and it maintains registered addresses in Monrovia, Liberia and Hamilton, Bermuda. Excel is the sole member of Excel Maritime LLC, a New York limited liability company with an office in White Plains, New York.

B. Overview Of Business

Excel is a shipping company founded in 1988 and incorporated under the laws of the Republic of Liberia. The Company is a provider of worldwide sea borne transportation for "dry bulk" cargo including, among others, iron ore, coal and grain, collectively referred to as "major bulks" and steel products, fertilizers, cement, bauxite, sugar and scrap metal, collectively referred to as "minor bulks." The dry bulk market is the primary provider of global commodities transportation. Approximately one third of all seaborne trade is dry bulk related.

The Company currently owns a fleet of thirty-six vessels. Thirty-five of these vessels are wholly-owned by thirty-five direct subsidiaries of Excel (each subsidiary, a "Vessel Owner"), each of which is a Debtor in these chapter 11 cases. One vessel is owned by non-Debtor Christine Shipco, a joint venture in which Christine Holdings, a direct, non-Debtor subsidiary of Excel, holds a 71.4% interest. The Company's fleet consists of 6 Capesize, 14 Kamsarmax, 14 Panamax and 2 Handymax vessels (together, the "Vessels") with a total carrying capacity of approximately 3.3 million deadweight tons (dwt), making the Company one of the world's largest independent dry bulk operators. The terms "Handymax", "Kamsarmax" et cetera refer to size categories of bulk carriers, some of which reference regional ports. For example, the term "Kamsarmax" refers to the maximum length of a vessel that can load in the port of Kamsar, and the term "Panamax" refers to the vessel size that can fit in the Panama Canal's lock chambers.

Maryville Maritime Inc. ("Maryville"), a wholly-owned non-Debtor subsidiary of Excel, provides in-house technical management for all of the Vessels pursuant to discrete management agreements entered into between each of the Vessel Owners and Maryville. Maryville provides technical supervision such as repairs, maintenance and inspections, safety and quality control, crewing and training, as well as provisioning. Maryville's in-house technical management of the Vessels provides the Company with a competitive advantage in controlling both the cost and quality of its Vessels' operations. Maryville also provides commercial management for negotiating charters, managing relationships, and providing seafaring crew to all the Vessels through a third party manning agent. Maryville is also party to a management agreement with Excel, pursuant to which it provides administrative services to Excel and its direct and indirect, Debtor and non-Debtor subsidiaries. Maryville employs management and administrative employees who oversee and run the Company's operations pursuant to the management agreements.

The Debtors generate revenues by deploying their fleet on a mix of "Period Time Charters" and "Spot Charters." Period Time Charters are charters with a term of at least four months on average. Spot Charters are comprised of both voyage charters (charters for one specific voyage) and short-term charters, which are charters with a term of less than four months on average. The Company deploys its Vessels according to its assessment of market conditions, adjusting the mix of both types of charters to take advantage of the relatively stable cash flow and high utilization rates associated with Period Time Charters and to profit from attractive Spot Charter rates during periods of strong charter market conditions. As of September 30, 2013, 12 of the Vessels in the Company's fleet were employed under Period Time Charters and 24 were operating in the Spot Charter market. In 2010, 2011 and 2012, the Company maintained vessel utilization rates (defined as number of operating days divided by fleet calendar dates) of 96.2%, 98% and 95.6%, respectively. During the first three fiscal quarters of 2013, the Company

has achieved a vessel utilization rate of 97.7%, an increase from 95.8% during the same period in 2012 and the Company expects to maintain a similar utilization as it secures additional charters for the remainder of 2013.

C. Capital Structure

1. Common Stock

Beginning on September 15, 2005, Excel's Class A common stock traded on the NYSE under the symbol "EXM." Prior to that date, Excel's Class A common stock traded on the American Stock Exchange under the same symbol. On June 11, 2013, the NYSE halted trading of Excel's common stock and commenced de-listing procedures. On July 1, 2013, the NYSE notified the SEC of its intention to remove Excel's Class A common stock from listing and registration on the NYSE at the opening of business on July 12, 2013. As of May 15, 2013, 103,153,299 shares of Excel's Class A common stock and 295,746 shares of its Class B common stock were issued and outstanding. Mr. Panayotides and entities associated with him hold 36,625,355 of Excel's Class A common stock and 150,875 of its Class B common stock. These amounts represent approximately 47% of the total voting power of Excel's capital stock. Additionally, Ms. Ismini Panayotides, the Board Secretary and the daughter of Mr. Panayotides, and entities associated with her hold 4,949,837 of Excel's Class A common stock and 30,000 of its Class B common stock, representing approximately 8.8% of the total voting power of Excel's capital stock.

2. Secured Debt

(a) Syndicate Credit Facility

Excel is a borrower pursuant to the Syndicate Credit Facility, whereby Wilmington Trust (London) Ltd. is administrative agent, security trustee and mortgagee under certain ship mortgages. Approximately \$771 million currently is outstanding under the Syndicate Credit Facility, prior to recognition of adequate protection payments of \$6.2 million made by the Debtors on October 1, 2013 and \$6.2 million expected to be made on January 2, 2014. The Syndicate Credit Facility is secured by, among other things, guarantees by each Vessel Owner other than non-Debtor Christine Shipco which is party to a separate credit facility, and first priority mortgages and first priority assignments of insurances for each of the Vessels owned by the guarantors ("Collateral Vessels"). The Syndicate Credit Facility is further secured by (i) assignments of earnings, (ii) assignments of charter for the Collateral Vessels in excess of 11 months, (iii) manager's undertakings and an assignment of management agreement for each Collateral Vessel, (iv) account pledge agreements for each Collateral Vessel, and (v) a pledge over, among others, the shares of entities owning the Collateral Vessels.

(b) The Christine Shipco Facility

Christine Holdings, a direct, wholly-owned, non-Debtor subsidiary of Excel, owns a 71.4% interest in non-Debtor Christine Shipco, a joint venture limited liability company. The owner of the minority interest is Robertson Maritime Investors, LLC ("RMI"), a third party unaffiliated with the Debtors. On April 30, 2010, Christine Shipco took delivery of the *M/V Christine* from Imabari Shipyard in Japan at a total cost of approximately \$72.5 million. Christine Shipco is a borrower pursuant to that certain secured loan facility agreement for a loan of up to \$42.0 million dated April 26, 2010 (as amended, modified and supplemented), pursuant to which DVB Bank SE ("DVB") is the lender (the "Christine Shipco Facility"). The Christine Shipco Facility is governed by English law. DVB has notified the Debtors that certain events of default have occurred under the Christine Shipco by letters dated March 2013, April 2013 and July 15, 2013 and reserved its rights to exercise its remedies in connection therewith.

The loan amount under the Christine Shipco Facility represented 65% of the vessel's fair market value at the time of the vessel's delivery and was drawn in order to finance the delivery of the *M/V Christine*. The loan bears interest at LIBOR plus a margin of 3% and is repayable in 26 quarterly installments of \$0.8 million through December 2015 and thereafter at \$0.6 million through September 2016 with a balloon payment of approximately \$20.0 million at October 2016. Approximately \$27.9 million is currently outstanding under the Christine Shipco Facility. The Christine Shipco Facility is guaranteed by Excel (up to an amount not to exceed \$29,988,000 in respect of the principal of the loan or its equivalent under the guaranty and indemnity) and Christine Holdings and secured by, among other things, (i) a first priority pledge of the membership interests in Christine Shipco and Christine Holdings, (ii) a first priority mortgage over, and an assignment of insurance and earnings with respect to,

the vessel *M/V Christine*, and (iii) an account pledge agreement. Further, pursuant to the Final Cash Collateral Order and the Stipulated Cash Collateral Order, the Syndicate Credit Facility lenders acquired a valid, binding, continuing, enforceable, fully-perfected junior lien on Excel's interest in Christine Holdings and a super-priority claim payable from, among other property of the Debtors' estates, lawful cash dividends paid to Excel by Christine Holdings.

Christine Shipco is not a Debtor. The Christine Shipco Facility is not being restructured and the Christine Shipco Facility is unaffected by these Chapter 11 cases. As described further below, RMI disputes the validity of Excel's indirect 71.4% interest in Christine Shipco. The Debtors believe RMI's allegation is baseless and will vigorously contest it.

3. Convertible Notes

Excel issued \$150.0 million principal amount of 1.875% unsecured convertible senior notes due October 15, 2027 pursuant to that certain indenture dated October 10, 2007 (the "Indenture") with Christiana Trust, a division of Wilmington Savings Fund Society FSB, as indenture trustee (the "Indenture Trustee"). Pursuant to the Indenture, the Convertible Notes are convertible into Class A common stock of Excel under certain circumstances.

4. Interest Rate Swaps

(a) The Nomura Swap

On September 2, 2010, Excel entered into a partially-secured interest rate swap with Nomura International plc ("Nomura") for a notional amount of \$50 million decreasing by \$0.8 million quarterly and maturing in September 2015 (the "Nomura Swap"). Excel made quarterly payments to Nomura at a fixed rate of 1.79% and Nomura made quarterly floating rate payments at 3-month LIBOR to Excel based on the same notional amount. As of May 31, 2013, the estimated mark-to-market liability of Excel in connection with the Nomura Swap was approximately \$1.3 million, secured by cash collateral of \$1.3 million located in an account held in Nomura's favor. The Nomura Swap was scheduled to roll over on June 10, 2013, and Excel made a business decision to unwind the swap. On June 7, 2013, Excel and Nomura agreed to unwind the Nomura Swap, which resulted in a net payment by Nomura to Excel of \$30,000. The cash collateral in the pledged account was used to settle and unwind the swap. As a result, Nomura has no claims outstanding against Excel arising under the Nomura Swap and Nomura will not receive any distribution under the Plan.

(b) The Eurobank Swap

Excel entered into an unsecured interest rate swap on March 29, 2011 with Eurobank EFG Private Bank Luxembourg S.A. ("Eurobank") for a non-amortizing notional amount of \$50 million (the "Eurobank Swap"). The Eurobank Swap is effective from April 1, 2012 to April 1, 2015. Excel made quarterly payments to Eurobank at a fixed rate of 1.80%, 2.25% and 2.75% for the first, second and third year, respectively, while Eurobank made quarterly floating-rate payments of 3-month LIBOR on the same notional amount. On July 4, 2013, Eurobank notified Excel that Excel's crystallized liability under the Eurobank Swap is \$2,154,000.

(c) The Marfin Swap

On July 11, 2011 Excel entered into an unsecured interest rate swap with Marfin Popular Bank Public Co. Ltd., Greek Branch ("Marfin") for a non-amortizing notional amount of \$50 million (the "Marfin Swap"). The Marfin Swap is effective from January 3, 2013 to January 3, 2017. Excel makes quarterly payments to Marfin at a fixed rate of 1.5% for the first year, and 2.98% for the remaining years, while Marfin makes quarterly floating-rate payments of 3-month LIBOR to Excel based on the same notional amount. As of July 1, 2013, the estimated mark-to-market liability of Excel in connection with the Marfin Swap was approximately \$4.0 million.

D. Pending Litigation as of the Petition Date

The Debtors are, from time to time, subject to various asserted or unasserted legal proceedings and claims. As of the date hereof, the Debtors have taken a litigation reserve of approximately \$225,000. The Debtors believe

that the majority of claims outside of the litigation reserve would be covered by their insurance policies should any claims proceed to final judgment or be settled by the parties.

Although the Debtors cannot predict what types of claims may be asserted against them in the future, the current claims asserted against the Debtors can be characterized as either breach of contract claims, vessel or port facilities damage claims, claims in respect of cargo, or claims of seafaring employees of Maryville. The Debtors are currently actively defending approximately six lawsuits in court or arbitration proceedings. Of the claims asserted, no single claim amount alleged exceeds \$500,000. Set forth on Appendix H hereto is a schedule of the pending claims against the Debtors, identified with reference to the jurisdiction in which such claim is pending, the nature of the pending claim, and the claim amount alleged, if any. As set forth in the Plan, nothing will affect the Debtors' or the Reorganized Debtors' rights and defenses, both legal and equitable, with respect to such claims.

E. Events Leading to the Chapter 11 Cases

1. The International Dry Bulk Shipping Market

The dry bulk shipping industry is cyclical with attendant volatility in charter hire rates and profitability. Charter rates for dry bulk vessels have been in a significant down cycle since 2008. The Baltic Dry Index ("BDI") is an assessment of the price of moving major bulks by vessels. The BDI measures 23 shipping routes on a timecharter basis, and covers numerous types of vessels, including Handymax, Panamax, and Capesize. The dry bulk market deteriorated significantly in 2012. On February 3, 2012, the BDI dropped to a 26-year low of 647, owing to a combination of both weak vessel demand and increases in supply. The average BDI for 2012 was 920, approximately 41% lower than the average index of 1,549 in 2011. As of November 25, 2013, the BDI closed at 1,483. Over the past couple of months, the dry bulk market has displayed a nascent recovery in charter rates, evidenced by the increase in the BDI relative to the 2012 average. Despite the recent improvement in rates and industry vessel utilization, the Debtors believe that the use of slow-steaming by vessel operators, continued growth in new building vessel orders and expected delivery of dry bulk vessels casts uncertainty as to the sustainability of the recent rate growth and further expansion of future charter rates.

The Debtors' results of operations depend primarily on the charter hire rates that they are able to realize. Fluctuations in charter rates result from changes in the supply and demand for vessel capacity and changes in the supply and demand for the major commodities carried by sea internationally. The recent decline and volatility in charter rates is, in significant measure, the result of vessel oversupply, including numerous deliveries of new ships (described in the industry as "newbuilding"). As the global economic downturn continues, lagging demand for dry bulk commodities has been unable to fully absorb the approximately 98.5 and 98.7 million new deadweight tonnage that entered the market in 2011 and 2012, respectively, despite almost record high scrapping levels. The result is decreased demand and increased supply.

While the Debtors' performance has improved in recent months, the decline and volatility in charter rates during 2012 negatively impacted the Debtors. The value of their vessels declined due to oversupply, and charter hire rates also dropped. The Debtors' cash flows and liquidity suffered as a result of these factors, and in consequence the Debtors have not been able to comply with certain covenants in their loan agreements. Further, as a result of the volatility and rate decline witnessed in the charter markets and continued oversupply of new vessels, vessel values are expected to remain under severe pressure.

2. Evaluation of Restructuring Alternatives

(a) Syndicate Credit Facility Amendments and Failed Equity Offering

Since early 2012 the Debtors have worked to address their cash flow issues and debt maturities, including retaining financial advisors and engaging in ongoing negotiations with their lenders under their secured debt facilities. In particular, in order to address their financial situation, the Debtors entered into a series of amendments to the Syndicate Credit Facility. Significantly, as of March 30, 2012, the Debtors negotiated a fifth amendment (the "Amendment No. 5") to the Syndicate Credit Facility. Under Amendment No. 5, the Syndicate Credit Facility's amortization schedule, collateral value clause and certain of its financial covenants were modified in order to permit the Debtors to improve their debt maturity profile and respond to the weak charter conditions and volatility in

vessels' market values. Amendment No. 5 also modified the loan repayment schedule to allow the Debtors, at their option, to defer the repayment of principal amount of up to \$100 million, originally scheduled for 2012 and 2013, to the balloon payment due at the end of the Syndicate Credit Facility's term in April 2016. Following the amendment to the Syndicate Credit Facility, the Debtors reached agreements with each of Credit Suisse and DVB to similarly amend a number of financial covenants under the respective credit facilities with those institutions.

Under Amendment No. 5, Excel was required to raise at least \$30 million in equity (the "Additional Equity") by December 31, 2012, through an offer and sale of newly issued capital stock of Excel (the "Offering"). In connection with Amendment No. 5 and the Offering, on March 29, 2012, Excel entered into a backstop agreement with Ivory, pursuant to which Ivory deposited \$20 million (the "Escrow Funds") into an escrow account (the "Escrow Account") set up for that purpose and committed to purchase capital stock of Excel up to the total amount deposited in the escrow account, in the event that Excel failed to raise the Additional Equity.

To launch the Offering, on May 7, 2012, Excel entered into separate sales agreements with each of Deutsche Bank Securities Inc. and Knight Capital Americas, L.P., as sales agents, under which it sought to sell an aggregate of up to \$35.0 million in gross proceeds of its Class A common stock par value \$0.01. The common stock was to be sold in privately negotiated transactions or transactions deemed to be "at-the-market offerings," including sales made directly on the NYSE, on any other existing trading market for the Class A common stock or to or through a market maker. Unfortunately, Excel was able to raise only \$4.1 million of Additional Equity given the severe continuing decline in the international dry bulk shipping market and the Debtors' over-leveraged capital structure.

(b) Redelivery of the Bareboat Charters

Bird Acquisition Corp., a non-Debtor indirect subsidiary of Excel ("Bird"), and seven Marshall Islands LLCs wholly owned by Bird (collectively with Bird, the "Bareboat Charterers") previously operated seven vessels under bareboat charters ("Bareboat Charters") entered into in July 2007 with third party vessel owners ("Bareboat Owners"). Due to the dramatic drop in charter rates, after accounting for daily operating costs, in 2012 the Bareboat Charterers were losing approximately \$10,000 per day per bareboat chartered vessel. The Bareboat Charterers took steps to reduce these losses, which led to the redelivery of each of the seven vessels back to their respective owners during the course of the fourth quarter of 2012. The Bareboat Owners asserted claims against the Bareboat Charterers for payment of alleged outstanding hire and damages arising from the early termination of the Bareboat Charters. The Bareboat Charterers denied any liability to the owners of the bareboat charter vessels.

Three of the Bareboat Charterers (the "Settling Bareboat Charterers"), together with Excel, signed a settlement agreement with the respective owners of three of the Bareboat Charter vessels ("Settling Bareboat Owners"), pursuant to which claims arising out of the redelivery of the chartered vessels were released in exchange for the agreement of Excel, Bird and the Settling Bareboat Charterers to pay \$5 million in cash or in stock, in the latter case at the market price on the date of the stock's issuance, by December 2015 (with Excel's option to extend such deadline to December 2017 pursuant to the terms of the settlement agreement, which extension would require interest payments on any remaining balance of 10% per year, payable quarterly). The Settling Bareboat Charterers are not Debtors in these Chapter 11 cases. However, the Settling Bareboat Owners have claims against Excel arising out of the settlement agreement. The claims of the Settling Bareboat Owners against Excel arising under the settlement agreement are classed as Impaired Excel General Unsecured Claims under the Plan and will share in the recovery proposed for Class 8 – Impaired Excel General Unsecured Claims.

The remaining four bareboat charter vessels were also redelivered to their respective owners. Those German owners (and together with any past or potential assignee or designee, including their financing bank, Commerzbank AG, the "German Owners") initiated arbitration proceedings against the respective Bareboat Charterers in connection with their claims under the relevant Bareboat Charters. The arbitration claims of the German Owners lie directly against Bird and the relevant Bareboat Charterers which are direct subsidiaries of Bird. As described in **Section V.H. "Other Risks Relating to the Debtors' Business and the Debtors' Ability to Satisfy their Debt Obligations After the Effective Date"** below, the German Owners may attempt to enforce their alleged claims against other vessels owned by the Debtors on the basis that they constitute "associated ships" within the meaning of the South African *Admiralty Jurisdiction Regulation Act 1983*. The German Owners have been given notice in these Chapter 11 Cases, including notice of the order of the Bankruptcy Court setting a deadline for

the filing of claims against the Debtors as described in **Section III.E.2 "Setting of Bar Date"** below. However the German Owners failed to timely file any proof of claim against any of the Debtors on account of such alleged claims. As a consequence, any such alleged claims, even if they had existed, are now barred and have been extinguished.

(c) Divestiture of Hope Shipco

In May 2013, Excel transferred ownership of one of its Vessel-owning subsidiaries, Hope Shipco LLC ("Hope Shipco") (the owner of the Vessel *M/V Mairaki*), to ABN Amro Bank N.V. ("ABN Amro") in full and final satisfaction of its and certain of its subsidiaries' obligations under two secured debt instruments.

Hope Shipco was a borrower pursuant to that certain secured loan agreement for a loan of up to \$42 million, dated February 11, 2010 (as amended, modified and supplemented), whereby ABN Amro was the lender (the "ABN Facility"). The ABN Facility was guaranteed by Excel and secured by, among other things, (i) a first priority mortgage over, and an assignment of insurances and earnings with respect to, the *M/V Mairaki*, (ii) a manager's undertakings for the *M/V Mairaki*, (iii) an account pledge agreement for the *M/V Mairaki*, and (iv) a pledge over the membership interest in Hope Shipco. As of April 30, 2013, \$35 million was outstanding under the ABN Facility. Certain subsidiaries of Excel were also counterparties to an interest rate swap (the "ABN Swap") with ABN Amro, which was guaranteed by Excel. As of April 29, 2013, the ABN Swap represented an estimated mark-to-market liability for Excel of \$29 million. The ABN Swap was secured by the same collateral as the Syndicate Credit Facility on a last-out basis.

Excel entered into negotiations with ABN Amro in March 2013. Between May 2, 2013 and May 28, 2013, Excel and certain of its subsidiaries, including Hope Shipco, received various reservations of rights and notices of default pursuant to which ABN Amro gave notice of its intent to exercise its rights and remedies as a secured lender. Given that the obligations of Excel and certain of its subsidiaries under the ABN Facility and the ABN Swap significantly exceeded the equity value of the membership interests in Hope Shipco, the parties ultimately entered into a settlement agreement to avoid the unnecessary expenses associated with the exercise of such remedies. As part of that settlement, the parties agreed voluntarily to transfer the ownership of Hope Shipco to ABN Amro's designee in full and final satisfaction of Excel's obligations under both the ABN Facility and ABN Swap. As part of this consensual settlement, ABN Amro agreed to waive its deficiency claims against Excel with respect to the undersecured portions of the ABN Facility and the ABN Swap. Hope Shipco's shares were transferred to a subsidiary of ABN Amro on May 31, 2013. ABN Amro does not have a claim against Excel or any of the Debtors in these chapter 11 cases.

(d) Pre-petition Negotiations with the Steering Committee and Filing of Pre-Negotiated Plan

As of August 2012, Excel had only raised approximately \$4.1 million of Additional Equity through the Offering. By that point, the Debtors had recognized that they would need to pursue a comprehensive restructuring. To that end, in July and September 2012, the Debtors retained Global Maritime Partners Inc. and Miller Buckfire & Co., LLC ("Miller Buckfire"), respectively, as financial advisors to assist them in evaluating and implementing their restructuring strategies. Shortly thereafter, a steering committee (the "Steering Committee") of certain Syndicate Credit Facility lenders was formed in connection with a potential restructuring of the Debtors' obligations under the Syndicate Credit Facility.

In connection with negotiations on a potential restructuring with the Steering Committee, the Debtors entered into additional amendments to the Syndicate Credit Facility subsequent to Amendment No. 5 and amended the Escrow Agreement governing the release of the Escrow Funds. Under a sixth amendment to the Syndicate Credit Facility dated September 30, 2012 ("Amendment No. 6"), the Debtors agreed to repay Syndicate Credit Facility loan principal in the amount of \$9.0 million (comprised of \$3.0 million per month in October, November and December 2012), in return for agreement by the Syndicate Credit Facility lenders to forbear from exercising their rights in connection with noncompliance of certain loan agreement provisions through December 31, 2012. In addition to the repayments under Amendment No. 6, in December 2012, Excel sold *M/V Attractive*, a Handymax vessel, for net proceeds of approximately \$2.7 million, which were used to repay indebtedness under the Syndicate Credit Facility.

Following the expiration of the forbearance period in Amendment No. 6, the Syndicate Credit Facility lenders agreed to forbear from exercising their rights, through subsequent amendments, in connection with certain overdue principal and interest payments through May 15, 2013. In particular, the Debtors obtained forbearance from the Syndicate Credit Facility lenders with respect to, among other things, the non-payment of a principal installment of approximately \$25 million due January 2, 2013. Concurrent with its negotiations with the Steering Committee, the Debtors also engaged in similar discussions with their lenders under their other credit facilities. The Debtors are currently in breach of certain financial covenants relating to outstanding indebtedness for fiscal quarter ended December 31, 2012 and certain other covenants.

After several months of negotiation, in May 2013, the Debtors and the Steering Committee agreed in principle on the terms of a restructuring. On July 1, 2013, a majority of the Syndicate Credit Facility lenders executed a restructuring support agreement with the Debtors, indicating agreement with the terms set forth on a restructuring term sheet and their agreement to support confirmation of a pre-negotiated plan. The restructuring support agreement was filed with the Debtors' Notice of Filing of Restructuring Support Agreement, dated July 1, 2013 [Docket No. 18], and a pre-negotiated plan was filed simultaneously [Docket No. 19]. However, this plan did not draw the support of all constituents, and subsequent to the Petition Date all major constituents participated in a plan mediation with Judge Peck which resulted in an agreement on the terms of a restructuring as set forth in the Plan described below.

(e) Formation of Christine Holdings

As of June 26, 2013, Excel held a direct 71.4% interest in Christine Shipco. Christine Shipco is a limited liability company formed under Marshall Islands law. Section 21 of the Marshall Islands Limited Liability Company Act of 1996 (52 MIRC Part IV) provides that a member's membership interests in a limited liability company terminate upon the member's bankruptcy. The Debtors consider it likely that this provision is an unenforceable *ipso facto* clause. Nevertheless, to mitigate any risk of Excel's interest in Christine Shipco dissolving upon the Petition Date, in the face of an explicit threat by RMI to cause such dissolution, Excel incorporated Christine Holdings, a new, wholly-owned direct subsidiary, in the Marshall Islands on June 20, 2013, and transferred its 71.4% membership interest in Christine Shipco to Christine Holdings on June 27, 2013. Excel believes that this transfer is permitted under the limited liability company agreement governing Christine Shipco (the "Christine LLC Agreement"). As discussed herein, RMI disputes that position.

(f) Negotiations with the Ad Hoc Committee of Noteholders

As the Debtors considered their restructuring alternatives, they recognized that a comprehensive restructuring of their balance sheet would require them to restructure certain unsecured claims against Excel. In particular, the Debtors recognized that the Convertible Notes, which make up the bulk of such unsecured claims against Excel, exclusive of the unsecured deficiency claims of the Syndicate Credit Facility lenders, and which pursuant to their terms may be redeemed at par on October 15, 2014 at the option of the holders, represented a substantial burden for Excel in view of the uncertain dry bulk market. As the Debtors formulated the Plan, they concluded that holders of impaired general unsecured claims against Excel, including the holders of Convertible Notes (the "Noteholders"), may be entitled to a minimal recovery on account of, among other things, the Debtors' unencumbered interests in Christine Shipco, and the dispute over the ownership of the Escrow Funds. In light of this, the Debtors believed that it was appropriate to engage with the Noteholders and seek their support for a plan in exchange for some recovery on their claims. Therefore, before the Petition Date, the Debtors and their advisors engaged in discussions with an ad hoc committee of Noteholders (the "Ad Hoc Committee of Noteholders") regarding such holders' treatment in the restructuring, including providing certain financial and other information about the Debtors and non-Debtor affiliates, including Christine Shipco. No agreement was reached at this time. However, subsequent to the Petition Date, the Debtors and their advisors, along with the Agent for the Syndicate Credit Facility and certain of the Syndicate Credit Facility lenders and their advisors, engaged in mediation with the Creditors' Committee, which is comprised of members of the Ad Hoc Committee of Noteholders, and its advisors and the support of the Creditors' Committee for the Plan was ultimately obtained.

III. THE CHAPTER 11 CASES

A. Motions Filed on the Petition Date

To ease their transition into chapter 11 and to expedite their emergence from chapter 11, on the Petition Date, the Debtors filed various "first day" motions requesting permission for administrative relief and to continue operating their business, including motions to use cash collateral, to continue using their existing cash management system and to pay trade vendors, insurance premiums and taxes. On July 3, 2013, the Bankruptcy Court granted each of these motions on an interim basis. To date, with the exception of the final order relating to cash management, final orders have been entered with respect to each of the first day motions.

On the Petition Date, the Debtors also sought an order enforcing the automatic stay and declaring invalid *ipso facto* provisions. The Debtors sought this relief in order to protect their assets on a world-wide basis against parties in foreign jurisdictions and to preserve value for the estates. The Debtors' motion for an order enforcing and restating the automatic stay and *ipso facto* protections was granted by the Bankruptcy Court on July 3, 2013 [Docket No. 34].

B. Formation of the Creditors Committee

On July 10, 2013, the U.S. Trustee, pursuant to its authority under section 1102 of the Bankruptcy Code, appointed an Official Committee of Unsecured Creditors (the "Creditors' Committee") to represent the interests of all unsecured creditors in these cases. The U.S. Trustee subsequently amended such appointments to the Creditors' Committee as of August 10, 2013. The Creditors' Committee currently consists of the following parties: Christiana Trust; Kayne Anderson Capital Advisors, L.P.; Silverback Asset Management, LLC; and Zazove Associates, LLC. The Creditors' Committee has retained the following professionals: Akin Gump Strauss Hauer & Feld LLP, as counsel, Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP, as conflicts counsel, and Jefferies LLC, as financial advisor.

C. Plan Mediation Leading to the Plan

On September 11, 2013, at the request of the Debtors and in an effort to resolve continued disputes regarding the terms of the Debtors' restructuring, the Bankruptcy Court ordered that the Debtors, the Creditors' Committee, the Steering Committee, Ivory, RMI, and certain other parties, including Oaktree and certain Syndicate Credit Facility lenders, participate in mediation designed to build consensus among the parties regarding the terms of a plan of reorganization [Docket No. 322]. Beginning on September 23, 2013 and continuing for several more days throughout September and October 2013, Judge Peck led the mediation at the offices of the Debtors' counsel in New York. The mediation was successful and resulted in an agreement on the terms of the Debtors' restructuring between the Debtors, the Creditor's Committee, Oaktree and certain other Syndicate Credit Facility lenders collectively holding or controlling a controlling percentage of the lenders' claims and Ivory. The terms of that restructuring are described in **Article IV – The Plan of Reorganization** below.

D. Litigation During the Chapter 11 Cases

1. Motion to Terminate Exclusivity

On August 2, 2013, the Creditors' Committee filed a motion seeking to terminate the Debtors' exclusive plan filing and solicitation periods [Docket No. 118]. A contested hearing on the Creditors' Committee's motion was held on August 29, 2013. By order dated August 30, 2013, the Court denied the Creditors' Committee's motion to terminate exclusivity [Docket No. 288].

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. 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.

E. Other Events in the Chapter 11 Case

1. Odell/Minta Sale

On the Petition Date, included among the Debtors were two direct subsidiaries of Excel, Odell International Ltd. ("Odell") and Minta Holdings S.A. ("Minta"), which were the owners of the Vessels *M/V Mairouli* and *M/V July M*, respectively. Odell and Minta were borrowers under a secured loan facility with Credit Suisse, as lender, and Excel, as guarantor, dated as of November 27, 2007 (as amended). Before the Petition Date, Excel began negotiating with Credit Suisse, the lender under the Odell/Minta Facility, to restructure and settle the obligations under that facility. Excel and Credit Suisse ultimately reached an agreement whereby Excel would sell the assets of Odell and Minta pursuant to a sale under section 363 of the Bankruptcy Code. Credit Suisse (or its nominee) agreed to credit bid, pursuant to section 363(k) of the Bankruptcy Code, up to the maximum amount of its secured claim

against the collateral securing the Odell/Minta Facility as consideration for the purchase of those assets. In order to ensure that Excel received the highest and best price possible in the 363 sale, Excel engaged a third party broker to market the two Vessels owned by Odell and Minta.

On the Petition Date, the Debtors sought authority to establish bid procedures and schedule an auction in connection with the proposed sale of the shares in Odell and Minta to a nominee of Credit Suisse. The Bankruptcy Court entered an order approving the Debtors' proposed bid procedures and scheduling a hearing to consider the sale of the shares in Debtors Odell and Minta for August 5, 2013. The Debtors also sought and received approval to enter into a debtor-in-possession loan, financed by Credit Suisse, for an amount equal to the lesser of (i) \$500,000 or (ii) the post-petition operating and restructuring costs of Odell and Minta (including, without limitation, Credit Suisse's restructuring costs). At the sale hearing held on August 5, 2013, the Bankruptcy Court approved the sale to Credit Suisse and ordered that the chapter 11 cases as to debtors Odell and Minta be dismissed upon the closure of the sale [Docket No. 135]. The sale was completed on August 7, 2013 by the transfer of the vessels to a third party entity affiliated with Ms. Ismini Panayotides [Docket No. 150]. Credit Suisse agreed that its guaranty claims against Excel would be discharged in connection with the Odell/Minta sale and that Credit Suisse will receive no further distribution on account of these claims.

2. Setting of Bar Date

On September 5, 2013 the Bankruptcy Court entered an order establishing a deadline of December 30, 2013 for claims by governmental units, and a deadline of October 18, 2013 for all other claims, and approved the proposed Proof of Claim form and other procedures related thereto [Docket No. 302].

3. Recognition of the Automatic Stay in South Africa

On September 10, 2013, in response to concerns that creditors may avail themselves of the creditor-friendly maritime law of South Africa and in light of the imminent arrival of the Debtors' vessel *M/V Iron Miner* in the South African port of Saldanha, the Debtors filed an application for recognition and application in South Africa of the Bankruptcy Court's order dated July 3, 2013 enforcing and restating the automatic stay and *ipso facto* protections (See **Section III.A "Motions Filed on the Petition Date"**). The High Court of South Africa (Western Cape High Court, Cape Town) granted the Debtor's application on September 12, 2013.

IV. SUMMARY OF THE PLAN OF REORGANIZATION

The primary objectives of the Plan are to (i) restructure the Debtors' obligations under the Syndicate Credit Facility and (ii) settle, compromise, or otherwise dispose of certain Claims on terms that the Debtors believe to be fair and reasonable and in the best interests of their respective estates and stakeholders. The statements contained in this Disclosure Statement include summaries of the provisions contained in the Plan and in the documents referred to therein. The statements contained in this Disclosure Statement do not purport to be precise or complete statements of all the terms and provisions of the Plan or the documents referred to therein, and reference is made to the Plan and to such documents for the full and complete statements of such terms and provisions. Capitalized terms not defined herein have the meaning ascribed to them in the Plan.

The Plan itself and the documents referred to therein control the actual treatment of Claims against and Interests in the Debtors under the Plan and will, upon the Effective Date, be binding upon all Holders of Claims against and Interests in the Debtors and their Estates, the Reorganized Debtors, and other parties in interest. In the event of any conflict between this Disclosure Statement, on the one hand, and the Plan or any other operative document, on the other hand, the terms of the Plan and such other operative document are controlling.

A. Overview Of Chapter 11

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Under chapter 11 of the Bankruptcy Code, a debtor is authorized to reorganize or liquidate its business for the benefit of itself, its creditors, and its interest holders. Another goal of chapter 11 is to promote equality of treatment for similarly situated creditors and similarly situated interest holders with respect to the distribution of a debtor's assets. The

consummation of a plan of reorganization or liquidation is the principal objective of a chapter 11 case. The plan sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a plan by the Bankruptcy Court makes that plan binding upon the debtor and any creditor of or equity security holder in the debtor, whether or not such creditor or equity security holder (i) holds a claim or interest that is impaired under the plan; (ii) has voted to accept or reject the plan; or (iii) receives or retains any property under the plan.

B. Classification And Treatment Of Claims And Interests

The Plan, though proposed jointly, constitutes separate plans proposed by each of the Debtors. Therefore, except as expressly in the Plan, the classifications set forth below will be deemed to apply separately with respect to each Plan proposed by the Debtors. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims have not been classified, and the respective treatment of such Claims is set forth in Article II of the Plan. A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim is also placed in a particular Class for the purpose of receiving distributions pursuant to the Plan only to the extent that such Claim is an Allowed Claim in that Class and such Claim has not been paid, released, or otherwise settled prior to the Effective Date.

1. Treatment Of Unclassified Claims

(a) Administrative Claims

An Administrative Claim means a claim arising under Bankruptcy Code section 507(a)(2) for costs and expenses of administration of the chapter 11 cases under Bankruptcy Code sections 503(b), 507(b), or 1114(e)(2), including: (a) any actual and necessary costs and expenses, incurred after the Petition Date, of preserving the estates and operating the businesses of the Debtors (such as wages, salaries and commissions for services and payments for inventory, leased equipment and premises) and claims of governmental units for taxes (including tax audit claims related to tax years commencing after the Petition Date, but excluding claims relating to tax periods, or portions thereof, ending on or before the Petition Date); and (b) all other claims entitled to administrative claim status pursuant to a final order of the Bankruptcy Court, but excluding Priority Tax Claims, Non-Tax Priority Claims and Professional Fee Claims.

On, or as soon as reasonably practicable after, the latest of (a) the Effective Date, (b) the date on which an Administrative Claim becomes an Allowed Administrative Claim, or (c) the date on which an Allowed Administrative Claim becomes payable under any agreement relating thereto, each Holder of such Allowed Administrative Claim will receive, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Allowed Administrative Claim, Cash equal to the unpaid portion of such Allowed Administrative Claim. Notwithstanding the foregoing, (y) any Allowed Administrative Claim based on a liability incurred by a Debtor in the ordinary course of business during the chapter 11 cases may be paid in the ordinary course of business in accordance with the terms and conditions of any agreement relating thereto and (z) any Allowed Administrative Claim may be paid on such other terms as may be agreed to between the Holder of such Claim and the Debtors in consultation with the other Consenting Parties or the Reorganized Debtors.

(b) Priority Tax Claims

A Priority Tax Claim means a claim of a governmental unit of the kind specified in Bankruptcy Code sections 502(i) or 507(a)(8).

On, or as soon as reasonably practicable after, the later of (a) the Effective Date or (b) the date on which a Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Allowed Priority Tax Claim, in the sole discretion of the Debtors, (i) Cash equal to the unpaid portion of such Holder's Allowed Priority Tax Claim, (ii) treatment in any other manner such that such Holder's Allowed Priority Tax Claim will be paid in accordance with the provisions of section 1129(a)(9)(C) of the Bankruptcy Code, or (iii) such other treatment as to which the Debtors in consultation with the other Consenting Parties or the Reorganized Debtors and such Holder will have agreed upon in writing.

(c) Professional Fee Claims

A Professional Fee Claim means an Administrative Claim of a Professional for compensation for services rendered or reimbursement of costs, expenses, or other charges incurred on or after the Petition Date and prior to and including the Effective Date.

Each Professional requesting compensation pursuant to sections 330, 331 or 503(b) of the Bankruptcy Code for services rendered in connection with the chapter 11 cases prior to the Effective Date will file with the Bankruptcy Court an application for allowance of final compensation and reimbursement of expenses in the chapter 11 cases on or before the 30th day following the Effective Date. Without limiting the foregoing, the Reorganized Debtors may pay the charges incurred by the Reorganized Debtors on and after the Effective Date for any Professional's fees, disbursements, expenses or related support services, without application to or approval by the Bankruptcy Court.

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Priority Tax Claims and Professional Fees are not classified and are not entitled to vote on the Plan.

2. Treatment of Classes

(a) Class 1 - Non-Tax Priority Claims.

- (i) Impairment and Voting. Class 1 Claims in respect of all Debtors are Unimpaired. Each Holder of an Allowed Non-Tax Priority Claim is not entitled to vote to accept or reject the Plan and will be conclusively deemed to have accepted the Plan.
- (ii) Distribution. Unless the Holder of any such Claim and the Debtors agree to a different treatment, on the Effective Date, each Holder of an Allowed Non-Tax Priority Claim will have its Claim paid in full in cash.

(b) Class 2 – Syndicate Credit Facility Secured Claims

- (i) Impairment and Voting. Class 2 Claims in respect of all Debtors are Impaired. Pursuant to section 1126 of the Bankruptcy Code, each Holder of an Allowed Class 2 Syndicate Credit Facility Secured Claim is entitled to vote to accept or reject the Plan.
- (ii) Allowance and Distribution. Upon the Effective Date, the Syndicate Credit Facility Secured Claims shall be Allowed for all purposes in the aggregate amount of \$579 million. On the Effective Date, each Holder of an Allowed Syndicate Credit Facility Secured Claim will receive, in full and final satisfaction, release, discharge of, and in exchange for, such Syndicate Credit Facility Secured Claim, its Pro Rata share of (a) the Amended and Restated Senior Secured Credit Facility; and (b) 16.7 million shares of New Common Stock, representing 83.3% of all New Common Stock to be issued under the Plan, prior to dilution on account of the Co-Investment Rights.⁵ Additionally, on the Effective Date, the Debtors shall pay the reasonable fees and documented expenses of (i) Oaktree in its capacity as a secured lender, including the fees and expenses of Paul, Weiss, Rifkind, Wharton & Garrison LLP, its

⁵ If fully diluted, such New Common Stock shall represent 82% of all New Common Stock issued under the Plan as set forth in the Plan Term Sheet.

counsel, incurred prior to and subsequent to the commencement of the Chapter 11 Cases in connection with the restructuring of the Debtors, (ii) Angelo Gordon in its capacity as a secured lender and primarily related to the negotiation and documentation of corporate governance related to Holdco, up to \$400,000, including those of Wachtell, Lipton, Rosen & Katz, its counsel, and (iii) the Agent for the Syndicate Credit Facility, including those of Blackstone Group International Partners LLP, Freshfields Bruckhaus Deringer US LLP, and Holland & Knight LLP as advisors to the Agent and the Secured Lenders, incurred in connection with the restructuring of the Debtors, to the extent not previously paid in connection with the Final Cash Collateral Order and the Stipulated Cash Collateral Order.

All New Common Stock issued to Holders of Allowed Class 2 Claims pursuant to the Plan shall be deemed to automatically and without the need for any action be contributed to Holdco pursuant to Section 5.7 of the Plan.

(a) Class 3 – Christine Shipco Facility Secured Guaranty Claim

(i) Impairment and Voting. The Class 3 Claim is Unimpaired, and the Holder of the Allowed Class 3 Claim is conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holder of the Class 3 Claim is not entitled to vote to accept or reject the Plan.

(ii) Distribution. The Holder of the Class 3 Claim will have such Claim Reinstated on the Effective Date.

(b) Class 4 – Other Secured Claims

(i) Impairment and Voting. Class 4 Claims in respect of all Debtors are Unimpaired, and the Holders of Allowed Class 4 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject the Plan.

(ii) Distribution. Holders of Class 4 Claims will have such Claims Reinstated on the Effective Date.

(c) Class 5 – [Reserved]

(d) Class 6 – Impaired Subsidiary Debtor General Unsecured Claims

(i) Impairment and Voting. Class 6 Claims are Impaired, and the Holders of Allowed Class 6 Claims are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, the Holders of Class 6 Claims are not entitled to vote to accept or reject the Plan.

(ii) Distribution. Holders of Class 6 Claims will not receive or retain any property under the Plan on account of such Claims and the obligations of the Debtors and Reorganized Debtors on account of such Claims will be discharged.

(e) Class 7 – Unimpaired Subsidiary Debtor General Unsecured Claims

- (i) Impairment and Voting. Class 7 Claims are Unimpaired, and the Holders of Allowed Class 7 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 7 Claims are not entitled to vote to accept or reject the Plan.
- (ii) Distribution. Holders of Class 7 Claims will have such Claims Reinstated on the Effective Date.

(f) Class 8 – Impaired Excel General Unsecured Claims

- (i) Impairment and Voting. Class 8 Claims are Impaired. Pursuant to section 1126 of the Bankruptcy Code, each Holder of an Allowed Class 8 Claim is entitled to vote to accept or reject the Plan.
- (ii) Allowance and Distribution. The aggregate amount of the Syndicate Credit Facility Deficiency Claims shall be either \$179.8 million, if the Adequate Protection Payment is made on or before January 2, 2014, or \$185,930,760.71, if the Adequate Protection Payment is not made by Excel on or before January 2, 2014, and shall be Allowed solely for voting purposes in such applicable amount in connection with the Plan and such claims shall be, subject to the next sentence, included within the class of Impaired Excel General Unsecured Claims (for the avoidance of doubt, subject to the next sentence, the Holders of Syndicate Credit Facility Claims, on account of and to the extent of the Syndicate Credit Facility Deficiency Claims, shall have all of the rights belonging to the Holders of Class 8 Claims including, without limitation, all rights to distributions and the Co-Investment Rights). The Consenting Parties reserve all rights with respect to the amount, if any, and treatment of a Syndicate Credit Facility Deficiency Claim, if any, held by the Secured Lenders for all other purposes including, but not limited to, voting on and receiving distributions, in each case with respect to any plan of reorganization that is not consistent with the plan of reorganization described in the Plan Term Sheet. On the Effective Date, and immediately prior to the transfer of the New Common Stock to Holdco and the issuance of the Holdco Units in accordance with Section 5.7 of the Plan, each Holder of an Allowed Impaired Excel General Unsecured Claim will receive, in full and final satisfaction, release, discharge of, and in exchange for, such Allowed Impaired Excel General Unsecured Claim, (a) its Pro Rata share of 1.6 million shares of New Common Stock, representing 8.0% of the New Common Stock to be issued under the Plan, subject to dilution on account of the Co-Investment Rights and (b) its Pro Rata share of the Tranche A Offered Shares and Tranche B Offered Shares subscribed for pursuant to such Holders' Co-Investment Rights.

Holders of Allowed Class 8 Claims may exercise their Co-Investment Rights pursuant to two separate rights offerings: the 1145 Rights Offering and 4(a)(2) Rights Offering. The Co-Investment Rights pursuant to the 1145 Rights Offering shall be split into two \$5.0 million tranches. The Tranche A Subscription Rights shall dilute pro rata the Primary Equity. Each Holder of an Allowed Impaired Excel General Unsecured Claim shall have the right to subscribe for any unsubscribed portion of the Tranche A Offered Shares up to the full amount of the

Tranche A Subscription Rights subject to Pro Rata reduction to the extent the Tranche A Subscription Rights are oversubscribed and the individual limits on oversubscription described below, if applicable.

The Tranche B Subscription Rights shall reduce the Ivory Investment on a dollar-for-dollar basis. Ivory shall have the exclusive right to purchase shares equal to the number of unsubscribed Tranche B Offered Shares with respect to the full amount of the Tranche B Subscription Rights.

Each Holder's aggregate Tranche A Subscription Rights (including oversubscription rights related thereto), when taken together with such Holder's Tranche B Subscription Rights, shall be limited to 75% of such Holder's Pro Rata portion of the Section 1145 Stipulated Value. This limit does not apply to the 4(a)(2) Rights Offering.

Additionally, Holders of Allowed Class 8 Claims who are Accredited Investors, and who timely return an Accredited Investor Questionnaire to the Subscription Agent pursuant to the Rights Offering Procedures, will have the opportunity to participate in the 4(a)(2) Rights Offering. Notwithstanding anything to the contrary in the Plan, (i) upon the completion of the 1145 Rights Offering and 4(a)(2) Rights Offering, Ivory shall have the exclusive right to purchase shares equal to the number of 1145 Offered Shares and 4(a)(2) Offered Shares remaining unsubscribed pursuant to section 4(a)(2) of the Securities Act and (ii) in no event shall the fact that the Co-Investment Rights are being offered pursuant to two rights offerings diminish Ivory's right to purchase up to 10.1% of the New Common Stock, subject to the rights of Holders of Impaired Excel General Unsecured Claims to exercise their Co-Investment Rights.

Each Holder's aggregate Co-Investment Rights and any New Common Stock acquired pursuant to the oversubscription right shall be limited to 75% of such Holder's Pro Rata portion of the Section 1145 Stipulated Value.

Holders of Syndicate Credit Facility Deficiency Claims shall have all of the rights belonging to the Holders of Allowed Impaired Excel General Unsecured Claims under the Plan including, without limitation, all rights to distributions and the Co-Investment Rights. If the class of Impaired Excel General Unsecured Claims votes to accept the Plan, then on the Effective Date, the Holders of Syndicate Credit Facility Deficiency Claims shall be deemed automatically and without the need for any action to have waived their entitlement to any distributions of Primary Equity and the Co-Investment Rights on account of their Syndicate Credit Facility Deficiency Claims, and the other Holders of Allowed Impaired Excel General Unsecured Claims Pro Rata participation in the Co-Investment Rights and distributions of Primary Equity shall be increased accordingly.

All New Common Stock issued to Holders of Allowed Class 8 Claims pursuant to the Plan and the exercise of the Co-Investment Rights shall be deemed automatically and without the need for any action to be contributed to Holdco pursuant to Section 5.7 of the Plan.

(g) Class 9 – Unimpaired Excel General Unsecured Claims

- (i) Impairment and Voting. Class 9 Claims are Unimpaired, and the Holders of Allowed Class 9 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 9 Claims are not entitled to vote to accept or reject the Plan.
- (ii) Distribution. Holders of Class 9 Claims will have such Claims Reinstated on the Effective Date.

(h) Class 10 – Section 510(b) Claims

- (i) Impairment and Voting. Class 10 Claims against Excel are Impaired, and the Holders of Allowed Class 10 Claims are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, the Holders of Class 10 Claims against Excel are not entitled to vote to accept or reject the Plan.
- (ii) Distribution. The Holders of Section 510(b) Claims will not receive or retain any property under the Plan on account of such Section 510(b) Claims and the obligations of the Debtors and Reorganized Debtors on account of Section 510(b) Claims will be discharged.

(i) Class 11 – Interests in Excel

- (i) Impairment and Voting. Class 11 Interests in Excel are Impaired, and the Holders of Allowed Class 11 Interests are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, the Holders of Class 11 Interests in Excel are not entitled to vote to accept or reject the Plan.
- (ii) Distribution. On the Effective Date, all Interests in Excel will be deemed to be cancelled automatically without further action by the Debtors or Reorganized Debtors and the obligations of the Debtors and Reorganized Debtors thereunder will be discharged. Holders of Interests in Excel will not receive or retain any property under the Plan on account of such Interests.

(j) Class 12 – Interests in Debtors Other than Excel

- (iii) Impairment and Voting. Class 12 Interests in respect of all Debtors other than Excel are Unimpaired, and the Holders of Allowed Class 12 Interests are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 12 Interests in Debtors Other than Excel are not entitled to vote to accept or reject the Plan.
- (iv) Distribution. Holders of Class 12 Interests will have such Interests Reinstated on the Effective Date.

3. Intercompany Claims. On the Effective Date, all Intercompany Claims will, at the election of Excel, be either (a) Reinstated, (b) released, waived, and discharged, or (c) contributed to, or dividended to, the capital of the obligor.

4. Special Provision Regarding Unimpaired Classes of Claims. Except as otherwise provided in the Plan, nothing will affect the Debtors' or the Reorganized Debtors' rights and defenses, both legal and equitable, with respect to any Claims in Unimpaired Classes, including, but not limited to, all rights with respect to legal and equitable defenses to setoffs against or recoupments of Claims in Unimpaired Classes.

C. Acceptance Of The Plan

1. Classes Entitled to Vote. Classes 2 and 8 are Impaired and entitled to vote to accept or reject the Plan. Classes 1, 3, 4, 7, 9, and 12 are Unimpaired and, therefore, are not entitled to vote. Classes 6, 10 and 11 are deemed to have rejected the Plan and are not entitled to vote.

2. Elimination of Classes. To the extent applicable, any Class that does not contain any Allowed Claims or any Claims temporarily allowed for voting purposes under Bankruptcy Rule 3018, as of the date of the commencement of the Confirmation Hearing, will be deemed to have been deleted from the Plan for purposes of (a) voting to accept or reject the Plan and (b) determining whether it has accepted or rejected the Plan under section 1129(a)(8) of the Bankruptcy Code.

3. Cramdown. The Debtors reserve the right to request confirmation of the Plan, as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code.

D. Means For Implementation Of The Plan

1. Continued Legal Existence. Except as otherwise provided for in the Plan, each of the Debtors will continue to exist after the Effective Date as a separate legal entity, with all the powers of such an entity under applicable law in the jurisdiction in which each applicable Debtor is organized, incorporated or otherwise formed and pursuant to such Debtor's articles of organization or formation, operating agreement and other organizational documents in effect as of the Effective Date (provided that such organizational documents will be amended to prohibit the Reorganized Debtors from issuing non-voting equity securities to the extent necessary to comply with section 1123(a) of the Bankruptcy Code).

2. Officers and Directors of Holdco and Reorganized Excel. On the Effective Date, each of the members of the existing board of directors of Excel shall be deemed to have resigned in such capacity. The Debtors' businesses will continue to be managed, as of the Effective Date, by existing management. Mr. Gabriel Panayotides shall serve as Chief Executive Officer of Reorganized Excel. From the Effective Date until the date that is two years after the Effective Date, the board of directors of Holdco (the "Board") shall consist of seven members, and shall be constituted as follows: (a) Oaktree shall have the right to designate three members of the Board; (b) Angelo Gordon shall have the right to designate two members of the Board, one of which designees shall be subject to the consent of Oaktree (such consent not to be unreasonably withheld); and (c) the current board of directors of the Debtors shall have the right to designate two members of the Board. At least four business days prior to the Voting Deadline, Excel will file a notice with the Bankruptcy Court designating the members of the boards of directors of Holdco and Reorganized Excel who will be appointed automatically without any requirement of further action by stockholders, members, creditors, directors, or managers of the Debtors, the Reorganized Debtors or Holdco. Such notice shall also include compensation, if any, to be paid to the members of the boards of directors of Holdco and Reorganized Excel to the extent such compensation, if any, has been determined at that time. Current Excel director Apostolos Kontoyannis shall be paid a performance bonus of \$350,000 on the Effective Date.

3. Officers of Reorganized Debtors. Subject to Section 5.2 of the Plan, all officers of the Debtors in office as of the Effective Date will continue in office after the Effective Date until and unless removed by the applicable Reorganized Debtors' board of directors to be appointed as soon as practicable after the Effective Date, subject to any restrictions imposed under the Plan or any agreements executed in connection with implementation of the Plan.

4. Ivory Investment. On the Effective Date, Ivory will (1)(x) contribute to Excel at least \$5 million and up to an additional \$10 million in cash, subject to the exercise of the Co-Investment Rights and the Ivory

Subscription Rights and (y) release all of its claims to and waive all of its rights in respect of the Escrow Funds; and (2) agree to a settlement (as set forth herein) of Adversary Case No. 13-08338. In exchange for the foregoing, Ivory shall receive 1,739,228 shares of New Common Stock, representing up to 8.7% of the New Common Stock, subject to dilution and reduction, as applicable, on account of the Co-Investment Rights and without taking into account Ivory's right to purchase shares equal to the number of shares not taken up by holders of Class 8 Claims pursuant to the Co-Investment Rights. All New Common Stock issued to Ivory, including any New Common Stock issued pursuant to the oversubscription rights described in Section 3.3(g) above, shall be exempt from registration under Section 4(2) of the Securities Act or Regulation D promulgated thereunder.

5. Compromise and Settlement of Adversary Case No. 13-08338. Pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for Ivory's (x) settlement and release of all of its claims to and waiver of all of its rights in respect of the Escrow Funds, and (y) contribution to Excel of at least \$5 million and up to an additional \$10 million in cash (subject to the exercise of the Co-Investment Rights and the Ivory Subscription Rights), the provisions of the Plan, including the Ivory Investment, shall constitute a good faith compromise and settlement of Adversary Case No. 13-08338, including all claims, interests and controversies relating to the Escrow Funds, and any and all claims and Causes of Action related thereto against Ivory, and its affiliates, members, officers, directors, agents, financial advisors, accountants, investment bankers, consultants, attorneys, employees, partners, and representatives. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of Adversary Case No. 13-08338, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtors, their Estates and Holders of Claims and Interests and is fair, equitable and reasonable.

6. Co-Investment Rights. Pursuant to and in accordance with the Rights Offering Procedures and the Subscription Agreements, each Eligible Holder shall receive Subscription Rights to subscribe for (i) the Tranche A Offered Shares at an offering price equal to \$16.25 per share, (ii) the Tranche B Offered Shares at an offering price equal to \$17.25 per share, and (iii) to the extent applicable, with respect to Eligible Holders who are Accredited Investors, the 4(a)(2) Offered Shares, at an offering price equal to \$16.25 per share. On, or as soon as reasonably practicable after, the Effective Date, the Reorganized Debtors will distribute the applicable Offered Shares purchased by each Eligible Holder that has properly exercised its applicable Subscription Rights in accordance with the delivery instructions set forth in such Eligible Holder's applicable Subscription Agreements.

Secured Lenders, Holders of Allowed Impaired Excel General Unsecured Claims and Ivory shall not be required to execute the Holdco LLC Agreement before receiving their respective distributions of Holdco Units under the Plan; any such Persons who do not execute the Holdco LLC Agreement shall be automatically deemed to have accepted the terms of the Holdco LLC Agreement (in their capacity as members of Holdco) and to be parties thereto without further action. The Holdco LLC Agreement shall be adopted on the Effective Date and shall be deemed to be valid, binding, and enforceable in accordance with its terms, and each holder of Holdco Units shall be bound thereby.

7. Transfer of New Common Stock to Holdco and Issuance of Holdco Units. On the Effective Date, and immediately after the issuance of the New Common Stock under the Plan, all holders of New Common Stock shall be deemed to have transferred their shares of New Common Stock to Holdco automatically pursuant to the terms of the Plan and without further action required. Subject to the terms in the Plan, the Secured Lenders, the Holders of Allowed Impaired Excel General Unsecured Claims and Ivory shall receive Holdco Units in the same percentages as they held New Common Stock in Reorganized Excel on the Effective Date after the exercise of the Co-Investment Rights.

8. Section 1145 Exemption and Section 4(a)(2) Exemptions. Pursuant to section 1145 of the Bankruptcy Code, the issuance and allocation of New Common Stock as Primary Equity to the Secured Lenders and the Holders of Allowed Impaired Excel General Unsecured Claims and any 1145 Offered Shares issued to the Holders of Allowed Impaired Excel General Unsecured Claims pursuant to the 1145 Subscription Rights, and the issuance of Holdco Units pursuant to Section 5.7 of the Plan in exchange for such shares and 1145 Offered Shares, shall be exempt from registration under the Securities Act without further act or action by any Person, and from any state or local law requiring registration for offer or sale of a security.

The Section 1145 exemption will not apply to any securities issued under the 4(a)(2) Rights Offering or to Ivory under the Plan. Securities issued pursuant to the 4(a)(2) Rights Offering or to Ivory will be issued pursuant to an exemption under section 4(a)(2) of the Securities Act, and may not be transferred or resold absent registration or exemption under the Securities Act or any applicable state securities law.

9. Available Information. Reorganized Excel shall make available on its website (including to prospective transferees) (i) unaudited quarterly and audited annual financial statements, on a timely basis, and (ii) to the extent not covered by (i), such information as is provided to the lenders under the Amended and Restated Senior Secured Credit Facility; provided that Reorganized Excel's obligation to provide the information described in (i) above shall commence after the first full quarter following the Effective Date.

10. Contractual Transferability & Registration Rights. The Holdco Units to be issued under the Plan pursuant to Section 5.7 thereof (including in the hands of subsequent transferees), shall be freely transferable without being subject to any right of first offer, right of first refusal, board approval or any other restriction, except for restrictions (i) imposed by applicable securities laws and (ii) on transfers that would cause Reorganized Excel or Holdco to become subject to the reporting obligations under the Securities Exchange Act of 1934. The Holdco LLC Agreement shall provide holders of Holdco Units that are affiliates of Holdco (including, if applicable, Ivory) with customary demand registration rights to sell their Holdco Units, piggy-back registration rights and marketing cooperation covenants; provided that such demand registration right cannot be exercised until the date that is eighteen (18) months after the Effective Date.

11. Minority Protections. The Holdco LLC Agreement shall contain minority protections with respect to pre-emptive rights, restrictions on affiliate transactions that are not on arms' length terms and certain amendments to the provisions of Holdco's governing documents as described below. The Holdco LLC Agreement shall also provide for the holders of at least 60% of the Holdco Units (the "Majority Interest Holders") to be entitled to drag-along rights in connection with a sale of Holdco to a party unaffiliated with the selling holder(s) (a "Drag-Along Sale"), which drag-along rights shall include, without limitation, an agreement by the holders of Holdco Units to grant a voting proxy to the Majority Interest Holders in connection with such Drag-Along Sale, subject to definitive documentation, including any governance and/or shareholder arrangements among the lenders under the Amended and Restated Senior Secured Credit Facility, which will not have any adverse impact on the minority rights set forth herein. If (i) such Drag-Along Sale is proposed within the first 12 months after the Effective Date and (ii) more than 50% of the fair market value of the consideration to be received by the holders of Holdco Units in such Drag-Along Sale consists of equity securities that are not publicly traded, then the issuer of such equity securities shall adopt corporate governance provisions substantially similar to those contained in the Plan (including, without limitation, the provisions relating to Contractual Transferability set forth in Section 5.10 of the Plan and Available Information set forth in Section 5.9 of the Plan). In the event that holders desire to sell at least 50% of the outstanding Holdco Units in one or a series of related transactions, the other holders of Holdco Units shall have tag-along rights in connection with such sale.

The provisions of the Holdco LLC Agreement set forth in the Plan (including, without limitation, the provisions relating to Contractual Transferability set forth in Section 5.10 of the Plan and Available Information set forth in Section 5.9 of the Plan) shall not be modified, amended or waived within the first year following the Effective Date, and thereafter shall not be modified, amended or waived without the prior written consent of both (A) holders of a majority of the equity securities in Holdco, excluding for the purposes of such calculation equity securities held by members who are affiliates of Holdco (which shall, for the avoidance of doubt, include on the Effective Date Oaktree and its affiliates and Ivory and its affiliates); and (B) Ivory, if (i) Ivory or its affiliates still own any equity securities of Holdco and (ii) such modification, amendment or waiver has a disproportionately adverse effect on Ivory or its affiliates as compared with the effect on non-affiliate holders of equity securities in Holdco.

12. Management Incentive Plan. On the Effective Date, the Management Incentive Plan shall become effective without any requirement of further action by stockholders, members, creditors, directors, or managers of the Debtors, the Reorganized Debtors or Holdco.

13. Corporate Action. Each of the matters provided for under the Plan involving the corporate structure of any Debtor, Reorganized Debtor or Holdco or any corporate action to be taken by, or required

of, any Debtor, Reorganized Debtor or Holdco shall be deemed to have occurred and be effective as provided herein, and shall be authorized, approved and, to the extent taken prior to the Effective Date, ratified in all respects without any requirement of further action by stockholders, members, creditors, directors, or managers of the Debtors, the Reorganized Debtors or Holdco.

Such actions shall include, but are not limited to the following steps which shall occur in the following order to implement the provisions of the Plan:

- (1) Secured Lenders shall exchange a portion of their Allowed Syndicate Credit Facility Secured Claims for (a) an amount of Amended and Restated Senior Secured Credit Facility, and a portion of their Allowed Syndicate Credit Facility Secured Claims for (b) New Common Stock, all as set forth in Section 3.3(b) of the Plan.
- (2) Holders of Allowed Impaired Excel General Unsecured Claims shall exchange their Allowed Impaired Excel General Unsecured Claims for (a) the remaining New Common Stock (before the cash subscription described in Step 4 below), and (b) the Co-Investment Rights as provided in Section 3.3(g) of the Plan.
- (3) The Class 11 Interests in Excel shall be cancelled for no consideration as provided in Sections 3.3(j) and 5.18 of the Plan.
- (4) Ivory and Holders of Allowed Impaired Excel General Unsecured Claims shall contribute cash to the Company in exchange for New Common Stock pursuant to the Ivory Investment and the Co-Investment Rights as provided in Sections 3.3(g) and 5.4 of the Plan.
- (5) (A) Secured Lenders shall contribute their New Common Stock (received in Step (1)(b)) to Holdco in exchange for Holdco Units and (B) Ivory and the Holders of Allowed Impaired Excel General Unsecured Claims shall contribute their New Common Stock ((received in Steps 2(a) and 4, as applicable) to Holdco in exchange for Holdco Units, as provided in Section 5.7 of the Plan.

14. Effectuating Documents; Further Transactions. Each of the Debtors and Reorganized Debtors, and their respective officers and designees, is authorized to execute, deliver, file, or record such contracts, instruments, releases, indentures, and other agreements or documents, and take such actions, as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan, or to otherwise comply with applicable law.

15. Check the Box Election. Holdco shall make a check-the-box election on Internal Revenue Service Form 8832 (or successor form) to be treated as a corporation for United States federal income tax purposes, effective on the date of its formation, and in any event, before the Effective Date.

16. Preservation of Causes of Action. In accordance with section 1123(b)(3) of the Bankruptcy Code, the Reorganized Debtors will retain and may (but are not required to) enforce all Retained Actions. After the Effective Date, the Reorganized Debtors, in their sole and absolute discretion, will have the right to bring, settle, release, compromise, or enforce such Retained Actions (or decline to do any of the foregoing), without further approval of the Bankruptcy Court. The failure of the Debtors to specifically list any claim, right of action, suit, proceeding, or other Retained Action in the Plan or the Disclosure Statement does not, and will not be deemed to, constitute a waiver or release by the Debtors or the Reorganized Debtors of such claim, right of action, suit, proceeding or other Retained Action, and, therefore, no preclusion doctrine, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches will apply to such claim, right of action, suit, proceeding, or other Retained Action upon or after the confirmation or consummation of the Plan.

17. Exemption From Certain Transfer Taxes and Recording Fees. Pursuant to section 1146(a) of the Bankruptcy Code, any transfers from a Debtor to a Reorganized Debtor or to any other Person or entity pursuant to the Plan, or any agreement regarding the transfer of title to or ownership of any of the Debtors' real or personal property, will not be subject to any document recording tax, stamp tax, conveyance fee, sales tax,

intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, or other similar tax or governmental assessment, and the Confirmation Order will direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

18. **Dissolution of Creditors' Committee.** The Creditors' Committee will continue in existence until the Effective Date to exercise those powers and perform those duties specified in section 1103 of the Bankruptcy Code. On the Effective Date, the Creditors' Committee will be dissolved and the Creditors' Committee's members will be deemed released of all their duties, responsibilities, and obligations in connection with the Chapter 11 Cases or the Plan and its implementation, and the retention or employment of the Creditors' Committee's attorneys, accountants, professionals, and other agents will terminate, except with respect to (i) all Professional Fee Claims and (ii) any appeals of the Confirmation Order.

19. **Cancellation of Existing Securities and Agreements.** Except as provided in the Plan or in the Confirmation Order, or for the purpose of evidencing a right to distribution hereunder or a contractual right to indemnification or reimbursement of the Administrative Agent, on the Effective Date, (i) all indentures, notes, stock, bonds, purchase rights, instruments, guarantees, certificates, warrants, options, puts, agreements (including registration rights agreements), and other documents evidencing or giving rise to Claims and Interests against and in the Debtors will be canceled, and the obligations of the Debtors thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote, or other approval or authorization by any Person; *provided, however*, notwithstanding Confirmation or the occurrence of the Effective Date, any such indenture, guarantee or agreement that governs the rights of the Holder of a Claim will continue in effect solely for purposes of (a) allowing Holders of Syndicate Credit Facility Secured Claims and Impaired Excel General Unsecured Claims to receive distributions under the Plan as provided in the Plan; *provided further, however*, that the preceding proviso will not affect the discharge of Claims or Interests pursuant to the Bankruptcy Code, the Confirmation Order or the Plan, or result in any expense or liability to the Reorganized Debtors, except to the extent set forth in or provided for under the Plan; *provided further, however*, that the cancellation of indentures, notes, stock, bonds, purchase rights, instruments, guarantees, certificates, warrants, options, puts, agreements and other documents hereunder will not itself alter the obligations or rights among third parties (apart from the Debtors, the Reorganized Debtors, and the non-Debtor affiliates).

E. Provisions Governing Distributions

1. **Allowed Claims and Interests.** Notwithstanding any provision in the Plan to the contrary, the Debtors or the Reorganized Debtors will make distributions only to Holders of Allowed Claims. A Holder of a Disputed Claim will receive only a distribution on account thereof when and to the extent that such Holder's Disputed Claim becomes an Allowed Claim.

2. **Fractional Shares.** No fractional shares of New Common Stock or Holdco Units will be issued or distributed under the Plan. The actual distribution of shares of New Common Stock or Holdco Units will be rounded to the next higher or lower whole number as follows: (a) fractions less than one-half ($\frac{1}{2}$) will be rounded to the next lower whole number and (b) fractions equal to or greater than one-half ($\frac{1}{2}$) will be rounded to the next higher whole number. No consideration will be provided in lieu of fractional shares that are rounded down.

3. **Withholding and Reporting Requirements.** In connection with the Plan and all distributions hereunder, the Reorganized Debtors will comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions hereunder will be subject to any such withholding and reporting requirements. The Reorganized Debtors will be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements.

4. **Setoffs.** The Reorganized Debtors may, pursuant to applicable law, but will not be required to, set off against any Claim the payments or other distributions to be made pursuant to the Plan in respect of such Claim, claims of any nature whatsoever that the Debtors or the Reorganized Debtors may have against the Holder of such Claim; *provided, however*, that neither the failure to do so nor the allowance of any Claim hereunder

will constitute a waiver or release by the Reorganized Debtors of any such Claim that the Debtors or the Reorganized Debtors may have against such Holder.

5. Allocation Between Principal and Accrued Interest. For tax purposes, the aggregate consideration paid to Holders with respect to their Allowed Claims shall be treated pursuant to the Plan as allocated first to the principal amount of such Allowed Claims (to the extent thereof) and, thereafter, to interest, if any, accrued through the Effective Date.

F. Treatment Of Executory Contracts And Unexpired Leases

1. Assumption of Executory Contracts and Unexpired Leases. On the Effective Date, all executory contracts and unexpired leases of the Debtors shall be deemed assumed in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, except (a) those executory contracts or unexpired leases that have previously expired or terminated pursuant to their own terms, (b) subject of a motion to reject filed on or before, and pending on, the Effective Date, or (c) identified on the Rejected Executory Contract and Unexpired Lease List on or prior to the Effective Date. The Debtors with the consent of the other Consenting Parties, reserve all rights to amend or otherwise supplement the Rejected Executory Contract and Unexpired Lease List through the Effective Date.

2. D&O Liability Insurance Policies and Indemnification Provisions. Notwithstanding anything in the Plan to the contrary, as of the Effective Date, the D&O Liability Insurance Policies and Indemnification Provisions belonging or owed to directors, officers, and employees of the Debtors (or the Estates) who served or were employed at any time by the Debtors will be deemed to be, and will be treated as though they are, executory contracts and the Debtors will assume (and assign to the Reorganized Debtors if necessary to continue the D&O Liability Insurance Policies in full force) all of the D&O Liability Insurance Policies and Indemnification Provisions pursuant to section 365(a) of the Bankruptcy Code. Entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the Debtors' foregoing assumption of each of the D&O Liability Insurance Policies and Indemnification Provisions. On or before the Effective Date, the Reorganized Debtors will obtain reasonably sufficient tail coverage (i.e., D&O insurance coverage that extends beyond the end of the policy period) under a directors and officers' liability insurance policy for the current and former directors, officers and managers for a period of six (6) years after the Effective Date on terms reasonably acceptable to each of the Consenting Parties.

3. Cure of Defaults and Adequate Assurance. Any monetary defaults under each executory contract and unexpired lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the default amount in Cash on the Effective Date, subject to the limitations described below, or on such other terms as the parties to such executory contracts or unexpired leases may otherwise agree.

The Debtor asserts, and this section of the Plan provides, that no Cure Claim is due to any counterparty to an executory contract or unexpired lease in order to assume any executory contract or unexpired lease under section 365(b)(1)(A) of the Bankruptcy Code. Any counterparty to an executory contract or unexpired lease that will be assumed under the Plan that asserts a Cure Claim must be paid in order to assume such executory contract or unexpired lease must file an objection asserting the amount of the Cure Claim with the Bankruptcy Court on or before the deadline for objecting to Confirmation of the Plan. Failure to object before the objection deadline to the proposed Cure Claim of \$0.00 for an executory contract or unexpired lease shall constitute consent to the assumption of such executory contract or unexpired lease, including the proposed Cure Claim of \$0.00, and an acknowledgement that such assumption satisfies all requirements of section 365(b) of the Bankruptcy Code. If any such objection to a Cure Claim of \$0.00 is filed and is not resolved at or prior to the Confirmation Hearing, such executory contract or expired lease shall not be assumed until the dispute regarding the amount of the Cure Claim is resolved by agreement or order of the Bankruptcy Court; provided, however, the Reorganized Debtors shall be authorized to reject any executory contract or unexpired lease to the extent the Reorganized Debtors, in the exercise of their sound business judgment, conclude that the amount of the Cure Claim as determined by the Bankruptcy Court, renders assumption of such executory contract or unexpired lease unfavorable to the Reorganized Debtors.

Except as otherwise provided in the Confirmation Order, the only adequate assurance of future performance shall be the promise of the applicable Reorganized Debtor to perform all obligations under any executory contract or unexpired lease under the Plan. The Debtors reserve the right, with the consent of the other Consenting Parties, to file a motion on or before the Confirmation Date to assume or reject any executory contract and unexpired lease.

Assumption of any executory contract or unexpired lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy related defaults, arising under any assumed executory contract or unexpired lease at any time before the effective date of the assumption. Any proof of Claim filed with respect to an executory contract or unexpired lease that has been assumed shall be deemed disallowed and expunged upon satisfaction of the Cure Claim in accordance with the procedures described above, without further notice to or action, order or approval of the Bankruptcy Court.

4. **Claims Based on Rejection of Executory Contracts or Unexpired Leases.** All proofs of Claim with respect to Claims arising from the rejection of executory contracts and unexpired leases, if any, must be filed with the Bankruptcy Court on or prior to 30 days after the date of entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection. Unless otherwise ordered by the Bankruptcy Court or otherwise provided herein, any Claims arising from the rejection of executory contracts and unexpired leases not filed with the Bankruptcy Court within such time will be automatically disallowed, forever barred from assertion and shall not be enforceable against the Debtors or the Reorganized Debtors, the Estates or their property without the need for any objection by the Reorganized Debtors or further notice to, or action, order, or approval of the Bankruptcy Court. All such Claims shall, as of the Effective Date, be subject to the discharge and permanent injunction set forth in Article X of the Plan. All Allowed Claims arising from the rejection of the Debtors' executory contracts and unexpired leases shall be classified as Class 6 Claims or Class 8 Claims, as applicable, against the applicable Debtor and shall be treated in accordance with Article III of the Plan. The deadline to object to Claims arising from the rejection of executory contracts and unexpired leases, if any, shall be the later of (a) 180 days following the date on which such Claim was filed, and (b) such other period of limitation as may be specifically fixed by an order of the Bankruptcy Court for objecting to such Claims.

G. Confirmation And Consummation Of The Plan

1. **Condition To Entry of the Confirmation Order.** The following are conditions precedent to Confirmation, each of which must be satisfied or waived by each of the Consenting Parties in accordance with the terms hereof:

(a) The Plan and all schedules, documents, supplements and exhibits relating to the Plan will have been filed in form and substance acceptable to each of the Consenting Parties, unless otherwise provided in the Plan.

(b) The proposed Confirmation Order will be in form and substance acceptable to each of the Consenting Parties.

2. **Conditions To Effective Date.** The following are conditions precedent to the occurrence of the Effective Date, each of which must be satisfied or waived by each of the Consenting Parties in accordance with the terms hereof:

(a) The Confirmation Order shall be in full force and effect and not subject to any stay, and shall provide, among other things, that (i) the New Common Stock and Holdco Units issued under the Plan (other than the New Common Stock and Holdco Units offered pursuant to the 4(a)(2) Rights Offering and to Ivory) shall be exempt from the registration requirements of the Securities Act and similar state statutes pursuant to section 1145 of the Bankruptcy Code and (ii) that the New Common Stock and Holdco Units issued pursuant to the 4(a)(2) Rights Offering and to Ivory shall be exempt from registration under Section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder.

- (b) The Amended and Restated Senior Secured Credit Facility will have been executed and delivered, and all conditions precedent to its effectiveness will have been satisfied.
- (c) The Holdco LLC Agreement shall be in full force and effect.
- (d) The Plan and Confirmation Order shall not authorize the Debtors to incur any material debt other than the debt incurred in connection with the Amended and Restated Senior Secured Credit Facility.
- (e) All authorizations, consents, and regulatory approvals required, if any, in connection with the consummation of the Plan will have been obtained.
- (f) The Debtors will have received the Ivory Investment and such funds will be available for contribution.
- (g) Ivory and Excel will have delivered instructions to Seward & Kissel to release the Escrow Funds to Excel on the Effective Date, and such funds will be available for release by Seward & Kissel to Excel.
- (h) All other actions, documents, and agreements necessary to implement the Plan will have been effected or executed.
- (i) The Plan and all schedules, documents, supplements and exhibits relating to the Plan shall be in form and substance acceptable to each of the Consenting Parties, unless otherwise specifically provided in the Plan.
- (j) The Plan Supplement documents shall be adopted in the form in which such documents were filed with the Plan Supplement (or with such other modifications as are satisfactory to each of the Consenting Parties).

3. Waiver Of Conditions. Each of the Consenting Parties may waive, in whole or in part, the conditions to the occurrence of the Effective Date, without any notice to other parties in interest or the Bankruptcy Court and without a hearing. The waiver of a condition to the occurrence of the Effective Date shall not be deemed a waiver of any other rights, and each such right shall be deemed an ongoing right that may be asserted at any time.

H. Effect Of Plan Confirmation

- 1. Binding Effect. The Plan will be binding upon and inure to the benefit of the Debtors, their Estates, all current and former Holders of Claims and Interests, and their respective successors and assigns, including, but not limited to, the Reorganized Debtors.
- 2. Revesting of Assets. Except as otherwise explicitly provided in the Plan, on the Effective Date, all property comprising the Estates will revert in the Reorganized Debtors, free and clear of all Claims, Liens, charges, encumbrances, rights, and Interests of creditors and equity security holders. As of the Effective Date, the Reorganized Debtors may operate their businesses and use, acquire, and dispose of property and settle and compromise Claims or Interests without supervision of the Bankruptcy Court, free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Plan or the Confirmation Order.
- 3. Compromise and Settlement of Claims and Interests. Pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims, Interests and controversies relating to the contractual, legal and subordination rights that a Holder of a Claim may have with respect to any Allowed Claim or Interest, or any distribution to be made on account of such Allowed Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or

settlement of all such Claims, Interests and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtors, their Estates and Holders of Claims and Interests and is fair, equitable and reasonable. In accordance with the provisions of the Plan, pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019(a), without any further notice to or action, order or approval of the Bankruptcy Court, after the Effective Date, the Reorganized Debtors may compromise and settle Claims against them and Causes of Action against other Persons.

4. Discharge of the Debtors. Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan, the distributions, rights and treatment that are provided in the Plan will be in full and final satisfaction, settlement, release and discharge, effective as of the Effective Date, of all Claims, Interests and Causes of Action of any nature whatsoever, including, without limitation, claims arising under maritime law in any foreign jurisdiction that provides for the seizure or arrest of any vessel of the Debtors under any theory of law or equity (including any claim arising under South African law on the basis that the vessel is an "associated ship" as defined in the South African Admiralty Jurisdiction Regulation Act 1983, and/or of an allegation under the law of any other jurisdiction that any Debtor has or had control of or was associated in any way with any vessel owned and/or operated by a Debtor and/or non-Debtor and of any vessel in respect of which an alleged liability, including a liability of any third party, was incurred), any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against and Interests in, the Debtors or any of their assets or properties, regardless of whether any property will have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities and Causes of Action that arose before the Effective Date, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, in each case whether or not: (i) a proof of Claim or Interest based upon such Claim, debt, right or Interest is filed or deemed filed pursuant to section 501 of the Bankruptcy Code; (ii) a Claim or Interest based upon such Claim, debt, right or Interest is Allowed or disallowed pursuant to section 502 of the Bankruptcy Code; or (iii) the Holder of such a Claim or Interest has accepted the Plan. Except as otherwise provided in the Plan, any default by the Debtors or their affiliates with respect to any Claim or Interest that existed before or on account of the filing of the Chapter 11 Cases will be deemed cured on the Effective Date. The Confirmation Order will be a judicial determination of the discharge of all Claims and Interests subject to the Effective Date occurring, except as otherwise expressly provided in the Plan.

5. **Releases and Related Matters.**

(a) **Releases by the Debtors.**

Pursuant to section 1123(b) of the Bankruptcy Code and to the extent allowed by applicable law, and except as otherwise specifically provided in the Plan or the Plan Supplement, for good and valuable consideration, including the service of the Released Parties to facilitate the expeditious reorganization of the Debtors and the implementation of the restructuring contemplated by the Plan, on and after the Effective Date, the Released Parties are deemed released and discharged by the Debtors, the Reorganized Debtors, the Estates and non-Debtor affiliates from any and all Claims, Interests, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, including any derivative claims, asserted or assertable on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that the Debtors, the Reorganized Debtors, the Estates or the non-Debtor affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim or Interest or other Person, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Debtors' restructuring, the Chapter 11 Cases, the purchase, sale or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the Plan Supplement, the business or contractual arrangements between any Debtor, Reorganized Debtor, Estate or non-Debtor affiliate and any Released Party, the restructuring of Claims and Interests before or during the Chapter 11 Cases, the negotiation, formulation or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments or other documents, upon any other act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date; *provided, however* that nothing in Section 9.5 of the Plan will be construed to release any party or entity from intentional fraud, willful misconduct, or criminal conduct, as determined by a Final Order.

(b) Releases by the Holders of Claims and Interests.

Except as otherwise provided in the Plan or the Plan Supplement, as of the Effective Date, each Holder of a Claim or Interest will be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever released and discharged the Debtors, the Reorganized Debtors, the Estates, non-Debtor affiliates and the Released Parties from any and all Claims, Interests, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, including any derivative Claims, assertable on behalf of a Debtor, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such Person would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Debtors' restructuring, the Chapter 11 Cases, the purchase, sale or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan or the Plan Supplement, the business or contractual arrangements between any Debtor, Reorganized Debtor, Estate or non-Debtor affiliate and any Released Party, the restructuring of Claims and Interests before or during the Chapter 11 Cases, the negotiation, formulation or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments or other documents, upon any other act or omission, transaction, agreement, event or other occurrence including or pertaining to the Debtors and taking place on or before the Effective Date, *provided, however* that nothing in Section 9.5 of the Plan will be construed to release any party or entity from intentional fraud, willful misconduct, or criminal conduct, as determined by a Final Order; *provided further, however* that Section 9.5 of the Plan will not release the Debtors, the Reorganized Debtors, the Estates, non-Debtor affiliates or the Released Parties from any Cause of Action held by a governmental entity existing as of the Effective Date based on (i) the Internal Revenue Code or other domestic state, city, or municipal tax code, (ii) the environmental laws of the United States or any domestic state, city, or municipality, (iii) any criminal laws of the United States or any domestic state, city, or municipality, (iv) the Securities and Exchange Act of 1934 (as now in effect or hereafter amended), the Securities Act, or other securities laws of the United States or any domestic state, city or municipality, (v) the Employee Retirement Income Security Act of 1974, as amended, or (vi) the laws and regulations of the Bureau of Customs and Border Protection of the United States Department of Homeland Security. Notwithstanding anything to the contrary in this Section 9.5(b), a Holder of Class 11 Interests in Excel shall only be deemed to provide the releases set forth in this section if such Holder did not affirmatively opt out of the Plan releases by completing and returning a form to Donlin, Recano & Company, Inc. by the Voting Deadline.

6. **Exculpation and Limitation of Liability.** Except as otherwise specifically provided in the Plan or Plan Supplement, no Exculpated Party will have or incur, and each Exculpated Party is hereby released and exculpated from, any Exculpated Claim, and in all respects such Persons will be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Debtors, the Reorganized Debtors, and the Released Parties have, and upon Confirmation of the Plan will be deemed to have, participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code with regard to the solicitation and distribution of the Plan securities pursuant to the Plan, and therefore are not, and on account of such distributions will not be, liable at any time for the violation of any applicable law, rule or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

7. **Injunction.**

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE PLAN, THE PLAN SUPPLEMENT OR RELATED DOCUMENTS, OR FOR OBLIGATIONS ISSUED PURSUANT TO THE PLAN, ALL PERSONS WHO HAVE HELD, HOLD OR MAY HOLD CLAIMS OR INTERESTS THAT HAVE BEEN RELEASED, DISCHARGED OR EXCULPATED PURSUANT TO THIS ARTICLE IX ARE PERMANENTLY ENJOINED, FROM AND AFTER THE EFFECTIVE DATE, FROM TAKING ANY OF THE FOLLOWING ACTIONS: (1) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (2) ENFORCING, ATTACHING, COLLECTING OR RECOVERING BY ANY MANNER OR MEANS ANY JUDGMENT, AWARD, DECREE OR ORDER AGAINST SUCH PERSONS ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO

ANY SUCH CLAIMS OR INTERESTS; (3) CREATING, PERFECTING OR ENFORCING ANY ENCUMBRANCE OF ANY KIND AGAINST SUCH PERSONS OR THE PROPERTY OR ESTATES OF SUCH PERSONS ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (4) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS RELEASED, SETTLED OR DISCHARGED PURSUANT TO THE PLAN; AND (5) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR PROCEEDING THAT CONTEMPLATES THE SEIZURE OR ARREST OF ANY PROPERTY OF THE DEBTORS, INCLUDING ANY VESSEL, WHETHER UNDER SOUTH AFRICAN LAW OR THE LAW OF ANY OTHER JURISDICTION, AND WHETHER ON THE BASIS THAT THE VESSEL IS AN "ASSOCIATED SHIP" AS DEFINED IN THE SOUTH AFRICAN ADMIRALTY JURISDICTION REGULATION ACT 1983, AND/OR OF AN ALLEGATION THAT ANY DEBTOR HAS OR HAD CONTROL OF OR WAS ASSOCIATED IN ANY WAY WITH ANY VESSEL OWNED AND/OR OPERATED BY A DEBTOR AND/OR A NON-DEBTOR AND OF ANY VESSEL IN RESPECT OF WHICH AN ALLEGED LIABILITY, INCLUDING A LIABILITY OF ANY THIRD PARTY, WAS INCURRED, OR OTHERWISE.

THE RIGHTS AFFORDED IN THE PLAN AND THE TREATMENT OF ALL CLAIMS AND INTERESTS IN THE PLAN WILL BE IN EXCHANGE FOR AND IN COMPLETE SATISFACTION OF ALL CLAIMS AND INTERESTS OF ANY NATURE WHATSOEVER, INCLUDING ANY INTEREST ACCRUED ON CLAIMS FROM AND AFTER THE PETITION DATE AGAINST THE DEBTORS OR ANY OF THEIR ASSETS, PROPERTY OR ESTATES. ON THE EFFECTIVE DATE, ALL SUCH CLAIMS AGAINST THE DEBTORS WILL BE FULLY RELEASED AND DISCHARGED, AND THE INTERESTS WILL BE CANCELLED.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR IN THE PLAN OR IN OBLIGATIONS ISSUED PURSUANT HERETO FROM AND AFTER THE EFFECTIVE DATE, ALL CLAIMS AGAINST THE DEBTORS WILL BE FULLY RELEASED AND DISCHARGED, AND ALL INTERESTS WILL BE CANCELLED, AND THE DEBTORS' LIABILITY WITH RESPECT THERETO WILL BE EXTINGUISHED COMPLETELY, INCLUDING ANY LIABILITY OF THE KIND SPECIFIED UNDER SECTION 502(G) OF THE BANKRUPTCY CODE. ALL PERSONS WILL BE PRECLUDED FROM ASSERTING AGAINST THE DEBTORS, THE DEBTORS' ESTATES, THE REORGANIZED DEBTORS, EACH OF THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, AND EACH OF THEIR ASSETS AND PROPERTIES, ANY OTHER CLAIMS OR INTERESTS BASED UPON ANY DOCUMENTS, INSTRUMENTS OR ANY ACT OR OMISSION, TRANSACTION OR OTHER ACTIVITY OF ANY KIND OR NATURE THAT OCCURRED BEFORE THE EFFECTIVE DATE.

8. Term of Bankruptcy Injunction or Stays. Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays provided for in the Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code or otherwise, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order), will remain in full force and effect until the Effective Date.

I. Procedures For Resolving and Treating Disputed Claims

1. Disputed Claims. All Disputed Claims against the Debtors shall be subject to the provisions of Article X of the Plan.

2. Objection Deadline. Unless otherwise ordered by the Bankruptcy Court, objections to Claims will be filed with the Bankruptcy Court and served upon the holders of each such Claim to which objections are made on or before the Claims Objection Bar Date. If an objection to a Claim is timely filed, a subsequent amendment to the objection will also be deemed timely, even if filed subsequent to the deadline for filing the original Claim objection, and even if the amendment raises facts or legal theories not raised in the original Claim objection.

3. Prosecution of Objections. After the Confirmation Date, the Debtors or the Reorganized Debtors, as the case may be, will have the authority to file, litigate to final judgment, settle, or withdraw objections to Disputed Claims.

4. No Distributions Pending Allowance. No payments or distributions will be made with respect to any Claim to the extent it is a Disputed Claim unless and until all objections to such Disputed Claim are resolved and such Disputed Claim becomes an Allowed Claim in whole or in part.

J. Retention Of Jurisdiction

1. Retention of Jurisdiction. Pursuant to sections 105(c) and 1142 of the Bankruptcy Code and notwithstanding entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court will retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases and the Plan to the fullest extent permitted by law, including, among other things, jurisdiction to:

(a) resolve any matters related to the assumption, assumption and assignment, or rejection of any executory contract or unexpired lease with respect to which any Debtor or Reorganized Debtor may be liable, and to hear, determine, and, if necessary, liquidate any Claims arising therefrom;

(b) decide or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications, involving the Debtors that may be pending on the Effective Date;

(c) enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan, the Disclosure Statement, or the Confirmation Order;

(d) resolve any cases, controversies, suits, or disputes that may arise in connection with the consummation, interpretation, or enforcement of the Plan or any contract, instrument, release, or other agreement or document that is executed or created pursuant to the Plan, or any entity's rights arising from, or obligations incurred in connection with, the Plan or such documents;

(e) modify the Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code or modify the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with the Plan or the Confirmation Order, or remedy any defect or omission, or reconcile any inconsistency, in any Bankruptcy Court order, the Plan, the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with the Plan, or the Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan;

(f) hear and determine all applications for compensation and reimbursement of expenses of Professionals under the Plan or under sections 330, 331, 503(b) and 1129(a)(4) of the Bankruptcy Code; *provided, however*, that from and after the Effective Date the payment of fees and expenses of the Reorganized Debtors, including professional fees, will be made in the ordinary course of business and will not be subject to the approval of the Bankruptcy Court;

(g) issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any entity with consummation, implementation, or enforcement of the Plan or the Confirmation Order;

(h) adjudicate controversies arising out of the administration of the Estates or the implementation of the Plan;

(i) recover all assets of the Debtors and property of the Estates, wherever located;

(j) enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason, or in any respect, modified, stayed, reversed, revoked, or vacated, or distributions pursuant to the Plan are enjoined or stayed;

(k) hear and resolve all matters concerning state, local, and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;

(l) determine any other matters that may arise in connection with, or relate to, the Plan, the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with the Plan, or the Confirmation Order;

(m) enforce all orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Chapter 11 Cases including but not limited to any effort to seize or arrest any vessel of the Debtors in South African waters or elsewhere on account of prepetition claims of the German Owners;

(n) hear and determine such other matters related hereto that are not inconsistent with the Bankruptcy Code or title 28 of the United States Code; and

(o) enter an order closing the Chapter 11 Cases.

2. Failure of Bankruptcy Court to Exercise Jurisdiction. If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter, including the matters set forth in Section 11.1 of the Plan, the provisions of Article XI of the Plan will have no effect upon and will not control, prohibit, or limit the exercise of jurisdiction by any other court having jurisdiction with respect to such matter.

K. Miscellaneous Provisions

1. Payment Of Statutory Fees. All fees payable pursuant to section 1930 of title 28 of the United States Code, as determined by the Bankruptcy Court at the Confirmation Hearing, will be paid on the Effective Date.

2. Amendment Or Modification Of The Plan. Subject to section 1127 of the Bankruptcy Code and, to the extent applicable, sections 1122, 1123, and 1125 of the Bankruptcy Code and subject further to the consent of the Consenting Parties, as provided for in the Plan, the Debtors reserve the right to alter, amend, or modify the Plan at any time prior to or after the Confirmation Date, including, without limitation the right to withdraw the Plan as to any particular Debtor and seek to confirm and consummate the Plan with respect to the other Debtors. A Holder of a Claim that has accepted the Plan will be deemed to have accepted the Plan, as altered, amended or modified, if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the Claim of such Holder.

3. Revocation, Withdrawal, or Non-Consummation. The Debtors reserve the right to revoke or withdraw the Plan at any time prior to the Confirmation Date and to file other plans of reorganization. If the Debtors revoke or withdraw the Plan, or if Confirmation or consummation of the Plan does not occur, then (i) the Plan will be null and void in all respects, (ii) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount any Claim or Class of Claims or any release contemplated hereby), assumption of executory contracts or leases effected by the Plan, and any document or agreement executed pursuant to the Plan will be deemed null and void, and (iii) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, will (A) constitute or be deemed to constitute a waiver or release of any Claims by or against, or any Interests in, the Debtors or any other Person, (B) prejudice in any manner the rights of the Debtors or any Person in any further proceedings involving the Debtors, or (C) constitute an admission of any sort by the Debtors or any other Person.

4. Governing Law. Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to the Plan provides otherwise, the rights and obligations arising under the Plan will be governed by, and construed and enforced in accordance with, the laws of the State of New York without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however* that corporate governance matters relating to the Debtors or the Reorganized Debtors, as applicable, not

incorporated in New York will be governed by the laws of the jurisdiction in which the applicable Debtor or Reorganized Debtor is incorporated.

V. RISK FACTORS TO BE CONSIDERED

The Plan involves a degree of risk and uncertainty. You should carefully consider the risks and uncertainties described below as well as the other information set forth in this Disclosure Statement (and the documents delivered together herewith and incorporated by reference) before deciding whether to vote to accept or reject the Plan or to participate in the Rights Offerings. The Debtors have described the risks and uncertainties that they believe are material, but these risks and uncertainties may not be the only ones faced by the Debtors. Additional risks and uncertainties that are not currently known to the Debtors, or that the Debtors currently deem immaterial, may also have an adverse effect on the Debtors' business, financial condition, results of operations or future prospects. If this occurs, the value of Reorganized Excel may decline.

The order in which the risks are presented does not necessarily reflect the likelihood of their occurrence or the magnitude of their potential impact on the Debtors' business, financial condition, results of operations, or the value of Reorganized Excel.

A. Risks Related to Failure to Consummate the Plan of Reorganization

The Debtors believe that restructuring through the Plan is critical to their continuing viability. If the Plan is not confirmed, the Debtors' creditors may seek to exercise certain remedies against them, or the Debtors may need to propose an alternate plan without the support of their secured creditors.

The Debtors are in default under the Syndicate Credit Facility, and the secured lenders thereunder have the right to enforce share pledges against almost all of the Debtors and thereby take ownership of substantially all of the Debtors' assets. The secured lenders under the Debtors' other secured facilities may also enforce their rights against the collateral securing those facilities, including the Debtors' vessels. Excel has also defaulted under the terms of the Convertible Notes and holders thereof may attempt to pursue Excel for payment. Certain creditors with maritime claims or liens may attempt to enforce such claims by arrest of the Debtors' vessels in various jurisdictions, or may commence foreign insolvency proceedings against the Debtors. In addition, in accordance with the Stipulated Cash Collateral Order, there are certain termination events, including, but not limited to, the obligation to attain one or more milestones within a specified period of time. The occurrence of a Termination Event (as defined in the Stipulated Cash Collateral Order) could result in the lenders terminating the Debtors' consensual access to cash collateral.

The chapter 11 process may be detrimental to the Debtors' business and it may adversely affect the Debtors' relationships with customers, employees, lenders and other stakeholders. For example,

- customers may lose confidence in the Debtors and choose not to do business with the Debtors, leading to a decline in revenues and cash flow;
- suppliers, including in particular bunker suppliers and other maritime service suppliers, may refuse to provide bunkers or services to the Debtors, rendering the Debtors unable to operate their fleet, or may require that bunkers or services be provided on less favorable credit terms, reducing the liquidity available to the Debtors;
- employees of Maryville, who run the day-to-day operations of the Debtors' business, could be distracted from performance of their duties, or more easily attracted to other career opportunities, and it may be more difficult to replace key employees;
- lenders may seek to terminate relationships with the Debtors, require financial assurances or enhanced returns, or refuse to provide credit on the terms contemplated by the Plan; and

- the Debtors could be forced to operate in bankruptcy for an extended period of time while they develop and seek approval for a reorganization plan.

Failure to Consummate the Plan.

Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a plan and requires, among other things, that the value of distributions to dissenting creditors and shareholders not be less than the value of distributions such creditors and shareholders would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. Although the Debtors believe that the Plan will meet such tests, there can be no assurance that the Bankruptcy Court will reach the same conclusion. If the Plan is not confirmed and consummated, there can be no assurance that the chapter 11 cases will continue rather than be converted to chapter 7 liquidations. The Bankruptcy Court, which sits as a court of equity, may exercise substantial discretion with respect to the affairs of the Debtors during the chapter 11 cases. Furthermore, although the Debtors believe that the Effective Date will occur shortly after the Confirmation Date, there can be no assurance as to such timing or that the Effective Date will occur. The Debtors could experience material adverse changes in their liquidity as a result of any such delay.

B. Risks Related to Confirmation

A Confirmation Order entered by the Bankruptcy Court may not be recognized as effective by a Liberian court.

Excel is incorporated pursuant to the laws of Liberia. Although the Debtors will make every effort to ensure that any Confirmation Order entered by the Bankruptcy Court and the steps taken pursuant to the Confirmation Order to implement the restructuring are recognized and are effective as a matter of Liberian law, it is possible that if a creditor or stakeholder were to challenge the restructuring and a Liberian court were required to adjudicate on the effectiveness of the restructuring, a Liberian court may refuse to recognize the effect of the Confirmation Order.

The cancellation of Interests in Debtor Excel and issuance of new stock pursuant to the Plan may not be recognized as effective by a Liberian court.

Excel is incorporated pursuant to and the rights attaching to its shares are governed by the laws of Liberia. While the Debtors consider that the cancellation and issuance of shares in Debtor Excel pursuant to the Confirmation Order will be recognized as effective, it is possible that a Liberian court could refuse to recognize or enforce the rights of the holders of New Common Stock issued pursuant to the Plan.

Implementation of the Plan May Trigger Event of Default Under the Christine Shipco Facility

Pursuant to the terms of the Christine Shipco Facility, the cancellation of all securities in Excel and distribution of the New Common Stock of Reorganized Excel to certain impaired creditors would result in a change in the beneficial ownership and control of Excel, Christine Holdings, and Christine Shipco, which, without the consent of DVB, would constitute an event of default under the Christine Shipco Facility. In the event of a default under the Christine Shipco Facility, DVB, as lender under that facility, may declare the loan, together with accrued interest and all other amounts accrued and outstanding immediately due and payable, and may exercise its right to seize its collateral, which includes a first priority pledge of the membership interests in Christine Shipco and Christine Holdings and a first priority mortgage over, and an assignment of insurance and earnings with respect to, *M/V Christine*. Additionally, the Christine Shipco Facility contains cross default provisions to which Excel, as guarantor, is party. If Excel were to default under certain loans, and DVB were not willing to waive the default or if the default went uncured, DVB could exercise its right to seize its collateral.

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(a)(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.

The market price of Excel's Class A common stock historically has been volatile and the value of Reorganized Excel and Holdco will likely to continue to be volatile.

The market price of Excel's Class A common stock fluctuated widely between when it began trading on the NYSE in September 2005 and when the stock was delisted in June 2013. The New Common Stock of Reorganized Excel will not be listed on the NYSE or any other public exchange or market system and will be held through Holdco, a Marshall Islands LLC which will not be listed on the NYSE or any other public exchange or market system. The value of Reorganized Excel is likely to continue to be volatile as a result of many factors, including those discussed in "*Other Risks Relating to the Debtors' Business and the Debtors' Ability to Satisfy their Debt Obligations after the Effective Date*" below, as well as the Debtors' actual results of operations and perceived prospects, the prospects of the Debtors' competition and of the shipping industry in general and in particular the dry bulk sector, differences between the Debtors' actual financial and operating results and those expected by investors and analysts, changes in analysts' recommendations or projections, changes in general valuations for companies in

the shipping industry (particularly the dry bulk sector), changes in general economic or market conditions, and broad market fluctuations.

U.S. securities laws may impose certain restrictions on the resale of New Common Stock or Holdco Units.

The New Common Stock and Holdco Units are being distributed in reliance upon an exemption from registration under the Securities Act and applicable state securities laws. Thus, neither the New Common Stock nor the Holdco Units have been registered under the Securities Act or any state securities laws. The Debtors make no representation regarding the right of any holder of New Common Stock or Holdco Units to freely resell the New Common Stock or Holdco Units. *See Article VI – "Applicability of Federal and Other Securities Laws."*

The Debtors do not intend to pay dividends on the New Common Stock or Holdco Units.

The Debtors do not intend to pay dividends on the New Common Stock or Holdco Units in the foreseeable future and the Debtors cannot assure holders of New Common Stock or Holdco Units that dividends will ever be paid on either the New Common Stock or the Holdco Units. This may adversely affect the value of the New Common Stock and Holdco Units.

Because Holdco is a foreign limited liability company, its members may not have the same rights that shareholders in a U.S. corporation may have.

Holdco will be a Marshall Islands limited liability company. Holdco's operating agreement and the Marshall Islands Limited Liability Company Act will govern its affairs. While the Marshall Islands Limited Liability Company Act resembles provisions of the limited liability company laws of a number of states in the United States, Marshall Islands law does not as clearly establish members' rights and the fiduciary responsibilities of its directors as do statutes and judicial precedent in some U.S. jurisdictions. However, while the Marshall Islands courts generally follow U.S. court precedent, there have been few judicial cases in the Republic of the Marshall Islands interpreting the Marshall Islands Limited Liability Company Act. Investors may have more difficulty in protecting their interests in the face of actions by the management, directors or controlling members than would members of a limited liability company organized under the laws of a U.S. jurisdiction that has developed a substantial body of case law.

It may be difficult to serve process on or enforce a U.S. judgment against Reorganized Excel, Holdco or their respective officers and directors.

Excel is a Liberian corporation and Holdco will be a Marshall Islands limited liability company. Many of their executive officers and directors may be located outside of the United States. In addition, a substantial portion of Excel's and Holdco's assets and the assets of their directors and officers are located outside of the United States. As a result, it may be difficult to serve legal process within the United States upon Reorganized 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, 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.

Inherent uncertainty of Debtors' Financial Projections.

In connection with this Disclosure Statement and the Confirmation Hearing, the Debtors prepared Financial Projections, attached hereto as Appendix E, to demonstrate to the Bankruptcy Court the feasibility of the Plan and their ability to continue operations upon emergence from the chapter 11 cases. This information was prepared for the limited purpose of furnishing recipients of this Disclosure Statement with adequate information to make an informed judgment regarding acceptance of the Plan, and was not prepared for the purpose of providing the basis for an investment decision relating to the issuance of the New Common Stock or the Holdco Units. This information was not audited or reviewed by the Debtors' independent public accountants. The Debtors do not intend to update or otherwise revise the Financial Projections, including any revisions to reflect events or circumstances existing or arising after the date of this Disclosure Statement or to reflect the occurrence of unanticipated events, even if any or all of the underlying assumptions do not come to fruition. Furthermore, the Debtors do not intend to update or revise the Financial Projections to reflect changes in general economic or industry conditions.

At the time they were prepared, the projections reflected numerous assumptions concerning the Debtors' anticipated future performance and with respect to prevailing and anticipated market and economic conditions that were and remain beyond their control and that may not materialize. Projections are inherently subject to substantial and numerous uncertainties and to a wide variety of significant business, economic and competitive risks, and the assumptions underlying the projections and/or valuation estimates may prove to be wrong in material respects. Actual results may vary significantly from those contemplated by the projections that were prepared in connection with this Disclosure Statement and the Confirmation Hearing. As a result, such projections are only an estimate and should not be relied upon as necessarily indicative of future, actual recoveries.

The business plan was developed by the Debtors with the help of their advisors. There can be no assurances that the Debtors' business plan will not change, perhaps materially, as a result of decisions management and Reorganized Excel's Board of Directors make after fully evaluating the strategic direction of the Debtors and their business plan. Any deviations from the Debtors' business plan would necessarily cause a deviation from the attached projections, and could result in materially different outcomes from those projected.

Lack of recent audited financial statements.

Attached to this Disclosure Statement as Appendix F are the Debtors' audited financial statements for the fiscal year ended December 31, 2011. This is the last period for which audited financial information is available. While attached to this Disclosure Statement as Appendix G are the Debtors' unaudited financial statements, as of and for the year ended December 31, 2012 as of the date hereof, the Debtors have not prepared audited financial statements for any fiscal year subsequent to December 31, 2011. The Debtors believe the unaudited financial statements prepared for fiscal year 2012 are consistent with their audited financials and all adjustments that would be made were such financial statements subjected to an audit in accordance with the standards of the Public

Company Accounting Oversight Board. However, the Debtors cannot assure you that any changes made to the financial statements for fiscal year 2012 pursuant to an audit would not have been material to you in your decision whether to vote to accept or reject the Plan.

I. Other Risks Relating to the Debtors' Business and the Debtors' Ability to Satisfy their Debt Obligations after the Effective Date

After the Effective Date, the Debtors will require a significant amount of cash to service their indebtedness. The Debtors' ability to generate cash depends on many factors beyond their control, and the Debtors may default on their obligations to pay any of their indebtedness, violate financial covenants in their loan agreements, and may be subject to restrictions on the payment of their other debt obligations or cause a cross-default or cross-acceleration.

The Debtors' ability to make scheduled payments on, and to refinance, their indebtedness, will depend on their ability to generate cash from operations in the future. This, to a certain extent, is subject to general economic, financial, competitive, legislative, regulatory and other factors that are beyond the Debtors' control. Low dry bulk charter rates and dry bulk vessels have negatively impacted the Debtors' cash flow in the past, and the Debtors cannot provide assurance that their business will generate sufficient cash flow from operations in an amount sufficient to enable the Debtors to pay their indebtedness, fund their other liquidity needs and comply with financial covenant. In the event of such default:

- lenders could require the Debtors to restructure their debt, post additional collateral, enhance their equity and liquidity, increase their interest payments or pay down their indebtedness to a level where the Debtors are in compliance with their loan covenants or sell vessels from their fleet;
- the lenders or holders of such indebtedness could elect to declare all the funds borrowed thereunder to be due and payable and, if not paid on demand, institute foreclosure proceedings against the Debtors' assets securing such indebtedness; and
- even if those lenders or holders do not declare a default, they may be able to cause all of the Debtors' available cash to be used to repay the indebtedness owed to them or restrict the Debtors' access to their cash.

Subject to certain exceptions, the Amended and Restated Senior Secured Credit Agreement will generally restrict the Debtors' ability to incur additional indebtedness or undertake financing activities or other similar actions that would generate cash, absent prior consent from the requisite lenders, and will require that the proceeds thereof be applied to prepay outstanding obligations under the Amended and Restated Senior Secured Credit Agreement. The Debtors' other debt agreements impose similar restrictions. The Debtors cannot offer assurances that requisite consents to undertake such actions could, if necessary, be effected on commercially reasonable terms, or at all. The Debtors' cash flow and capital resources may be insufficient for payment of interest on and principal of their debt in the future, and any such alternative measures may be unsuccessful or may not permit the Debtors to meet scheduled debt service obligations, which could cause the Debtors to default on obligations and could impair their liquidity and ability to continue to operate their business as described herein and in the documents incorporated by reference.

Further, as a result of cross-default provisions contained in the Debtors' loan agreements, any default could lead to additional defaults under the Debtors' other loan agreements and the consequent acceleration of the indebtedness thereunder, the commencement of foreclosure proceedings by other lenders and/or exercise of other remedies by such lenders. This could adversely affect the Debtors' ability to continue their business and force it into bankruptcy or liquidation.

The Debtors may also be required to reclassify all of their indebtedness as current liabilities, which would be significantly in excess of their cash and other current assets, and accordingly would adversely affect the Debtors' ability to continue as a going concern by limiting the Debtors' ability to continue to conduct their operations, finance their future operations, pursue business opportunities, or make payments on their debt obligations.

The agreements and instruments governing the Debtors' debt contain, and the Amended and Restated Senior Secured Credit Agreement will contain, restrictive covenants which may limit the Debtors' liquidity and corporate activities.

The Debtors' loan agreements impose, and the Amended and Restated Senior Secured Credit Agreement will impose, significant operating and financial restrictions on them. These restrictions may limit the Debtors' ability to:

- incur additional indebtedness or provide guaranties;
- create liens on their assets;
- sell capital stock of their subsidiaries;
- make investments;
- engage in mergers or acquisitions;
- pay dividends or redeem capital stock;
- make capital expenditures;
- enter into transactions with affiliates;
- change the flag, class or the management of their vessels or terminate or materially amend the management agreement relating to each vessel; and
- sell vessels or other assets.

The Debtors may need to seek permission from their lenders in order to engage in certain corporate actions. The interests of the Debtors' lenders may be different from their own and the Debtors cannot guarantee that they will be able to obtain the permission of the Debtors' lenders when needed. Subject to limited exceptions, the Amended and Restated Senior Secured Credit Agreement restricts the ability of the Debtors and their subsidiaries to raise new funds or financing for future operations or business opportunities without the consent of the requisite lenders. Such restrictions may have an adverse effect on the Debtors' liquidity, operations and financial performance.

The market fundamentals of the dry bulk market historically have been volatile and have deteriorated significantly since the market high in May 2008, which has adversely affected and may continue to adversely affect the Debtors' results of operations and financial condition.

The Debtors are an independent shipping company that operates in the dry bulk shipping markets. One of the factors that impacts the Debtors' profitability is the freight rates they are able to charge. The dry bulk shipping industry is cyclical with attendant volatility in charter hire rates and profitability. The degree of charter hire rate volatility among different types of dry bulk vessels has varied widely, and charter hire rates for dry bulk vessels are at near historically low levels. Because the Debtors charter some of their vessels pursuant to voyage charters or short-term time charters, they are exposed to changes in spot market and short-term charter rates for dry bulk carriers and such changes may affect the Debtors' earnings and the value of their dry bulk carriers at any given time.

This volatility is reflected by the movement of the BDI from May 2008 to the present day. The BDI declined from a high of 11,793 in May 2008 to a low of 663 in December 2008, which represents a decline of approximately 94%. Over the comparable period of May through December 2008, the high and low of the Baltic Panamax Index and the Baltic Capesize Index (which measure the price of moving materials by Panamax and Capesize vessels, respectively) represent a decline of approximately 96% and 99%, respectively. During 2009, the BDI increased from a low of 772 in January to a high of 4,661 in November of 2009. In 2010, the BDI increased from a low of 2,848 in January 2010 to a high of 4,209 in May 2010 and subsequently decreased to a low of 1,700 in

July 2010. During 2011, the BDI remained volatile, ranging from a low of 1,043 on February 4, 2011 to a high of 2,173 on October 14, 2011. As of December 23, 2011, the BDI was 1,738. On February 3, 2012, the BDI dropped to a 26-year low of 647, owing to a combination of both weak vessel demand and further increases in supply, and the average BDI for 2012 was 920 – 41% lower than the average index of 1,549 in 2011.

The market fundamentals of the dry bulk market deteriorated significantly in 2012, as the average BDI of 920 for the year was about 41% lower than the average index of 1,549 in 2011. On November 20, 2013, the BDI closed at 1,527. Despite a relatively healthy demand growth, primarily due to increased imports in China, the record high deliveries of newly built dry bulk vessels have pushed the charter rates substantially lower. More specifically, the seaborne trade for dry bulk commodities grew by approximately 7% in 2012 and is expected to grow by about 5% in 2013, with a large part of this growth being attributed to iron ore and coal trade which increased by 5% and 12% respectively in 2012 and is anticipated to grow by 7% and 6% respectively in 2013. However, the growth of the dry bulk fleet in 2012 was about 10% or approximately 64 million deadweight tons, as the large number of new deliveries of approximately 99 million deadweight tons was only partly counterbalanced by the demolition of approximately 34 million deadweight tons. The fleet continued to grow in 2013 and the dry bulk capacity is estimated to increase by about 6% in 2013. The decline and volatility in charter rates in the dry bulk market and increased supply affected the value of dry bulk vessels and negatively affected the Debtors' cash flows and liquidity. The Debtors can offer no assurance that the dry bulk market will improve, and if the weak dry bulk market persists, it will continue to negatively affect the Debtors' results of operations and financial condition.

Charter hire rates for dry bulk vessels are volatile and are driven by a number of factors which are outside the control of the Debtors.

Fluctuations in charter rates result from changes in the supply and demand for vessel capacity and changes in the supply and demand for the major commodities carried by sea internationally. Because the factors affecting the supply and demand for vessels are outside of the Debtors' control and are unpredictable, the nature, timing, direction and degree of changes in industry conditions are also unpredictable.

Factors that influence demand for vessel capacity include:

- supply and demand for energy resources, commodities, semi-finished and finished consumer and industrial products;
- changes in the exploration or production of energy resources, commodities, semi-finished and finished consumer and industrial products;
- the location of regional and global exploration, production and manufacturing facilities;
- the location of consuming regions for energy resources, commodities, semi-finished and finished consumer and industrial products;
- the globalization of production and manufacturing;
- global and regional economic and political conditions, including armed conflicts and terrorist activities; embargoes and strikes;
- natural disasters and other disruptions in international trade;
- developments in international trade;
- changes in seaborne and other transportation patterns, including the distance cargo is transported by sea;
- environmental and other regulatory developments;
- currency exchange rates; and

- weather.

Factors that influence the supply of vessel capacity include:

- the number of newbuilding deliveries;
- the scrapping rate of older vessels;
- vessel casualties;
- the level of port congestion;
- changes in environmental and other regulations that may limit the useful life of vessels;
- the number of vessels that are out of service, namely those that are laid-up, drydocked, awaiting repairs or otherwise not available for hire; and
- changes in global dry bulk commodity production.

Other factors that affect the rate of newbuilding, scrapping and laying-up include newbuilding prices, secondhand vessel values in relation to scrap prices, cost of bunkers and other operating costs, costs associated with classification society surveys, normal maintenance and insurance coverage, the efficiency and age profile of the existing dry bulk fleet in the market, and government and industry regulation of maritime transportation practices, particularly environmental protection laws and regulations. The Debtors may not be able to correctly assess the nature, timing and degree of changes in industry conditions which may have an adverse effect on their results of operations and financial condition.

An oversupply of dry bulk carrier capacity may lead to further reductions in charterhire rates and profitability.

The market supply of dry bulk carriers has been increasing. The number of dry bulk vessels on order as of August 2013 was approximately 17% for Capesize class vessels and 21% for Panamax class vessels of the then-existing global dry bulk fleet in terms of deadweight tons, with the majority of new deliveries expected mainly during 2013 and 2014. In 2012, dry bulk carriers of a cumulative 99 million deadweight tons entered service, representing a year-on-year increase in deadweight of approximately 10%. Recent estimates indicate that new deliveries in the remaining 2013 will add approximately 6% of additional capacity to the Capesize vessel class and 10% of additional capacity to the Panamax vessel class, excluding the potential effect from slippage or order cancellations. Fleet growth for the Capesize and Panamax vessel classes in 2014 is anticipated to be 6% and 8%, respectively, which may have a negative impact on the Debtors' business.

An oversupply of dry bulk carrier capacity could negatively impact the recent improvement in dry charter rates and prolong the current period of low charter rates. A material increase in the net supply of dry bulk vessel capacity without corresponding growth in dry bulk vessel demand could have a material adverse effect on the Debtors' fleet utilization and their charter rates generally, and could materially adversely affect the Debtors' business, financial condition and results of operations.

When the Debtors' charters end, they may not be able to replace them promptly or with profitable ones and, in addition, any such new charters are potentially subject to further decline in charter rates and other market deterioration, which could adversely affect the Debtors' results of operations.

When the Debtors' time charters expire, the Debtors will generally attempt to re-charter their vessels at favorable rates with reputable charterers, but there can be no guarantee that they will succeed. The charterers under these charters have no obligation to renew or extend the charters. If the Debtors cannot enter into time period charters on acceptable terms, they may have to secure charters in the spot market, where charter rates are more volatile and revenues are, therefore, less predictable. If the current low charter rate environment persists, or a further reduction occurs, upon the expiration or termination of the Debtors' vessels' current charters, the Debtors

may only be able to re-charter their vessels at reduced or unprofitable rates or they may not be able to charter these vessels at all.

Failure to obtain replacement charters will reduce or eliminate the Debtors' revenue and ability to service their debt. In addition, the Debtors may have to reposition their vessels without cargo or compensation to deliver them to future charterers or to move vessels to areas where they believe that future employment may be more likely or advantageous. Repositioning the Debtors' vessels would increase their vessel operating costs which could have an adverse effect on the Debtors' results of operations and financial condition.

A drop in spot charter rates may provide an incentive for some charterers to renegotiate or default on their time charters, which could reduce the Debtors' revenues and have a material adverse effect on their business, financial condition and results of operations.

When the Debtors enter into a time charter, charter rates under that time charter are fixed for the term of the charter. The ability of each of the Debtors' charterers to perform its obligations under the charter depends on a number of factors that are beyond the Debtors' control and may include, among other things, general economic conditions, the condition of the maritime and offshore industries, the overall financial condition of the charterer, charter rates received for specific types of vessels and various expenses. In addition, if the spot charter rates in the dry bulk shipping industry become significantly lower than the time charter rates that some of the Debtors' charterers are obligated to pay the Debtors under their existing time charters, the charterers may have incentives to default under that time charter or attempt to renegotiate the time charter. If the Debtors' charterers default on their charters, the Debtors will seek the remedies available to them, which may include arbitration or litigation to enforce the contracts, although such efforts may not be successful. If their charterers fail to pay their obligations, the Debtors would have to attempt to re-charter their vessels at lower charter rates, which would affect the Debtors' results of operations.

The Debtors' operating results are subject to seasonal fluctuations, which could affect their operating results and ability to service their debt.

The Debtors operate their vessels in markets that have historically exhibited seasonal variations in demand and, as a result, in charterhire rates. To the extent the Debtors operate vessels in the spot market this seasonality may result in quarter-to-quarter volatility in their operating results. The dry bulk sector is typically stronger in the fall and winter months in anticipation of increased consumption of coal and other raw materials in the northern hemisphere. In addition, unpredictable weather patterns in these months tend to disrupt vessel scheduling and supplies of certain commodities. As a result, the Debtors' revenues from their dry bulk carriers may be weaker during the fiscal quarters ending June 30 and September 30, and, conversely, the Debtors' revenues from their dry bulk carriers may be stronger in fiscal quarters ending December 31 and March 31. While this seasonality will not affect the Debtors' operating results as long as their fleet is employed on period time charters, to the extent the Debtors' vessels are employed in the spot market, it could materially affect the Debtors' operating results.

The market values of the Debtors' vessels have declined and may further decrease. This could lead the Debtors to incur losses when they sell the vessels or they may be required to write down their carrying value, which may adversely affect the Debtors' earnings, or cause them to default under their loan agreements.

The fair market values of the Debtors' vessels have generally experienced high volatility and although the values of certain of the vessels may have rebounded from their recent historic lows, values remain substantially lower than the amount of the Debtors' debt obligations. The market values of the Debtors' vessels may continue to fluctuate depending on a number of factors, including:

- general economic and market conditions affecting the shipping industry;
- the prevailing rate of charter hire;
- competition from other shipping companies and other modes of transportation;
- the types, sizes and ages of their vessels;

- the supply and demand for vessels;
- applicable governmental regulations;
- technological advances; and
- the cost of newbuildings.

The Debtors evaluate the carrying amounts of their vessels to determine if events have occurred that would require an impairment of their carrying amounts. The recoverable amount of vessels is reviewed based on events and changes in circumstances that would indicate that the carrying amount of the assets might not be recovered. The review for potential impairment indicators and projection of future cash flows related to the vessels is complex and requires the Debtors to make various estimates on the basis of various assumptions, including future freight rates and earnings from the vessels which have been historically volatile.

When the Debtors' estimate of undiscounted future cash flows for any vessel is lower than the vessel's carrying value, the carrying value is written down, by recording a charge to operations, to the vessel's fair market value if the fair market value is lower than the vessel's carrying value. The carrying values of the Debtors' vessels may not represent their fair market value in the future because the new market prices of secondhand vessels tend to fluctuate with changes in charter rates and the cost of newbuildings. Any impairment charges incurred as a result of declines in charter rates could have a material adverse effect on the Debtors' business, results of operations, cash flows and financial condition. If for any reason the Debtors sell their vessels at a time when prices have fallen, the sale price may be less than the vessels' carrying amount on their financial statements, and the Debtors would incur a loss and a reduction in earnings.

Further, when the market value of a vessel declines, it reduces the Debtors' ability to comply with their outstanding debt or obtain future financing. The Debtors' lending facilities, including the Amended and Restated Senior Secured Credit Agreement, are secured by mortgages on their vessels and require them to comply with minimum security vessel values and satisfy certain financial and other covenants, including those that are affected by the market value of the Debtors' vessels. Further declines in the market and vessel values could cause the Debtors to breach financial covenants relating to the maintenance of minimum security vessel values contained in their lending facilities.

Continued disruption in world financial markets and the resulting governmental action in Europe, the United States and in other parts of the world could have a material adverse impact on the Debtors' ability to obtain financing, results of operations, financial condition and cash flows and could cause the value of the New Common Stock and Holdco Units to decline.

In the current global economy, operating businesses have faced and continue to face tightening credit, weakening demand for goods and services, and weak international liquidity conditions. Lower demand for dry bulk cargoes, as well as diminished trade credit available for the delivery of such cargoes, have led to decreased demand for dry bulk carriers, creating downward pressure on charter rates and vessel values. Negative economic conditions have had a number of adverse consequences for dry bulk and other shipping sectors, including, among other things:

- an absence of available financing for vessels;
- a further decrease in the market value of vessels and no active secondhand market for the sale of vessels;
- low charter rates; and
- declaration of bankruptcy by some charterers, operators and ship owners.

The occurrence of one or more of these events could have a material adverse effect on the Debtors' business, results of operations, cash flows and financial condition.

The Debtors faces liquidity risks which may be exacerbated by changing market conditions.

The Debtors' activities are subject to liquidity risk, that is, the risk that they will be unable to meet their payment obligations, including loan commitments, when due. In light of this, the availability of the liquidity needed to carry out the various activities in which the Debtors are engaged and the ability to access long-term financing are essential for the Debtors to be able to meet their anticipated and unforeseen cash payment obligations, so as not to impair their day-to-day operations or financial position. Instability in global financial markets, the after-effect in part of the global financial market crisis, may impact liquidity.

A number of financial institutions experienced serious financial difficulties in recent years, and an increasing number of financial institutions will likely continue to experience serious financial difficulties as a result of deterioration in the stability, or perceived stability, of the respective countries in which these institutions are based or operate. This instability is due to the European sovereign debt crisis, which began in May 2010 in the wake of Greece's public finance problems and spread rapidly to the countries of the Euro area exhibiting greatest weakness.

Although the Debtors have no exposure to sovereign debt of governments and other public bodies of countries in or outside the Eurozone, they faces risks attendant to changes in economic environments, changes in interest rates and instability in certain securities markets, among other factors. Major market disruptions and adverse changes in market conditions and the regulatory climate in Europe, the United States and worldwide may adversely affect the Debtors' business or impair their ability to borrow amounts under any future financial arrangements. There is a possibility that the Debtors' ability to access the liquidity they need may be affected by further increases in the cost of borrowing, a reduction in the availability of financing, an increase in the cost of other forms of fundraising and/or an inability to sell their assets or to liquidate their investments, which would, in turn, have an impact on the Debtors' activities, with severe negative effects on their operating results and capital and financial position.

An economic slowdown in the Asia Pacific region could exacerbate the effect of recent slowdowns in the economies of the United States and Europe and may have a material adverse effect on the Debtors' business, financial condition and results of operations.

Negative changes in economic conditions in any Asia Pacific country, particularly in China, may exacerbate the effect of the significant recent slowdowns in the economies of the United States and Europe and may have a material adverse effect on the Debtors' business, financial condition and results of operations, as well as future prospects. Before the global economic financial crisis began in 2008, China had one of the world's fastest growing economies in terms of gross domestic product, or GDP, which had a significant impact on shipping demand. In 2012, the growth rate of China's GDP decreased to approximately 7.4%, as compared to approximately 9.2% for the year ended December 31, 2011 and 10.4% for the year ended December 31, 2010. China has recently imposed measures to restrain lending, which may further contribute to a slowdown in its economic growth. It is possible that China and other countries in the Asia Pacific region will continue to experience slowed or even negative economic growth in the near future. Moreover, the limited recovery of the economies of the United States, Europe and other Asian countries may further adversely affect economic growth in China and elsewhere. The Debtors' business, financial condition and results of operations as well as future prospects, will likely be materially and adversely affected by an economic downturn in any of these countries.

Changes in the economic and political environment in China and policies adopted by the Chinese government to regulate its economy may have a material adverse effect on the Debtors' business, financial condition and results of operations.

The Chinese economy differs from the economies of most countries belonging to the Organization for Economic Cooperation and Development, in such respects as structure, government involvement, level of development, growth rate, capital reinvestment, allocation of resources, rate of inflation and balance of payments position. Prior to 1978, the Chinese economy was a planned economy. Since 1978, increasing emphasis has been placed on the utilization of market forces in the development of the Chinese economy. Annual and five-year State Plans are adopted by the Chinese government in connection with the development of the economy. Although state-owned enterprises still account for a substantial portion of the Chinese industrial output, in general, the Chinese

government is reducing the level of direct control that it exercises over the economy through State Plans and other measures. There is an increasing level of freedom and autonomy in areas such as allocation of resources, production, pricing and management and a gradual shift in emphasis to a "market economy" and enterprise reform. Limited price reforms were undertaken, with the result that prices for certain commodities are principally determined by market forces. Many of the reforms are unprecedented or experimental and may be subject to revision, change or abolition based upon the outcome of such experiments. If the Chinese government does not continue to pursue a policy of economic reform, the level of imports to and exports from China could be adversely affected by the Chinese government's changes to these economic reforms, as well as by changes in political, economic and social conditions or other relevant policies of the Chinese government, such as changes in laws, regulations or export and import restrictions, all of which could adversely affect the Debtors' business, operating results and financial condition.

The Debtors' vessels may call on ports located in countries that are subject to restrictions imposed by the United States government, which could negatively affect the value of the Reorganized Debtors.

The Debtors currently employ all of their vessels under time charter contracts with unaffiliated parties. Under the terms of these time charters, and consistent with shipping industry practice, the charterer of each vessel pays the Debtors a daily time charter rate and directs the vessel's route, loading and discharge ports and cargoes carried. While the Debtors do not control the routes or ports of call made by their vessels, all of the time charter contracts under which their vessels operate contain express prohibitions proscribing trades of their vessels in Sudan and Cuba, as well as countries that are prohibited in trading by the United Nations or the United States. In addition, the Debtors have not had, and do not intend to have in the future, directly or indirectly, any agreements, commercial arrangements or other contacts with the governments of, or entities controlled by the governments of Iran, Sudan, Syria or Cuba, and has not provided, and does not intend to provide any goods or services, directly or indirectly, to the governments of, or entities controlled by the governments of, such countries. The value of Reorganized Excel may be adversely affected by the consequences of war, the effects of terrorism, civil unrest and governmental actions in these and surrounding countries.

Occasionally, however, upon charterers' instructions, the Debtors' vessels have called, and may again call, on ports located in countries subject to sanctions and embargoes imposed by the United States government and countries identified by the United States government as state sponsors of terrorism, including Iran, Sudan and Syria. As of the date hereof, the Debtors' vessels made ten calls on Iranian ports (eight calls on the Port of Bandar Imam Khomeini and two calls on the Port of Bandar Abbas) out of a total of 684 calls on worldwide ports. In 2012, the Debtors' vessels made ten calls on Iranian ports (nine calls on the Port of Bandar Imam Khomeini and one call on the Port of Bandar Abbas). In 2011, the Debtors' vessels made seven calls on the Iranian port of Bandar Imam Khomeini and one call on the Syrian port of Tartous. In each of these voyages the cargo consisted solely of agricultural products. Although the Debtors believe that they are in compliance with all applicable sanctions and embargo laws and regulations, and intend to maintain such compliance, there can be no assurance that the Debtors will be in compliance in the future, particularly as the scope of certain laws may be unclear and may be subject to changing interpretations. Any such violation could result in fines or other penalties. Moreover, the Debtors' charterers may violate applicable sanctions and embargo laws and regulations as a result of actions that do not involve the Debtors or their vessels, and those violations could in turn negatively affect the Debtors' reputation.

World events outside the Debtors' control may negatively affect the shipping industry, which could adversely affect the Debtors' operations and financial condition.

Terrorist attacks like those in New York in 2001, London in 2005, Mumbai in 2008 and other countries and the continuing response of the world community to these attacks, as well as the threat of future terrorist attacks around the world, continue to cause uncertainty in the world financial markets and may affect the Debtors' business, results of operations and financial condition. Continuing conflicts in North Africa and the Middle East and the presence of U.S. and other armed forces in various regions around the world may lead to additional acts of terrorism and armed conflict, which may contribute to further economic instability in the global financial markets. In the past, political conflicts resulted in attacks on vessels, mining of waterways and other efforts to disrupt international shipping. For example, in October 2002, the VLCC *Limburg* was attacked by terrorists in Yemen. Acts of terrorism and piracy have also affected vessels trading in regions such as the South China Sea. Such events could also cause partial or complete closure of ports and sea passages such as the Suez and Panama Canals, potentially resulting in

higher costs, vessel delays or cancellations on some of the Debtors' lines. Future terrorist attacks could also result in increased volatility of the financial markets in the United States and globally and could result in an economic recession in the United States or the world. Any of these occurrences could have a material adverse impact on the Debtors' operating results, revenue, and costs.

In addition, because the Debtors' operations are primarily conducted outside of the United States, they may be affected by economic, political and governmental conditions in the countries where the Debtors are engaged in business or where their vessels are registered. Future hostilities or political instability in regions where the Debtors operate or may operate could have a material adverse effect on the Debtors' business, results of operations and ability to service their debt. In addition, tariffs, trade embargoes and other economic sanctions by the United States or other countries against countries where their vessels trade may limit trading activities with those countries, which could also harm the Debtors' business, financial condition and results of operations.

The smuggling of drugs, weapons or other contraband onto the Debtors' vessels may lead to governmental claims against the Debtors.

The Debtors expect that their vessels will call in areas where smugglers attempt to hide drugs, weapons and other contraband on vessels, with or without the knowledge of crew members. To the extent their vessels are found with contraband, whether with or without the knowledge of any crew member, the Debtors may face governmental or other regulatory claims which could have an adverse effect on the Debtors' business, results of operations, cash flows and financial condition.

Governments could requisition the Debtors' vessels during a period of war or emergency, resulting in loss of earnings.

A government could requisition one or more of the Debtors' vessels for title or hire, or seize one or more of their vessels. Requisition for title occurs when a government takes control of a vessel and becomes her owner. Requisition for hire occurs when a government takes control of a vessel and effectively becomes her charterer at dictated charter rates. Generally, requisitions occur during a period of war or emergency, although governments may elect to requisition vessels in other circumstances. Government requisition of one or more of the Debtors' vessels would negatively impact their revenues.

Maritime claimants could arrest the Debtors' vessels, which could interrupt their cash flow.

Crew members, suppliers of goods and services to a vessel, shippers of cargo, vessel financing participants, charterparties, and other parties may be entitled to a maritime lien against a vessel for unsatisfied debts, claims or damages. In many jurisdictions, a maritime lien holder may enforce its lien by arresting a vessel through foreclosure proceedings. The arrest or attachment of one or more of the Debtors' vessels could interrupt their cash flow and require them to make significant payments to have the arrest lifted.

In addition, in some jurisdictions, such as South Africa, under the "sister ship" or "associated ship" theory of liability, a claimant may arrest either the vessel which is subject to the claimant's maritime lien or any "associated" vessel, which is any vessel owned or controlled, at the time that the action is commenced, by the same owner or ultimate controller of the vessel concerned when the maritime claim arose. Claimants could try to assert "sister ship" or "associated ship" liability against one vessel in the Debtors' fleet for claims relating to another of their ships. In particular, as described in **Section II.E.2(b) – "Redelivery of the Bareboat Charters"** above, the German Owners have commenced arbitration against certain of Excel's non-Debtor subsidiaries and could attempt to enforce their alleged claims against the assets of Excel pursuant to South Africa's "associated ship" theory of liability, notwithstanding the terms of the Plan which expressly enjoin such acts.

The Debtors depend upon a few significant customers for a large part of their revenues. The loss of one or more of these customers could adversely affect the Debtors' financial performance.

The Debtors have historically derived a significant part of their revenue from a small number of charterers. In 2012, the Debtors derived approximately 16%, 14% and 10% of their gross revenues from EDF Trading Limited,

Global Maritime Investments Ltd., and Glencore Grain B.V., respectively. In the first nine months of 2013, the Debtors derived 20%, 13% and 8% of their gross revenues from EDF Trading Limited, Glencore Grain B.V. and Global Maritime Investments Ltd., respectively.

If one or more of the Debtors' customers are unable to perform under one or more charters with it and the Debtors are not able to find a replacement charter, or if a customer exercises certain rights to terminate the charter, the Debtors could suffer a loss of revenues that could materially adversely affect their business, financial condition and results of operations.

The Debtors could lose a customer or the benefits of a time charter if, among other things:

- the customer fails to make charter payments because of its financial inability, disagreements with the Debtors or otherwise;
- the customer terminates the charter because the Debtors fail to deliver the vessel within a fixed period of time, the vessel is lost or damaged beyond repair, there are serious deficiencies in the vessel or prolonged periods of off-hire, or there are other defaults by the Debtors under the charter;
- the customer terminates the charter because the vessel has been subject to seizure for more than a specified number of days; or
- there is a prolonged *force majeure* event affecting the customer, including damage to, or destruction of relevant production facilities, war or political unrest, which prevents the Debtors from performing services for that customer.

If the Debtors lose a key customer, they may be unable to obtain period time charters on comparable terms with charterers of comparable standing or may have increased exposure to the volatile spot market.

The Debtors faces strong competition.

The Debtors obtain charters for their vessels in a highly competitive market that is capital intensive and highly fragmented. The Debtors' market share is insufficient to enforce any degree of pricing discipline. Competition for the transportation of dry bulk cargo by sea is intense and depends on price, location, size, age, condition and the acceptability of the vessel and its operators to the charterers. Although the Debtors believe that no single competitor has a dominant position in the markets in which they compete, the Debtors are aware that certain competitors may be able to devote greater financial and other resources to their activities than they can, resulting in a significant competitive threat to the Debtors. In addition, due in part to the highly fragmented market, competitors with greater resources than the Debtors could enter the dry bulk shipping industry and operate larger fleets through consolidations or acquisitions and may be able to offer lower charter rates and higher quality vessels than the Debtors are able to offer. The Debtors cannot give assurances that they will continue to compete successfully with their competitors or that these factors will not erode their competitive position in the future.

J. Operational Risks

The operation of the Debtors' ocean-going vessels entails the possibility of marine disasters including damage or destruction of the vessel due to accident, the loss of a vessel due to piracy or terrorism, loss of life, damage or destruction of cargo and similar events that may cause a loss of revenue from affected vessels and could damage the Debtors' business reputation, which may in turn lead to loss of business.

The operation of the Debtors' ocean-going vessels entails certain inherent risks that may adversely affect their business and reputation, and which may substantially increase the Debtors' costs, including:

- damage or destruction of a vessel due to marine disaster such as a collision;
- the loss of a vessel due to piracy and terrorism;

- cargo and property losses or damage as a result of the foregoing or less drastic causes such as human error, mechanical failure and bad weather;
- environmental accidents as a result of the foregoing; and
- business interruptions and delivery delays caused by mechanical failure, human error, war, terrorism, political action in various countries, labor strikes or adverse weather conditions.

If the Debtors' vessels suffer damage, they may need to be repaired at a drydocking facility. The costs of drydock repairs are unpredictable and can be substantial. In addition, space at drydocking facilities is sometimes limited and not all drydocking facilities are conveniently located. The Debtors may be unable to find space at a suitable drydocking facility or the vessel in issue may be forced to travel to a drydocking facility that is distant from its current position. The loss of earnings while their vessels are being repaired and repositioned, as well as the actual cost of these repairs, would decrease the Debtors' earnings. The Debtors may not have insurance that is sufficient to cover all or any of these costs or losses and may have to pay drydocking costs not covered by their insurance. Further, the involvement of the Debtors' vessels in a disaster or delays in delivery or loss of cargo may harm their reputation as a safe and reliable vessel operator and could cause them to lose business.

The operation of dry bulk vessels has certain unique operational risks; failure to adequately maintain the Debtors' vessels could have a material adverse effect on the Debtors' business, financial condition and results of operations.

With a dry bulk vessel, the cargo itself and its interaction with the vessel may create operational risks. By their nature, dry bulk cargoes are often heavy, dense and easily shifted, and they may react badly to water exposure. In addition, dry bulk vessels are often subjected to battering treatment during unloading operations with grabs, jackhammers (to pry encrusted cargoes out of the hold) and small bulldozers. This treatment may cause damage to the vessel. Vessels damaged due to treatment during unloading procedures may be more susceptible to breach while at sea. Breaches of a dry bulk vessel's hull may lead to the flooding of the vessel's holds. If a dry bulk vessel suffers flooding in its forward holds, the bulk cargo may become so dense and waterlogged that its pressure may buckle the vessel's bulkheads, leading to the loss of a vessel. If the Debtors do not adequately maintain their vessels, they may be unable to prevent these events. The occurrence of any of these events could have a material adverse effect on the Debtors' business, financial condition and results of operations.

Risk of loss and lack of adequate insurance may affect the Debtors' results.

In addition to risks relating to the operation of ocean-going vessels, described above, the Debtors' business may be affected by political circumstances in foreign countries, hostilities, labor strikes, and boycotts. Any such event may result in loss of revenues or increased costs. The United States Oil Pollution Act of 1990 ("OPA"), by imposing potentially unlimited liability upon owners, operators and bareboat charterers for certain oil pollution accidents in the U.S., has made liability insurance more expensive for shipowners and operators and has also caused insurers to consider reducing available liability coverage.

The Debtors carry insurance to protect against most of the accident-related risks involved in the conduct of their business and maintain environmental damage and pollution insurance coverage. The Debtors do not carry insurance covering the loss of revenue resulting from vessel off-hire time. The Debtors believe that their insurance coverage is adequate to protect them against most accident-related risks involved in the conduct of their business and that it maintains appropriate levels of environmental damage and pollution insurance coverage. Currently, the available amount of coverage for pollution is \$1.0 billion for dry bulk carriers per vessel per incident. However, there can be no assurance that all risks are adequately insured against, that any particular claim will be paid or that the Debtors will be able to procure adequate insurance coverage at commercially reasonable rates in the future. More stringent environmental regulations in the past have resulted in increased costs for insurance against the risk of environmental damage or pollution. In the future, the Debtors may be unable to procure adequate insurance coverage to protect them against environmental damage or pollution.

Outside of the United States, other national laws generally provide for the owner to bear strict liability for pollution, subject to a right to limit liability under applicable national or international regimes for limitation of liability. The most widely applicable international regime limiting maritime pollution liability is the Convention on Limitation of Liability for Maritime Claims (London 1976), or 1976 Convention. Rights to limit liability under the 1976 Convention are forfeited where a spill is caused by a shipowner's intentional or reckless conduct. Certain states have ratified the IMO's 1996 Protocol to the 1976 Convention. The Protocol provides for substantially higher liability limits to apply in those jurisdictions than the limits set forth in the 1976 Convention. Finally, some jurisdictions are not a party to either the 1976 Convention or the Protocol of 1996, and, therefore, a shipowner's rights to limit liability for maritime pollution in such jurisdictions may be uncertain.

In some areas of regulation, the European Union has introduced new laws without attempting to procure a corresponding amendment of international law. In October 2009, the European Union amended a directive to impose criminal sanctions for illicit ship-source discharges of polluting substances, including minor discharges, if committed with intent, recklessly or with serious negligence and the discharges individually or in the aggregate result in deterioration of the quality of water. Criminal liability for pollution may result in substantial penalties or fines and increased civil liability claims. The directive could therefore result in criminal liability being incurred in circumstances where it would not be otherwise incurred under international law. Experience has shown that in the emotive atmosphere often associated with pollution incidents, the negligence alleged by prosecutors has often been found by courts on grounds which the international maritime community has found hard to understand. Moreover, there is skepticism in the international maritime community that "serious negligence" will prove to be any narrower in practice than ordinary negligence. Criminal liability for a pollution incident could not only result in the Debtors incurring substantial penalties or fines, but may also, in some jurisdictions, facilitate civil liability claims for greater compensation than would otherwise have been payable.

The Debtors are subject to funding calls by their protection and indemnity associations, and their associations may not have enough resources to cover claims made against them.

The Debtors are indemnified for legal liabilities incurred while operating their vessels through membership in P&I associations. P&I associations are mutual insurance associations whose members must contribute to cover losses sustained by other association members. The objective of a P&I association is to provide mutual insurance based on the aggregate tonnage of a member's vessels entered into the association. Claims are paid through the aggregate premia of all members of the association, although members remain subject to calls for additional funds if the aggregate premia are insufficient to cover claims submitted to the association. Claims submitted to the association may include those incurred by members of the association, as well as claims submitted to the association from other P&I associations with which the Debtors' P&I association has entered into inter-association agreements. The Debtors cannot guarantee that the P&I associations to which they belong will remain viable or that they will not become subject to additional funding calls which could adversely affect the Debtors.

Acts of piracy on ocean-going vessels could adversely affect the Debtors' business.

Acts of piracy have historically affected ocean-going vessels, including the Debtors' own, trading in regions of the world such as the South China Sea, the Indian Ocean, and the Arabian Sea, and in the Gulf of Aden off the coast of Somalia. On December 11, 2010, the Debtors' vessel *Renuar* was hijacked in waters east of Somalia and was released on April 23, 2011. Although the frequency of sea piracy worldwide decreased during 2012 to its lowest level since 2009, sea piracy incidents continue to occur, particularly in the Gulf of Aden off the coast of Somalia and increasingly in the Gulf of Guinea, with dry bulk vessels and tankers particularly vulnerable to such attacks.

If piracy attacks result in regions in which the Debtors' vessels are deployed being characterized as "war risk" zones by insurers, as the Gulf of Aden temporarily was in May 2008, or as "war and strikes" listed areas by the Joint War Committee, premia payable for such coverage could increase significantly and such insurance coverage may be more difficult to obtain. Accordingly, the Debtors may not be adequately insured to cover losses from these incidents, which could have a material adverse effect on them. Although the Debtors usually obtain war risk insurance for certain of their vessels making port calls in designated war zone areas, they cannot provide assurance that such insurance will be obtained prior to one of the Debtors' vessels entering into an actual war zone, which could result in that vessel not being insured. Even if their insurance coverage is adequate to cover their losses, the

Debtors may not be able to timely obtain a replacement vessel in the event of a loss. In addition, detention of any of the Debtors' vessels, hijacking as a result of an act of piracy against their vessels, or an increase in cost, or unavailability, or insufficiency of insurance for their vessels, could have a material adverse impact on the Debtors' business, financial condition, results of operations and ability to service their debt.

Rising fuel prices may affect the Debtors' profitability.

The price of bunker fuel is correlated with crude oil prices, which in turn have historically exhibited significant volatility in short periods of time and have recently been at, or close to, historic highs. Furthermore, crude oil prices are influenced by a host of economic and geopolitical factors, such as global terrorism, political instability, tensions in the Middle East, insurrections in the Niger Delta, a long-term increase in global demand for oil and the economic development of emerging markets, China and India in particular.

While the Debtors generally will not bear the cost of fuel, or bunkers for vessels operating on time charters, fuel is a significant factor in negotiating charter rates. As a result, an increase in the price of fuel beyond the Debtors' expectations may adversely affect their profitability at the time of charter negotiation. In addition, upon redelivery of vessels at the end of a period time or trip time charter, the Debtors may be obligated to repurchase bunkers on board at prevailing market prices, which could be materially higher than fuel prices at the inception of the charter period. Fuel is also a significant, if not the largest, expense in the Debtors' shipping operations when vessels are not under period charters. Changes in the price of fuel may adversely affect the Debtors' profitability. The price and supply of fuel is unpredictable and fluctuates based on events outside the Debtors' control, including geopolitical developments, supply and demand for oil and gas, actions by the Organization of Petroleum Exporting Countries, and other oil and gas producers, war and unrest in oil producing countries and regions, regional production patterns and environmental concerns. Further, fuel may become much more expensive in the future, which may reduce the profitability and competitiveness of the Debtors' business versus other forms of transportation.

Rising crew costs may adversely affect the Debtors' profits.

Crew costs are a significant expense for the Debtors under their charters. Recently, the limited supply of, and increased demand for, well-qualified crew, due to the increase in the size of the global shipping fleet, has created upward pressure on crewing costs, which the Debtors bear under their Period Time Charters and Spot Charters. Increases in crew costs may adversely affect the Debtors' profitability.

Because many of Maryville's employees are covered by industry-wide collective bargaining agreements, failure of industry groups to renew those agreements may disrupt the Debtors' operations and adversely affect their earnings.

Maryville, the technical manager for the Debtors, currently employs approximately 849 seafarers on-board the Debtors' vessels and 119 land-based employees in its Athens office. The 119 employees in Greece are covered by industry-wide collective bargaining agreements that set basic standards. The Debtors cannot guarantee that these agreements will prevent labor interruptions. If not resolved in a timely and cost-effective manner, industrial action or other labor unrest could prevent or hinder the Debtors' operations from being carried out normally and could have a material adverse effect on the Debtors' business, results of operations, cash flows, and financial condition.

The aging of the Debtors' fleet may result in increased operating costs in the future, which could adversely affect the Debtors' earnings.

The majority of the Debtors' vessels were acquired secondhand, and the Debtors estimate their useful lives to be 28 years from their date of delivery from the yard, depending on various market factors and management's ability to comply with government and industry regulatory requirements. The Debtors' current operating fleet has an average age of approximately 11.9 years (11.2 years on a deadweight weighted average basis).

In general, expenditures necessary for maintaining a vessel in good operating condition increase as a vessel ages. Older vessels are typically less fuel efficient and more costly to maintain than more recently constructed

vessels due to improvements in engine technology. Cargo insurance rates also increase with the age of a vessel, making older vessels less desirable to charterers. Older vessels also tend to be less fuel-efficient than newer vessels. While the difference in fuel consumption is factored into the freight rates that the Debtors' older vessels earn, if the cost of bunker fuels were to increase significantly, it could disproportionately affect the Debtors' vessels and significantly lower their profits. Further, secondhand vessels may also develop unexpected mechanical and operational problems despite adherence to regular survey schedules and proper maintenance.

In addition, governmental regulations, including environmental regulations, safety or other equipment standards related to the age of vessels may require expenditures for alterations to existing equipment or the addition of new equipment to the Debtors' vessels and may restrict the type of activities in which their vessels may engage. The Debtors cannot give assurances that, as their vessels age, market conditions will justify those expenditures or enable the Debtors to operate their vessels profitably during the remainder of their useful lives.

The Debtors do not expect to set aside reserves for vessel replacement, and at the end of a vessel's useful life its revenue will decline if the Debtors are also unable to borrow funds for vessel replacement.

The Debtors' current operating fleet has an average age of approximately 11.9 years (11.2 years on a deadweight weighted average basis). The Debtors do not expect to set aside any reserves for vessel replacement. Therefore, the Debtors may be unable to replace the vessels in their fleet upon the expiration of their useful lives in the event the Debtors have insufficient credit at the time of such expiration to borrow funds for vessel replacement. The Debtors estimate the useful life of their vessels to be 28 years from the date of initial delivery from the shipyard. If the Debtors are unable to replace the vessels in its fleet upon the expiration of their useful lives, their business, results of operations, financial condition and ability to service their debt will be adversely affected.

Technological innovation could reduce the Debtors' charterhire income and the value of their vessels.

The charterhire rates and the value and operational life of a vessel are determined by a number of factors including the vessel's efficiency, operational flexibility and physical life. Efficiency includes speed, fuel economy and the ability to load and discharge cargo quickly. Flexibility includes the ability to enter harbors, utilize related docking facilities and pass through canals and straits. The length of a vessel's physical life is related to its original design and construction, its maintenance and the impact of the stress of operations. If new dry bulk carriers are built that are more efficient or more flexible or have longer physical lives than the Debtors' vessels, competition from these more technologically advanced vessels could adversely affect the amount of charterhire payments the Debtors receive for its vessels once their initial charters expire, and the resale value of their vessels could significantly decrease. As a result, the Debtors' business, results of operations, cash flows and financial condition could be adversely affected.

Certain of the Debtors' directors, officers, and principal stockholders are affiliated with entities engaged in business activities similar to those conducted by the Debtors which may compete directly with it, causing such persons or entities with which they are affiliated to have conflicts of interest.

Some of the Debtors' directors, officers and principal stockholders have affiliations with entities that have similar business activities to those conducted by the Debtors or that are parties to agreements with it. Certain of the Debtors' directors are also directors of other shipping companies and they may enter similar businesses in the future. These other affiliations and business activities may give rise to certain conflicts of interest in the course of such individuals' affiliation with the Debtors.

K. Financial and Taxation Risks

The Debtors currently maintain all of their cash and cash equivalents with a limited number of financial institutions which subject them to credit risk.

The Debtors currently maintain almost all of their cash and cash equivalents with a limited number of financial institutions located in the United Kingdom, Switzerland, Greece, The Netherlands, Luxembourg and Germany. The Debtors do not expect any of their balances to be covered by insurance in the event of default by any

of these financial institutions. The occurrence of such a default could therefore have a material adverse effect on the Debtors' business, financial condition, results of operations and cash flows, and they may lose part or all of their cash that they have deposited with such financial institutions.

Because the Debtors generate all of their revenues in U.S. dollars but incur approximately one-fifth of their expenses in other currencies, exchange rate fluctuations could hurt their results of operations.

The Debtors generate all of their revenues in U.S. dollars but historically have incurred approximately 20% to 25% of their vessel operating expenses in currencies other than U.S. dollars. This variation in operating revenues and expenses could lead to fluctuations in net income due to changes in the value of the U.S. dollar relative to the other currencies, in particular the Japanese yen, the Euro, the Singapore dollar and the British pound sterling. Expenses incurred in foreign currencies against which the U.S. dollar falls in value may increase as a result of these fluctuations, therefore decreasing the Debtors' net income. The Debtors currently do not hedge their currency exposure and, as a result, their results of operations and financial condition could suffer as a result of these fluctuations.

The Debtors are subject to the U.S. Federal Income Tax on U.S. source income, which could reduce their earnings.

Under the Internal Revenue Code, 50% of the gross shipping income of a vessel owning or chartering corporation, such as the Debtors, that is attributable to transportation that begins or ends, but that does not both begin and end, in the U.S. may be subject to a 4% U.S. federal income tax without allowance for deduction, unless that corporation qualifies for exemption from tax under Section 883 of the Internal Revenue Code and the applicable Treasury Regulations promulgated thereunder.

The Debtors do not believe that they are currently entitled to exemption under Section 883 of the Internal Revenue Code for any taxable year. Therefore, the Debtors are subject to an effective 2% U.S. federal income tax on the gross shipping income that they derive during the year that is attributable to the transport or cargoes to or from the U.S.

U.S. tax authorities could treat us as a "passive foreign investment company" which could have adverse U.S. federal income tax consequences to U.S. holders.

A foreign corporation will be treated as a "passive foreign investment company" or PFIC, for U.S. federal income tax purposes if either (i) at least 75% of its gross income for any taxable year consists of certain types of "passive income" or (ii) at least 50% of the average value of the corporation's assets produce or are held for the production of those types of "passive income." For purposes of these tests, "passive income" includes dividends, interest, and gains from the sale or exchange of investment property and rents and royalties other than rents and royalties which are received from unrelated parties in connection with the active conduct of a trade or business. For purposes of these tests, income derived from the performance of services does not constitute "passive income." U.S. shareholders of a PFIC are subject to a disadvantageous U.S. federal income tax regime with respect to the income derived by the PFIC, the distributions they receive from the PFIC and the gain, if any, they derive from the sale or other disposition of their shares in the PFIC.

Based on its projected operations and assets, Holdco does not expect to be or to become a PFIC with respect to any taxable year. In this regard, Holdco intends to treat the gross income it derives or is deemed to derive from its time chartering activities as services income, rather than rental income. Accordingly, Holdco believes that its income from its time chartering activities does not constitute "passive income," and the assets that it will own and operate in connection with the production of that income will not constitute passive assets.

There is substantial legal authority supporting this position consisting of case law and other authorities concerning the characterization of income derived from time charters and voyage charters as services income for other tax purposes. However, it should be noted that there is also authority which characterizes time charter income as rental income rather than services income for other tax purposes. Accordingly, no assurance can be given that the IRS or a court of law will accept this position, and there is a risk that the IRS or a court of law could determine that

Holdco is a PFIC. Moreover, no assurance can be given that Holdco would not constitute a PFIC for any future taxable year if the nature and extent of its operations changed.

If Holdco were to be treated as a PFIC for any taxable year, U.S. holders of Holdco Units may face adverse U.S. tax consequences. Under the PFIC rules, unless those unitholders make an election available under the Tax Code (which election could itself have adverse consequences for such unitholders, as discussed below under "**Certain Tax Consequences of the Plan—Certain U.S. Federal Income Tax Consequences to U.S. Holders—Passive Foreign Investment Company Status and Significant Tax Consequences**"), such unitholders would be liable to pay U.S. federal income tax at the then prevailing income tax rates on ordinary income plus interest upon "excess distributions" and upon any gain from the disposition of Holdco Units, as if the excess distribution or gain had been recognized ratably over the unitholders' holding period of such Holdco Units. See "**Certain Tax Consequences of the Plan—Certain U.S. Federal Income Tax Consequences to U.S. Holders—Passive Foreign Investment Company Status and Significant Tax Consequences**" for a more comprehensive discussion of the U.S. federal income tax consequences to U.S. holders of Holdco Units if Holdco were treated as a PFIC.

L. Legal and Regulatory Risks

The Debtors' operations are subject to the risks of litigation.

The Debtors are involved on an ongoing basis in litigation arising in the ordinary course of business or otherwise. Litigation may include claims related to commercial, labor, employment, antitrust, securities, tax or environmental matters. Moreover, the process of litigating cases, even if the Debtors are successful, may be costly, and may approximate the cost of damages sought. These actions could also expose the Debtors to adverse publicity, which might adversely affect the Debtors' brand and reputation. Litigation trends and expenses and the outcome of litigation cannot be predicted with certainty, and adverse litigation trends, expenses and outcomes could adversely affect the Debtors' financial results, to the extent not adequately covered by insurance.

As described in more detail in **Section II.E.2(b) – "Redelivery of the Bareboat Charters,"** certain of Excel's non-Debtor subsidiaries, including Bird, are currently engaged in arbitration with respect to the return of certain bareboat charter vessels to their owners. The German Owners could assert a theory under which they would contend that Excel is obligated under any judgment against Bird or its other subsidiaries. However, as described in more detail in **Section II.E.(2)(b)**, any such claims would have arisen prepetition and therefore would be barred and discharged due to the German Owners' failure to timely file a proof of claim.

Further, RMI has indicated that it may pursue its alleged claims described in **Section III.D.3 – "Dispute with Robertson Maritime Investors"** above in other foreign jurisdictions.

The Debtors' business may be adversely affected by protectionist policies and regulatory regimes adopted by countries globally.

There is a risk that countries could, in the wake of the global financial and economic crisis or in response to real or perceived currency manipulations or trade imbalances, resort to protectionist measures or make changes to the regulatory regimes in which the Debtors operate in order to protect and preserve domestic industries. Such measures could include raising import tariffs, providing subsidies to domestic industries, restrictions on currency repatriation and the creation of other trade barriers. A global trend towards protectionism would be harmful to the global economy in general, as protectionist measures could cause world trade to shrink and counter-measures taken by protectionist policies' target countries would increase the chance for all-out trade wars. As the Debtors' business success hinges, among other things, on global trade volumes, the stated protectionist policies and regulatory regimes would have a material adverse effect on the Debtors' business, financial condition and results of operations.

The Debtors are subject to complex laws and regulations, including environmental, safety and security regulations that could adversely affect the cost, manner or feasibility of doing business.

The Debtors' operations are subject to numerous laws and regulations in the form of international conventions and treaties, national, state and local laws and national and international regulations in force in the

jurisdictions in which the Debtors' vessels will operate or will be registered, which could significantly affect the ownership and operation of the vessels. These requirements include, but are not limited to, conventions of the International Maritime Organization, or IMO, such as the International Convention for the Prevention of Marine Pollution from Ships, 1973, as modified by the Protocols of 1978, the International Convention for the Safety of Life at Sea of 1974, the International Convention on Load Lines of 1966, the Convention on Limitation of Liability for Maritime Claims (as amended), or 1976 Convention, the International Convention on Civil Liability for Oil Pollution Damage of 1969, as amended by different Protocol in 1976, 1984, and 1992, and amended in 2000, the OPA, the U.S. Comprehensive Environmental Response, Compensation and Liability Act of 1980, the U.S. Clean Air Act, U.S. Clean Water Act and the U.S. Marine Transportation Security Act of 2002.

Compliance with such laws, regulations and standards, where applicable, may require installation of costly equipment or operational changes and may affect the resale value or useful lives of the Debtors' vessels. The Debtors may also incur additional costs in order to comply with other existing and future regulatory obligations, including, but not limited to, costs relating to air emissions, including greenhouse gases, the management of ballast waters, maintenance and inspection, development and implementation of emergency procedures and insurance coverage or other financial assurance of their ability to address pollution incidents. These costs could have a material adverse effect on the Debtors' business, results of operations, cash flows and financial condition. Failure to comply with applicable laws and regulations may result in administrative and civil penalties, criminal sanctions or the suspension or termination of the Debtors' operations.

Environmental laws often impose strict liability for remediation of spills and releases of oil and hazardous substances, which could subject the Debtors to liability without regard to whether it was negligent or at fault. Under OPA, for example, owners, operators and bareboat charterers are jointly and severally strictly liable for the discharge of oil within the 200-mile exclusive economic zone around the United States. An oil spill could result in significant liability, including fines, penalties and criminal liability and remediation costs for natural resources damages under other federal, state and local laws, as well as third-party damages. Under OPA, the Debtors will be required to satisfy insurance and financial responsibility requirements for potential marine fuel spills and other pollution incidents. Furthermore, the 2010 explosion of the *Deepwater Horizon* and the subsequent release of oil into the Gulf of Mexico, or other events, may result in further regulation of the shipping industry, and modifications to statutory liability schemes, which could have a material adverse effect on the Debtors' business, financial condition, results of operations and cash flows. Although the Debtors arrange for insurance to cover certain environmental risks, there can be no assurance that such insurance will be sufficient to cover all such risks or that any claims will not have a material adverse effect on the Debtors' business, results of operations, cash flows and financial condition.

Further legislation, or amendments to existing legislation, applicable to international and national maritime trade are expected over the coming years in areas such as ship recycling, sewage systems, emission control (including emissions of greenhouse gases), ballast treatment and handling. The United States has recently enacted legislation and regulations that require more stringent controls of air and water emissions from ocean-going vessels. Such legislation or regulations may require additional capital expenditures or operating expenses (such as increased costs for low-sulfur fuel) in order for the Debtors to maintain their vessels in compliance with international and/or national regulations.

The operation of the Debtors' vessels is affected by the requirements set forth in the United Nations' International Maritime Organization's International Management Code for the Safe Operation of Ships and Pollution Prevention ("ISM Code"). The ISM Code requires ship owners, ship managers and bareboat charterers to develop and maintain an extensive "Safety Management System" that includes the adoption of a safety and environmental protection policy setting forth instructions and procedures for safe operation and describing procedures for dealing with emergencies. If the Debtors fail to comply with the ISM Code, they may be subject to increased liability, their insurance coverage may be invalidated or decreased, or their vessels may be detained in, or denied access to, certain ports. Currently, each of the Debtors' vessels is ISM Code-certified by Bureau Veritas or American Bureau of Shipping and the Debtors expect that any vessel that they agree to purchase will be ISM Code-certified upon delivery to them. Bureau Veritas and American Bureau of Shipping have awarded ISM certification to Maryville, the Debtors' vessel management company and a wholly-owned subsidiary of Excel. However, there can be no assurance that such certification will be maintained indefinitely.

The Debtors could be adversely affected by violations of the U.S. Foreign Corrupt Practices Act, UK Bribery Act, and other applicable worldwide anticorruption laws.

The U.S. Foreign Corrupt Practices Act ("FCPA") and other applicable worldwide anti-corruption laws generally prohibit companies and their intermediaries from making improper payments to government officials for the purpose of obtaining or retaining business. These laws include the recently enacted U.K. Bribery Act, which became effective on July 1, 2011 and which is broader in scope than the FCPA, as it contains no facilitating payments exception. The Debtors charter their vessels into some jurisdictions that international corruption monitoring groups have identified as having high levels of corruption. The Debtors' activities create the risk of unauthorized payments or offers of payments by one of their employees or agents that could be in violation of the FCPA or other applicable anti-corruption laws. The Debtors maintain policies that prohibit bribery including restrictions on giving or receiving items or services of value to influence business decisions. Although the Debtors have these policies in place, there can be no assurance that these policies will protect the Debtors from governmental investigations or inquiries surrounding actions of their employees or agents. If the Debtors are found to be liable for violations of the FCPA or other applicable anti-corruption laws (either due to their own acts or inadvertence, or due to the acts or inadvertence of others), the Debtors could suffer from civil and criminal penalties or other sanctions.

Increased inspection procedures and tighter import and export controls could increase costs and disrupt the Debtors' business.

International shipping is subject to various security and customs inspection and related procedures in countries of origin and destination and transshipment points. Inspection procedures may result in the seizure of contents of the Debtors' vessels, delays in the loading, offloading or delivery and the levying of customs duties, fines or other penalties against the Debtors.

It is possible that changes to inspection procedures could impose additional financial and legal obligations on the Debtors or require significant capital expenditures. Changes to inspection procedures could also impose additional costs and obligations on the Debtors' customers and may, in certain cases, render the shipment of certain types of cargo uneconomical or impractical. Any such changes or developments may have a material adverse effect on the Debtors' business, financial condition and results of operations.

The Debtors' commercial vessels are subject to inspection by a classification society.

The hull and machinery of every commercial vessel must be classed by a classification society authorized by its country of registry. Classification societies are non-governmental, self-regulating organizations and certify that a vessel is safe and seaworthy in accordance with the applicable rules and regulations of the country of registry of the vessel and the Safety of Life at Sea Convention. The Debtors' vessels are currently enrolled with Bureau Veritas, American Bureau of Shipping, Nippon Kaiji Kyokai, Det Norske Veritas and Lloyd's Register of Shipping.

A vessel must undergo Annual Surveys, Intermediate Surveys and Special Surveys. In lieu of a Special Survey, a vessel's machinery may be on a continuous survey cycle, under which the machinery would be surveyed periodically over a five-year period. The Debtors' vessels are on Special Survey cycles for hull inspection and continuous survey cycles for machinery inspection. Every vessel is also required to be drydocked every two to three years for inspection of the underwater parts of such vessel. Generally, the Debtors will make a decision to scrap a vessel or reassess its useful life at the time of a vessel's fifth Special Survey.

If any vessel fails any Annual Survey, Intermediate Survey, or Special Survey, the vessel may be unable to trade between ports and, therefore, would be unemployable, potentially causing a negative impact on the Debtors' revenues due to the loss of revenues from such vessel until it is able to trade again.

VI. APPLICABILITY OF FEDERAL AND OTHER SECURITIES LAWS

A. Issuance and Resale of Plan Securities Under the Plan Pursuant to Section 1145

1. Exemption from Registration

The Plan provides for Reorganized Excel to issue New Common Stock to holders of Syndicate Credit Facility Secured Claims and Allowed Impaired Excel General Unsecured Claims (including Syndicate Credit Facility Deficiency Claims) on account of their claims, which in turn will be exchanged for Holdco Units. Ivory will receive New Common Stock in Reorganized Excel, which will also be exchanged for Holdco Units, on account of its investment in Reorganized Excel. All such Holdco Units issued in exchange for New Common Stock to holders of Syndicate Credit Facility Secured Claims and Allowed Impaired Excel General Unsecured Claims (including pursuant to the Section 1145 Rights Offering but excluding New Common Stock issued pursuant to the 4(a)(2) Rights Offering and the Holdco Units issued in exchange), the "1145 Plan Securities" and together with the New Common Stock issued pursuant to the 4(a)(2) Rights Offering and to Ivory and the Holdco Units issued in exchange, the "Plan Securities"). The Debtors believe that the Plan Securities constitute "securities," as defined in section 2(a)(1) of the Securities Act, section 101 of the Bankruptcy Code, and applicable Blue Sky Law. It is expected that the Plan Securities issued to holders of claims will meet these requirements.

With the respect to the 1145 Plan Securities issued to holders of claims (including pursuant to the 1145 Rights Offering), section 1145 of the Bankruptcy Code provides that the registration requirements of section 5 of the Securities Act (and any state Blue Sky Law requirements) shall not apply to the offer or sale of stock, options, warrants, or other securities by a debtor if (a) the offer or sale occurs under a plan of reorganization; (b) the recipients of the securities hold a claim against, an interest in, or claim for administrative expense against, the debtor; and (c) the securities are issued in exchange for a claim against or interest in a debtor or are issued principally in such exchange and partly for cash and property. Section 1145 does not cover Plan Securities issued to Ivory or pursuant to the 4(a)(2) Rights Offering (collectively, the "4(a)(2) Plan Securities") and such 4(a)(2) Plan Securities may not be transferred or resold absent registration or an exemption. With respect to the Plan Securities issued to Ivory, section 4(a)(2) of the Securities Act provides that the registration requirements of section 5 of the Securities Act shall not apply to the offer and sale of a security in connection with transactions not involving any public offering. By virtue of section 18 of the Securities Act, section 4(a)(2) also provides that any state Blue Sky Law requirements shall not apply to such offer or sale. See "**Section VI.B - Issuance and Resale of Plan Securities Under the Plan Pursuant to Section 4(a)(2).**"

In reliance upon these exemptions, the offer and sale of the 1145 Plan Securities (including pursuant to the Co-Investment Rights) will not be registered under the Securities Act or any state Blue Sky Law. Accordingly, it is expected that the 1145 Plan Securities issued to holders of claims may be resold without registration under the Securities Act or other federal securities laws, unless the holder is an "underwriter" (as discussed below) with respect to such securities, as that term is defined in section 2(a)(11) of the Securities Act and in the Bankruptcy Code. In addition, the 1145 Plan Securities generally may be able to be resold without registration under state securities laws pursuant to various exemptions provided by the respective Blue Sky Law of those states; however, the availability of such exemptions cannot be known unless individual state Blue Sky Laws are examined. Therefore, recipients of the 1145 Plan Securities are advised to consult with their own legal advisors as to the availability of any such exemption from registration under state Blue Sky Law in any given instance and as to any applicable requirements or conditions to such availability.

2. Resales of Plan Securities; Definition of Underwriter

If the holder of the 1145 Plan Securities is an underwriter, the 1145 Plan Securities will be "restricted securities" and may not be resold under the Securities Act and applicable state Blue Sky Law absent an effective registration statement under the Securities Act or pursuant to an applicable exemption from registration, including Rule 144 promulgated under the Securities Act. Section 1145(b)(1) of the Bankruptcy Code defines an "underwriter" as one who, except with respect to "ordinary trading transactions" of an entity that is not an "issuer," (a) purchases a claim against, interest in, or claim for an administrative expense in the case concerning the debtor, if such purchase is with a view to distribution of any security received or to be received in exchange for such claim or interest; or (b) offers to sell securities offered or sold under a plan for the holders of such securities; or (c) offers to

buy securities offered or sold under a plan from the holders of such securities, if such offer to buy is (i) with a view to distribution of such securities and (ii) under an agreement made in connection with the plan, with the consummation of the plan, or with the offer or sale of securities under the plan; or (d) is an issuer of the securities within the meaning of section 2(a)(11) of the Securities Act. In addition, a person who receives a fee in exchange for purchasing an issuer's securities could also be considered an underwriter within the meaning of section 2(a)(11) of the Securities Act.

The definition of an "issuer" for purposes of whether a person is an underwriter under section 1145(b)(1)(D) of the Bankruptcy Code, by reference to section 2(a)(11) of the Securities Act, includes as "statutory underwriters" all persons who, directly or indirectly, through one or more intermediaries, control, are controlled by, or are under common control with, an issuer of securities. The reference to "issuer," as used in the definition of "underwriter" contained in section 2(a)(11), is intended to cover "controlling persons" of the issuer of the securities.

"Control," as defined in Rule 405 of the Securities Act, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. Accordingly, an officer or director of a reorganized debtor or its successor under a plan of reorganization may be deemed to be a "controlling person" of such debtor or successor, particularly if the management position or directorship is coupled with ownership of a significant percentage of the reorganized debtor's or its successor's voting securities. Moreover, the legislative history of section 1145 of the Bankruptcy Code suggests that a creditor who owns ten percent (10%) or more of a class of securities of a reorganized debtor may be presumed to be a "controlling person" and, therefore, an underwriter.

Resales of the 1145 Plan Securities by persons deemed to be "underwriters" (which definition includes "controlling persons") are not exempted by section 1145 of the Bankruptcy Code from registration under the Securities Act or other applicable law. Under certain circumstances, holders of 1145 Plan Securities who are deemed to be "underwriters" may be entitled to resell their Plan Securities pursuant to the limited safe harbor resale provisions of Rule 144. Generally, Rule 144 would permit the public sale of securities received by such person if current information regarding the issuer 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, and as a result, Rule 144 will not be available for resales of 1145 Plan Securities by persons deemed to be underwriters.

Whether any particular person would be deemed to be an "underwriter" (including whether such person is a "controlling person") with respect to the Plan Securities would depend upon various facts and circumstances applicable to that person. Accordingly, the Debtors express no view whether any person would be deemed an "underwriter" with respect to the Plan Securities. In view of the complex nature of the question of whether a 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.

TO ENSURE COMPLIANCE WITH IRS CIRCULAR 230, HOLDERS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF FEDERAL TAX ISSUES CONTAINED OR REFERRED TO IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY HOLDERS FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON THEM UNDER THE TAX CODE, (B) SUCH DISCUSSION IS WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING OF THE TRANSACTIONS OR MATTERS DISCUSSED HEREIN, AND (C) HOLDERS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

A. Certain U.S. Federal Income Tax Consequences to U.S. Holders

The discussion below describes certain U.S. federal income tax consequences of the transactions contemplated by the Plan to U.S. Holders; however, no assurance can be given as to the treatment of such transactions by the IRS or as to whether such treatment will be sustained by a court. Each U.S. Holder should consult its tax advisor regarding the tax consequences to it of the transactions contemplated by the Plan and information that may be relevant to its particular situation and circumstances.

1. U.S. Holders of Syndicate Credit Facility Claims

(a) General

Pursuant to the Plan, in full satisfaction and discharge of its Claim, each U.S. Holder of an allowed Syndicate Credit Facility Claim will receive its *pro rata* share of (i) 16.7 million shares of New Common Stock, (ii)

all of the interests in the Amended and Restated Senior Secured Credit Facility having a principal amount of \$300 million and (iii) if, and only if, Class 8 does not vote to accept the Plan, on account of an allowed Syndicate Credit Facility Deficiency Claim, (a) 1.6 million shares of New Common Stock and (b) the Co-Investment Rights (collectively, the "Excel Exchange"). In addition, on the Effective Date and concurrently with the receipt of the New Common Stock and the exercise, if at all, of the Co-Investment Rights (if issued as described above), each holder of New Common Stock shall automatically (and shall automatically be deemed to) contribute such New Common Stock to Holdco in exchange for the same percentage of Holdco Units as the holder had in the New Common Stock immediately prior to such contribution (the "Holdco Contribution"). Reorganized Excel intends to follow, for U.S. federal income tax purposes, the treatment of the Excel Exchange and the Holdco Contribution as described in the Plan. The IRS could take the position, however, that the Excel Exchange, the U.S. Holders, Excel, and/or the Holdco Contribution should be treated for U.S. federal income tax purposes in some manner other than that set forth in the Plan.

(b) The Excel Exchange

The U.S. federal income tax consequences of the Excel Exchange will depend, in part, on whether the U.S. Holders' allowed Syndicate Credit Facility Claims and, if applicable, the Co-Investment Rights constitute "securities" and rights to acquire New Common Stock for U.S. federal income tax purposes. Whether a debt instrument constitutes a "security" is determined based on all the facts and circumstances. Most authorities have held that the length of the term of a debt instrument at initial issuance is an important factor in determining whether such instrument is a security for U.S. federal income tax purposes. These authorities have indicated that a term of less than five years is evidence that the instrument is not a security, whereas a term of ten years or more is evidence that it is a security. There are other factors that may be relevant to the determination, including the security for payment, the creditworthiness of the obligor, the subordination or lack thereof with respect to other creditors, the right to vote or otherwise participate in the management of the obligor, convertibility of the instrument into equity of the obligor, whether payments of interest are fixed, variable or contingent and whether such payments are made on a current basis or accrued. The allowed Syndicate Credit Facility Claims have a term of more than five years but less than ten years. The Co-Investment Rights are a right to acquire New Common Stock. It is unclear whether U.S. Holders' allowed Syndicate Credit Facility Claims constitute, and no assurance can be made that the Co-Investment Rights constitute, "securities" for U.S. federal income tax purposes and each U.S. Holder should consult its tax advisor regarding the treatment of such obligations as "securities."

The Debtors intend to take the position that each of the allowed Syndicate Credit Facility Claims, the Amended and Restated Senior Secured Credit Facility and, if applicable, the Co-Investment Rights should constitute "securities" for U.S. federal income tax purposes.

(i) Treatment as a Recapitalization

Subject to the discussion below regarding accrued interest, to the extent that a U.S. Holder's allowed Syndicate Credit Facility Claim is characterized as a "security" for U.S. federal income tax purposes, the Excel Exchange should be treated as a "recapitalization" for U.S. federal income tax purposes and the Amended and Restated Senior Secured Credit Facility should also be characterized as a "security" for U.S. federal income tax purposes. If the Excel Exchange is treated as a recapitalization, and assuming that, if applicable, the Co-Investment Rights are properly characterized as a right to acquire New Common Stock, a U.S. Holder of an allowed Syndicate Credit Facility Claim generally should not recognize capital gain or loss pursuant to the Excel Exchange. A U.S. Holder's aggregate tax basis in the New Common Stock, its interest in the Amended and Restated Senior Secured Credit Facility and, if applicable, the Co-Investment Rights it receives in the Excel Exchange should be equal to the tax basis of such U.S. Holder's allowed Syndicate Credit Facility Claim surrendered in exchange therefor. This aggregate tax basis should be allocated among such New Common Stock, Amended and Restated Senior Secured Credit Facility and, if applicable, Co-Investment Rights in proportion to their respective fair market values as of the Effective Date. Such U.S. Holder's holding period for such New Common Stock, Amended and Restated Senior Secured Credit Facility and, if applicable, Co-Investment Rights generally should include its holding period for the allowed Syndicate Credit Facility Claim surrendered in exchange therefor.

(ii) Treatment as a Taxable Exchange

Generally. Subject to the discussion below regarding accrued interest, if the allowed Syndicate Credit Facility Claims are not characterized as "securities," and as a result the Excel Exchange is not treated as a "recapitalization," and the transactions contemplated by the Plan are otherwise taxable to a U.S. Holder, such U.S. Holder should recognize gain or loss equal to the difference between (a) the sum of (i) the fair market value as of the Effective Date of such U.S. Holder's shares of New Common Stock received pursuant to the Plan, (ii) the issue price of such U.S. Holder's *pro rata* share of the Amended and Restated Senior Secured Credit Facility received pursuant to the Plan (which generally should be deemed to equal the stated principal amount if neither the Amended and Restated Senior Secured Credit Facility nor the allowed Syndicate Credit Facility Claim surrendered in exchange therefor is considered "publicly traded" under applicable Treasury regulations) and (iii) the fair market value as of the Effective Date of the Co-Investment Rights the U.S. Holder received pursuant to the Plan, if at all, over (b) such U.S. Holder's tax basis in its allowed Syndicate Credit Facility Claim surrendered pursuant to the Plan. Such gain or loss should be capital gain or loss (subject to the "market discount" rules described below) and should be long-term capital gain or loss if the U.S. Holder's holding period for its surrendered allowed Syndicate Credit Facility Claim exceeded one year. A U.S. Holder's tax basis in each of its shares of New Common Stock, its *pro rata* share of the Amended and Restated Senior Secured Credit Facility and, if applicable, its Co-Investment Right, received pursuant to the Plan, should equal the fair market value of such interests on the Effective Date. A U.S. Holder's holding period for each of its shares of New Common Stock, its *pro rata* share of the Amended and Restated Senior Secured Credit Facility and, if applicable, its Co-Investment Right, received pursuant to the Plan should begin on the day following the Effective Date.

(c) The Co-Investment Rights

If U.S. Holders of allowed Syndicate Credit Facility Claims receive the Co-Investment Rights pursuant to the Plan as a result of Class 8 failing to vote to accept the Plan, such U.S. Holder should not recognize any gain or loss upon the exercise of the Co-Investment Rights received pursuant to the Plan. The tax basis of the shares of New Common Stock acquired through exercise of a Co-Investment Right should equal the sum of the offering price for such shares and the U.S. Holder's tax basis in such Co-Investment Right as described above. The holding period for the shares of New Common Stock acquired through exercise of the Co-Investment Rights should begin on the day following the Effective Date.

If U.S. Holders of allowed Syndicate Credit Facility Claims receive the Co-Investment Rights pursuant to the Plan as a result of Class 8 failing to vote to accept the Plan, the tax consequences to such U.S. Holder of allowing a Co-Investment Right it received pursuant to the Plan to expire unexercised are unclear. Such a holder generally should realize a capital loss equal to the tax basis in such expired Co-Investment Right, which should be long-term capital loss if the U.S. Holder's holding period for such Co-Investment Right exceeded one year. There can be no assurance, however, that the IRS would not assert that instead of recognizing such loss, the holder should add the tax basis in its expired Co-Investment Right to the tax basis it has in the shares of New Common Stock it received pursuant to the Plan. Each U.S. Holder should consult its tax advisor as to the tax consequences of allowing the Co-Investment Rights it received pursuant to the Plan to expire unexercised.

(d) The Holdco Contribution

Subject to the market discount rules described below, the Holdco Contribution generally should be treated as a tax-free transaction in which no gain or loss is recognized for U.S. federal income tax purposes. A U.S. Holder's basis in its Holdco Units generally should be equal to the tax basis of such U.S. Holder's New Common Stock exchanged therefor. A U.S. Holder's holding period in its Holdco Units generally should include its holding period for such New Common Stock.

(e) Accrued Interest

To the extent that any consideration is allocated to accrued but unpaid interest, a U.S. Holder of allowed Syndicate Credit Facility Claims that has not previously included such accrued interest in taxable income for U.S. federal income tax purposes should recognize ordinary income equal to the fair market value of any property received (including the U.S. Holder's *pro rata* share of the New Common Stock, the Amended and Restated Senior Secured Credit Facility and, if applicable, the Co-Investment Rights) with respect to such Claims for accrued interest. Pursuant to the Plan, Reorganized Excel will allocate for U.S. federal income tax purposes all distributions

in respect of any Claim first to the principal amount of such Claim, and thereafter to accrued but unpaid interest. No assurance can be given that the IRS will not challenge such allocation. If a distribution with respect to a Claim is entirely allocated to the principal amount of such Claim, a holder may be entitled to claim a loss to the extent of any accrued but unpaid interest on the Claim that was previously included in the holder's gross income. U.S. Holders should consult their tax advisors regarding the particular U.S. federal income tax consequences applicable to them under the Plan in respect of allowed Syndicate Credit Facility Claims for accrued interest, including the character of any loss claimed with respect to accrued but unpaid interest previously included in gross income.

(f) Market Discount

A U.S. Holder that purchased its allowed Syndicate Credit Facility Claim from a prior holder at a discount to the then-adjusted issue price of such allowed Syndicate Credit Facility Claim may be subject to the market discount rules of the Tax Code. Under those rules, assuming such U.S. Holder has not made an election to amortize the market discount into income on a current basis, any gain recognized on the exchange of such allowed Syndicate Credit Facility Claim (subject to a de minimis rule and exceptions for certain nonrecognition transactions) generally would be characterized as ordinary income to the extent of the accrued market discount on such allowed Syndicate Credit Facility Claim as of the Effective Date. U.S. Holders of allowed Syndicate Credit Facility Claims should consult their tax advisors as to the tax consequences of the market discount rules, including, without limitation, the possible application of such rules on the Excel Exchange and Holdco Contribution.

2. U.S. Holders of Convertible Notes

(a) General

Pursuant to the Plan, in full satisfaction and discharge of each Convertible Note, each U.S. Holder of a Convertible Note will receive its *pro rata* share of (i) 1.6 million shares of New Common Stock and (ii) the Co-Investment Rights (collectively, the "Convertible Notes Exchange"). In addition, on the Effective Date and concurrently with the receipt of the New Common Stock and the exercise, if at all, of the Co-Investment Rights, each holder of New Common Stock shall automatically (and shall automatically be deemed to) contribute such New Common Stock to Holdco in exchange for the same percentage of the Holdco Units as the holder had in the New Common Stock immediately prior to such contribution (the Holdco Contribution). The Debtors intend to follow, for U.S. federal income tax purposes, the treatment of the Convertible Notes Exchange and the Holdco Contribution as described in the Plan. The IRS could take the position, however, that the U.S. Holders or Excel should be treated for U.S. federal income tax purposes in some manner other than that set forth in the Plan.

(b) The Convertible Notes Exchange

The U.S. federal income tax consequences of the Convertible Notes Exchange will depend, in part, on whether the Convertible Notes constitute "securities" for U.S. federal income tax purposes and whether the Co-Investment Rights constitute "securities" and rights to acquire New Common Stock for U.S. federal income tax purposes. Whether a debt instrument constitutes a "security" is determined based on all the facts and circumstances. Most authorities have held that the length of the term of a debt instrument at initial issuance is an important factor in determining whether such instrument is a security for U.S. federal income tax purposes. These authorities have indicated that a term of less than five years is evidence that the instrument is not a security, whereas a term of ten years or more is evidence that it is a security. There are other factors that may be relevant to the determination, including the security for payment, the creditworthiness of the obligor, the subordination or lack thereof with respect to other creditors, the right to vote or otherwise participate in the management of the obligor, convertibility of the instrument into equity of the obligor, whether payments of interest are fixed, variable or contingent and whether such payments are made on a current basis or accrued. The Convertible Notes have a term of more than ten years. The Co-Investment Rights are a right to acquire New Common Stock. No assurance can be made that the Convertible Notes and the Co-Investment Rights constitute "securities" for U.S. federal income tax purposes and each U.S. Holder should consult its tax advisor regarding the treatment of such obligations as "securities."

The Debtors intend to take the position that the Convertible Notes and the Co-Investment Rights should constitute "securities" for U.S. federal income tax purposes and that the Convertible Notes Exchange should be treated as a "recapitalization" for U.S. federal income tax purposes.

Subject to the discussion below regarding accrued interest, and assuming that the Co-Investment Rights are properly characterized as a right to acquire New Common Stock, a U.S. Holder of Convertible Notes generally should not recognize capital gain or loss pursuant to the Convertible Notes Exchange. A U.S. Holder's aggregate tax basis in the New Common Stock and the Co-Investment Rights it receives in the Convertible Notes Exchange should be equal to the tax basis of such U.S. Holder's Convertible Notes surrendered in exchange therefor. This aggregate tax basis should be allocated among such New Common Stock and Co-Investment Rights in proportion to their respective fair market values as of the Effective Date. Such U.S. Holder's holding period for such New Common Stock and Co-Investment Rights generally should include its holding period for the Convertible Notes surrendered in exchange therefor.

(c) The Co-Investment Rights

A U.S. Holder should not recognize any gain or loss upon the exercise of the Co-Investment Rights received pursuant to the Plan. The tax basis of the shares of New Common Stock acquired through exercise of a Co-Investment Right should equal the sum of the offering price for such shares and the U.S. Holder's tax basis in such Co-Investment Right as described above. The holding period for the shares of New Common Stock acquired through exercise of the Co-Investment Rights should begin on the day following the Effective Date.

The tax consequences to a U.S. Holder of allowing a Co-Investment Right it received pursuant to the Plan to expire unexercised are unclear. Such a holder generally should realize a capital loss equal to the tax basis in such expired Co-Investment Right, which should be long-term capital loss if the U.S. Holder's holding period for such Co-Investment Right exceeded one year. There can be no assurance, however, that the IRS would not assert that instead of recognizing such loss, the holder should add the tax basis in its expired Co-Investment Right to the tax basis it has in the shares of New Common Stock it received pursuant to the Plan. Each U.S. Holder should consult its tax advisor as to the tax consequences of allowing the Co-Investment Rights it received pursuant to the Plan to expire unexercised.

(d) The Holdco Contribution

Subject to the market discount rules described below, the Holdco Contribution generally should be treated as a tax-free transaction in which no gain or loss is recognized for U.S. federal income tax purposes. A U.S. Holder's basis in its Holdco Units generally should be equal to the tax basis of such U.S. Holder's New Common Stock exchanged therefor. A U.S. Holder's holding period in its Holdco Units generally should include its holding period for such New Common Stock.

(e) Accrued Interest

To the extent that any consideration is allocated to accrued but unpaid interest, a U.S. Holder of Convertible Notes on which there is accrued interest that such U.S. Holder previously has not included in taxable income for U.S. federal income tax purposes should recognize ordinary income equal to the fair market value of any property received (including the U.S. Holder's pro rata share of the New Common Stock and the Co-Investment Rights) with respect to such Claims for accrued interest. Pursuant to the Plan, Reorganized Excel will allocate for U.S. federal income tax purposes all distributions in respect of any Claim first to the principal amount of such Claim, and thereafter to accrued but unpaid interest. No assurance can be given that the IRS will not challenge such allocation. If a distribution with respect to a Claim is entirely allocated to the principal amount of such Claim, a holder may be entitled to claim a loss to the extent of any accrued but unpaid interest on the Claim that was previously included in the holder's gross income. U.S. Holders should consult their tax advisors regarding the particular U.S. federal income tax consequences applicable to them under the Plan in respect of Convertible Notes for accrued interest, including the character of any loss claimed with respect to accrued but unpaid interest previously included in gross income.

(f) Market Discount

A U.S. Holder that purchased its Convertible Notes from a prior holder at a discount to the then-adjusted issue price of such Convertible Notes may be subject to the market discount rules of the Tax Code. Under those

rules, assuming such U.S. Holder has not made an election to amortize the market discount into income on a current basis, any gain recognized on the exchange of such Convertible Notes (subject to a de minimis rule and exceptions for certain nonrecognition transactions) generally would be characterized as ordinary income to the extent of the accrued market discount on such Convertible Notes as of the Effective Date. U.S. Holders of Convertible Notes should consult their tax advisors as to the tax consequences of the market discount rules, including, without limitation, the possible application of such rules on the Convertible Notes Exchange.

3. Passive Foreign Investment Company Status and Significant Tax Consequences

Special U.S. federal income tax rules apply to a U.S. Holder that holds stock in a foreign corporation (such as Holdco) classified as a passive foreign investment company ("PFIC"), for U.S. federal income tax purposes. In general, Holdco will be treated as a PFIC with respect to a U.S. Holder if, for any taxable year in which such holder held Holdco Units, either:

- at least 75% of Holdco's gross income for such taxable year consists of passive income (e.g., dividends, interest, capital gains and rents derived other than in the active conduct of a rental business); or
- at least 50% of the average value of the assets held by Holdco during such taxable year produce, or are held for the production of, passive income.

For purposes of determining whether Holdco is a PFIC, it will be treated as earning and owning its proportionate share of the income and assets, respectively, of any of its subsidiary corporations in which it owns at least 25% of the value of the subsidiary's stock. Income earned, or deemed earned, by Holdco in connection with the performance of services would not constitute passive income. By contrast, rental income would generally constitute "passive income" unless Holdco were treated under specific rules as deriving its rental income in the active conduct of a trade or business.

Based on its projected operations and assets, Holdco does not expect to be or to become a PFIC with respect to any taxable year. Although there is no legal authority directly on point, and Holdco is not relying upon an opinion of counsel on this issue, this belief is based principally on the position that, for purposes of determining whether Holdco is a PFIC, the gross income Holdco derives or is deemed to derive from the time chartering and voyage chartering activities of its wholly-owned subsidiaries should constitute services income, rather than rental income. Correspondingly, such income should not constitute passive income, and the assets that Holdco or its wholly-owned subsidiaries own and operate in connection with the production of such income, in particular, the drybulk carriers, should not constitute passive assets for purposes of determining whether Holdco is a PFIC. There is substantial legal authority supporting this position consisting of case law and other authorities concerning the characterization of income derived from time charters and voyage charters as services income for other tax purposes. However, there is also authority which characterizes time charter income as rental income rather than services income for other tax purposes. In the absence of any legal authority specifically relating to the statutory provisions governing PFICs, the IRS or a court could disagree with this position. In addition, although Holdco intends to conduct its affairs in a manner intended to avoid being classified as a PFIC with respect to any taxable year, the nature of its operations may change in the future.

As discussed more fully below, if Holdco were to be treated as a PFIC for any taxable year, a U.S. Holder of Holdco Units would be subject to special taxation rules depending on whether the U.S. Holder makes an election to treat Holdco as a "Qualified Electing Fund" (a "QEF"). A U.S. shareholder of a PFIC is required to file an annual information return containing information regarding the PFIC as required by applicable Treasury regulations.

(a) Taxation of U.S. Holders Making a Timely QEF Election

If a U.S. Holder makes a timely QEF election (an "Electing Holder"), such Electing Holder must report each year for U.S. federal income tax purposes his pro rata share of Holdco's ordinary earnings and net capital gain, if any, for Holdco's taxable year that ends with or within the taxable year of the Electing Holder, regardless of whether or not distributions were received from Holdco by the Electing Holder. The Electing Holder's adjusted tax

basis in the Holdco Units will be increased to reflect taxed but undistributed earnings and profits. Distributions of earnings and profits that had been previously taxed will result in a corresponding reduction in the adjusted tax basis in the Holdco Units and will not be taxed again once distributed. An Electing Holder would generally recognize capital gain or loss on the sale, exchange or other disposition of Holdco Units. A U.S. Holder would make a QEF election with respect to any year that Holdco is a PFIC by filing IRS Form 8621 with his U.S. federal income tax return. If Holdco becomes aware that it is to be treated as a PFIC for any taxable year, Holdco will provide each U.S. Holder with all necessary information in order to make the QEF election described above.

(b) Taxation of U.S. Holders Not Making a Timely QEF Election

If Holdco were to be treated as a PFIC for any taxable year, a U.S. Holder who does not make a QEF election for that year (a "Non-Electing Holder") would be subject to special rules with respect to (1) any excess distribution (i.e., the portion of any distributions received by the Non-Electing Holder on the Holdco Units in a taxable year in excess of 125% of the average annual distributions received by the Non-Electing Holder in the three preceding taxable years, or, if shorter, the Non-Electing Holder's holding period for the Holdco Units), and (2) any gain realized on the sale, exchange or other disposition of the Holdco Units. Under these special rules:

- the excess distribution or gain would be allocated ratably over the Non-Electing Holder's aggregate holding period for the Holdco Units;
- the amount allocated to the current taxable year and any taxable year before Holdco became a PFIC would be taxed as ordinary income; and
- the amount allocated to each of the other taxable years would be subject to tax at the highest rate of tax in effect for the applicable class of taxpayer for that year, and an interest charge for the deemed tax deferral benefit would be imposed with respect to the resulting tax attributable to each such other taxable year.

These penalties would not apply to a pension or profit sharing trust or other tax-exempt organization that did not borrow funds or otherwise utilize leverage in connection with its acquisition of the Holdco Units. If a Non-Electing Holder who is an individual dies while owning the Holdco Units, such holder's successor generally would not receive a step-up in tax basis with respect to such stock.

Each U.S. Holder should consult its tax advisor as to the tax consequences to it if Holdco were, or were to become, a PFIC, including the availability of the QEF election and the consequences of making, or failing to make, this election.

B. Certain U.S. Federal Income Tax Consequences to Non-U.S. Holders

A Non-U.S. Holder generally should not be subject to U.S. federal income tax on any gain, accrued interest or accrued market discount recognized in the Excel Exchange, the Convertible Notes Exchange and/or the Holdco Contribution, as applicable, unless the gain, accrued interest or accrued market discount, as the case may be, is effectively connected with the Non-U.S. Holder's conduct of a trade or business in the United States (and, if a tax treaty applies, the Non-U.S. Holder maintains a U.S. permanent establishment to which the gain is attributable).

To the extent that such gain, accrued interest or accrued market discount, as the case may be, is effectively connected with the Non-U.S. Holder's conduct of a U.S. trade or business (and, if a tax treaty applies, the Non-U.S. Holder maintains a U.S. permanent establishment to which the gain is attributable), the Non-U.S. Holder generally will be subject to U.S. federal income tax on a net basis in the same manner as if the Non-U.S. Holder were a U.S. Holder. Such gain, accrued interest or accrued market discount, as the case may be, by a corporate Non-U.S. Holder may also be subject to an additional U.S. federal branch profits tax at a 30% rate (or, if applicable, a lower treaty rate).

Non-U.S. Holders should consult their tax advisors regarding the tax consequences to them of the transactions contemplated by the Plan and information that may be relevant to their particular situation and circumstances.

C. Other Tax Issues

1. Certain Liberian Tax Consequences

Excel and certain of its subsidiaries are incorporated in the Republic of Liberia. Under the Consolidated Tax Amendments Act of 2010, Reorganized Excel and its Liberian subsidiaries will be deemed non-resident Liberian corporations wholly exempted from Liberian taxation, effective as of 1977, and distributions to its shareholders (if any) will be made free of any Liberian withholding tax.

All vessels owned by Excel through its respective Debtor vessel-owning subsidiaries, as previously stated, are managed by Maryville which is a Liberian corporation, having established a branch office in Greece, pursuant to the provisions of art. 25 of law 27/1975 (often referred to as a "Law 89 Company"). In January 2013, law 4110/2013 amended the long-standing provisions of art. 26 of law 27/1975 by imposing a fixed annual tonnage tax on vessels flying a foreign (i.e. non-Greek) flag which are managed by a Law 89 Company, establishing an identical tonnage tax regime as the one already in force for vessels flying the Greek flag. This tax varies depending on the size of the vessel, calculated in gross registered tonnage ("GRT"), as well as on the age of each vessel. As explicitly stated in the new law, payment of this tonnage tax completely satisfies ("exhausts") all income tax obligations of both the shipowning company and of all its shareholders up to the ultimate beneficial owners (no matter how many holding companies are in-between the shipowning company and the ultimate beneficial owners). Any tax payable to the state of the flag of each vessel as a result of its registration with a foreign flag registry (e.g. Liberia or the Marshall Islands) is subtracted from the amount of tonnage tax due to the Greek tax authorities. In the case of Excel, each vessel-owning Debtor and Maryville are jointly and severally liable vis-à-vis the Greek state for payment of this tax with respect to each vessel. This means that all the Debtor vessel-owning companies (wholly owned by Excel) as of 2013 have this added tax obligation. In addition, under the same law (4110/2013) any transfer (for whatever reason, including as a result of inheritance) of shares in a shipowning company that pays the aforementioned tonnage tax (or of a company holding shares in such shipowning company) is exempt from any tax.

2. Certain Marshall Islands Tax Consequences

Holdco will be incorporated under the laws of the Marshall Islands. Under current Marshall Islands law and based on its contemplated activities, Holdco will not be subject to Marshall Islands tax on its income or capital gains. In addition, under current Marshall Islands law and based on its contemplated activities, Marshall Islands withholding tax *will not* be imposed upon payments of dividends by Holdco to its stockholders or upon payments of interest by Holdco.

D. Importance of Obtaining Professional Tax Assistance

THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN INCOME TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE ABOVE DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A CLAIM OR U.S. HOLDER'S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, U.S. HOLDERS OF CLAIMS SHOULD CONSULT THEIR TAX ADVISORS ABOUT THE UNITED STATES FEDERAL, STATE, AND LOCAL, AND APPLICABLE FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.

VIII. FEASIBILITY OF THE PLAN AND BEST INTERESTS OF CREDITORS

A. Feasibility of the Plan

The Bankruptcy Code requires that the Bankruptcy Court determine that confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization of the Debtors. For purposes of showing that the Plan meets this "feasibility" standard, the Debtors have analyzed the ability of the Reorganized Debtors to meet their obligations under the Plan and retain sufficient liquidity and capital resources to conduct their business. To support their belief in the feasibility of the Plan, the Debtors have relied upon the Financial Projections set forth as Appendix E of this Disclosure Statement. The Financial Projections show that the Reorganized Debtors should have sufficient cash to make payments required under the Plan. Accordingly, the Debtors believe the Plan is feasible and meets the requirements of section 1129(a)(11) of the Bankruptcy Code.

THE FINANCIAL PROJECTIONS ARE BY THEIR NATURE FORWARD LOOKING, AND ACTUAL RESULTS MAY DIFFER MATERIALLY FROM THE INFORMATION SET FORTH THEREIN. Readers of this Disclosure Statement are cautioned not to place undue reliance on the Financial Projections, and should carefully review **Section V - "Risk Factors To Be Considered"** herein. The Financial Projections should not be relied upon as necessarily indicative of future, actual recoveries.

Holders of Claims against the Debtors are advised that the Financial Projections were not prepared with a view toward compliance with the published guidelines of the American Institute of Certified Public Accountants or any other regulatory or professional agency or body or generally accepted accounting principles. Furthermore, the Debtors' independent certified public accountants have not compiled or examined the Financial Projections and accordingly do not express any opinion or any other form of assurance with respect thereto and assume no responsibility for the Financial Projections.

In addition to the assumptions footnoted in the Financial Projections themselves, the Financial Projections also assume that (i) the Plan will be confirmed and consummated in accordance with its terms, (ii) there will be no material change in legislation or regulations, or the administration thereof, that will have an unexpected effect on the operations of the Reorganized Debtors, and (iii) there will be no material contingent or unliquidated litigation or indemnity claims applicable to the Reorganized Debtors. Although considered reasonable by the Debtors as of the date hereof, unanticipated events and circumstances occurring after the preparation of the Financial Projections may affect actual recoveries under the Plan.

The Debtors do not intend to update or otherwise revise the Financial Projections, including any revisions to reflect events or circumstances existing or arising after the date of this Disclosure Statement or to reflect the occurrence of unanticipated events, even if any or all of the underlying assumptions do not come to fruition. Furthermore, the Debtors do not intend to update or revise the Financial Projections to reflect changes in general economic or industry conditions.

B. Valuation Analysis

1. Introduction

In conjunction with formulating the Plan, the Debtors have determined that it is appropriate to estimate the post-confirmation enterprise value. Accordingly, the Debtors, have directed Miller Buckfire to prepare such a valuation. In preparing the estimated total enterprise value range, Miller Buckfire has, among other things: (i) conducted meetings and discussions with members of the Debtors' management team; (ii) reviewed the Debtors' business plan, including the underlying assumptions upon which it was based; (iii) considered certain economic and industry information relevant to the Debtors' operating businesses; (iv) reviewed certain analyses prepared by other firms retained by the Debtors; and (v) reviewed relevant publicly available information concerning the Debtors, the dry bulk shipping industry in which the Debtors operate, their markets and competitors.

2. Valuation

In formulating the Plan, four commonly accepted valuation methodologies were utilized to evaluate the post-confirmation total enterprise value of the Debtors: (i) the fleet valuation methodology, (ii) the comparable public companies trading multiples methodology, (iii) the comparable acquisition multiples methodology and (iv) the discounted cash flow methodology.

The fleet valuation methodology derives an estimated enterprise value of the Debtors based upon third-party fleet valuations. It is a common practice in the shipping industry to obtain third-party fleet valuations and appraisals, which are provided by shipbroking and shipping advisory firms with extensive experience in understanding the global ship purchase and sale markets. These firms review and evaluate a substantial portion of these transactions on an ongoing basis, in addition to formulating informed views on underlying shipping markets and their influence on these transactions, giving them a current view of the market value of vessels based on a going-concern non-distressed asset sale transaction between a willing buyer and seller. These market values are based upon various factors including vessel type, vessel age, market charter rates and the market's view of the vessel's ability to generate a certain stream of future earnings. In performing its analysis, Miller Buckfire reviewed appraisals of the Debtors' fleet from two independent shipping advisory firms, who conducted asset-level valuations of the Debtors' fleet. In addition to these two independent appraisals, Miller Buckfire also evaluated current data from VesselsValue, an internationally recognized provider of vessel sale and valuation information. The average of these indications of value was used to determine an aggregate market value of the 35 vessels owned and operated by the Debtors upon emergence. The market value of the vessels was then adjusted to include the value of any above or below market charter agreements.

The comparable public companies trading multiples methodology involved identifying a reference group of publicly-traded marine transportation companies which were selected based on fleet profile, cargo and exposure to the dry bulk shipping market. Miller Buckfire subsequently evaluated each company's enterprise value as a multiple of historical and projected EBITDA and gross asset value. Miller Buckfire used these reference group benchmarks to develop multiple ranges for the Debtors which account for differences in i) profitability profiles and ii) fleet characteristics between the reference group and the Debtors' business.

The comparable acquisition multiples methodology involved reviewing previously announced and completed acquisitions of dry bulk vessels or fleet of vessels that are most comparable to Debtors' fleet of dry bulk vessels. The transactions reviewed cover approximately 6 years from July 2007 to present and range in value from \$100 million to \$2 billion. Miller Buckfire relied on information available in public documents, company press releases and publicly-available third-party research to calculate the enterprise value multiple to gross asset value implied by the purchase price and transaction value, and applied these multiples to the gross asset value of the 35 vessels owned and operated by the Debtors upon emergence.

The discounted cash flow methodology involved deriving the unlevered free cash flows that the Debtors would generate assuming the Financial Projections (as defined herein) were realized following emergence from Chapter 11. To determine the Debtors' enterprise value range, these cash flows and an estimated enterprise value at the end of the projection period were discounted to an assumed date of emergence from Chapter 11 of December 31, 2013, using the Debtors' estimated weighted average cost of capital.

The total enterprise value incorporates the value attributable to Excel's ownership in non-Debtor subsidiaries. In specific, the equity value of Excel's 71.4% joint venture stake in Christine Shipco was estimated separately based on estimating the enterprise value of Christine Shipco LLC, utilizing the fleet valuation and discounted cash flow methodologies, and adjusting the resultant value of the equity stake for certain items related to corporate governance and ability to monetize the investment at fair value, including existing dividend distribution rights and restrictions on transferability of interest.

Utilizing the aforementioned valuation methodologies and including the value of Excel's non-Debtor subsidiaries, Miller Buckfire estimates the total enterprise value of the Debtors to be between approximately \$605 million and \$655 million with a mid-point of approximately \$630 million.

This valuation is based upon information available to, and analyses undertaken by, Miller Buckfire and assumes a Plan effective date of December 31, 2013. The valuation analysis reflects other factors and assumptions including a successful reorganization of the Debtors' business and finances in a timely manner, achieving forecasts

reflected in the financial projections, the amount of cash available to the Debtor upon emergence and the Plan becoming effective in accordance with its terms on a basis consistent with the estimates and other assumptions discussed herein.

Additionally, an estimate of total enterprise value is not entirely mathematical but rather, involves complex considerations and judgments concerning various factors that could affect the value of an operating business. Moreover, the value of an operating business is subject to uncertainties and contingencies that are difficult to predict and will fluctuate with changes affecting the financial conditions and prospects of such a business.

The estimate of total enterprise value set forth herein is not necessarily indicative of actual outcomes, which may be significantly more or less favorable than those set forth herein depending on the results of the Debtors' operations or changes in industry conditions. Additionally, these estimates of value represent hypothetical values of the Debtors as the continuing operator of their businesses and assets, and do not purport to reflect or constitute estimates of the actual market value that may be realized through the sale of any securities to be issued pursuant to the Plan, which may be significantly different than the amounts set forth herein. Such estimates were developed solely for purposes of formulation and negotiation of the Plan and analysis of implied relative recoveries to creditors thereunder. The value of an operating business such as the Debtors' businesses is subject to uncertainties and contingencies that are difficult to predict and will fluctuate with changes in factors affecting the financial condition and prospects of such businesses.

Because valuation estimates are inherently subject to uncertainties, neither the Debtors, Miller Buckfire, nor any other person assumes responsibility for their accuracy, but the Debtors believe the estimates have been prepared in good faith based on reasonable assumptions.

C. Best Interests Test

Section 1129(a)(7) of the Bankruptcy Code requires that the Bankruptcy Court find that each entity who rejects (or is deemed to reject) the Plan will receive property with a value, as of the Effective Date, that is not less than the amount that it would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on that date. This requirement is known as the "best interests of creditors" test.

In a chapter 7 case, one or more bankruptcy trustees would sell the Debtors' assets to generate cash. In general, the net proceeds of assets encumbered by valid and perfected security interests would be paid to the creditors holding those security interests. The remaining proceeds would be applied to the administrative expenses of the liquidation, including the trustees' fees, the fees of their professionals, and wind-down expenses. If funds were remaining, priority claims, including certain employee and tax claims, would be paid prior to any distributions to non-priority unsecured creditors. A chapter 7 liquidation analysis of the Debtors' assets is attached hereto as Appendix D (the "Liquidation Analysis").

The Debtors believe that the Plan meets the best interests test. After analyzing the effect that a chapter 7 liquidation would have on the ultimate proceeds available for distribution, the Debtors, in consultation with their advisors, believe that the distributions under the Plan will be at least as much as under a chapter 7 liquidation. The Debtors believe that any liquidation analysis in these cases is highly speculative given the nature of the Debtors' assets. However, based on the Liquidation Analysis, the Debtors believe that in a chapter 7 liquidation the net proceeds of any sale would be far less than the value provided under the Plan.

The fact that the going concern value would be higher than a liquidation value can be attributed to the following: (i) the increased costs and expenses of liquidation under chapter 7, including the fees payable to the chapter 7 trustee and the attorneys and advisors to such trustee, (ii) additional expenses and claims, some of which would have to be paid in order to liquidate the Debtors' assets, which would be generated during the liquidation, (iii) the erosion of the value of the Debtors' assets during the liquidation process, (iv) the likelihood that vessel sale prices achieved in the "forced sale" atmosphere of a chapter 7 liquidation, particularly given current market constraints, would be significantly lower than the value which may be realized through the operation or sale of the vessels as going concerns, (v) the potential loss of any "fleet" or "pool" value, being the value derived from coordinated operation of a fleet of vessels so as to minimize ballast voyages, through the separate sale of individual

vessels, and (vi) the likelihood of increased opportunistic litigation and claims by counterparties to the Debtors' various agreements.

**IX. CONFIRMATION WITHOUT ACCEPTANCE OF ALL IMPAIRED CLASSES: THE
'CRAMDOWN' ALTERNATIVE**

Under section 1129(b) of the Bankruptcy Code, the Bankruptcy Court may confirm a plan over the objection of an impaired rejecting class, if, among other things, at least one impaired class of claims has accepted the plan (not counting the votes of any "insiders" as defined in the Bankruptcy Code) and if the plan "does not discriminate unfairly" against and is "fair and equitable" to each impaired, rejecting class.

Class 2 – Syndicate Credit Facility Secured Claims is impaired and entitled to vote on the Plan. Holders of over one-half in number and two-thirds in amount of the Class 2 claims have committed to vote in favor of the Plan. Class 8 – Impaired Excel General Unsecured Claims is impaired and entitled to vote on the Plan. Holders of \$67,110,000 in amount of the Class 8 claims have committed to vote in favor of the Plan. Class 10 – Section 510(b) Claims and Class 11 – Interests in Excel will receive no recovery under the Plan and are deemed to reject it. In view of the deemed rejection of the Plan by Classes 10 and 11, and, if applicable, the rejection of the Plan by Class 8, the Debtors will seek confirmation of the Plan pursuant to the "cramdown" provisions of section 1129(b) of the Bankruptcy Code.

A plan does not discriminate unfairly within the meaning of the Bankruptcy Code if a dissenting class is treated substantially equivalent with respect to other classes of equal rank. Courts will take into account a number of factors in determining whether a plan discriminates unfairly, including whether the discrimination has a reasonable basis, whether the debtor can carry out a plan without such discrimination, whether such discrimination is proposed in good faith, and the treatment of the class that alleges discrimination. Courts have also held that it is appropriate to classify unsecured creditors separately if the differences in classification are in the best interest of the creditors, foster reorganization efforts, do not violate the absolute priority rule, and do not needlessly increase the number of classes.

Holders of Class 2 – Syndicate Credit Facility Secured Claims will receive a 98.6% recovery under the Plan. Holders of Class 8 – Impaired Excel General Unsecured Claims will receive a 15.9% recovery under the Plan, excluding Syndicate Credit Facility Deficiency Claims. Class 10 – Section 510(b) Claims, and Class 11 – Interests in Excel will both receive zero recovery under the Plan. The Claims and Interests in these Classes are likewise properly subordinated to all other Claims of any nature, and/or are legally distinct. Accordingly, the Plan does not discriminate unfairly against holders of Claims and Interests in Classes 2, 8, 10 and 11.

A plan is fair and equitable as to a class of unsecured claims that rejects a plan if the plan provides (a) for each holder of a claim included in the rejecting class to receive or retain on account of that claim property that has a value, as of the effective date of the plan, equal to the allowed amount of such claim; or (b) that the holder of any claim or interest that is junior to the claims of such class will not receive or retain on account of such junior claim or interest any property at all. A plan is fair and equitable as to a class of equity interests that rejects a plan if the plan provides (a) that each holder of an interest included in the rejecting class receive or retain on account of that interest property that has a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or (b) that the holder of any interest that is junior to the interests of such class will not receive or retain any property at all on account of such junior interest under the plan.

The Plan is fair and equitable with respect to Classes 8, 10 and 11. First, there are no holders of any Claims against or Interests in the Debtors junior to the Claims and Interests in Classes 8, 10 and 11, respectively, who will receive or retain any property under the Plan on account of such junior claim or interest. Second, pursuant to the Plan, no holders of Claims against or Interests in the Debtors senior to Classes 8, 10 and 11 are receiving more than full payment on account of such Claims against or Interests in the Debtors. Thus, the Debtors submit that the Plan is structured such that it does not "discriminate unfairly" and is "fair and equitable" to each impaired rejecting class.

X. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN

If the requisite acceptances are not received or if the Plan is not confirmed, the Debtors could attempt to formulate and propose a different plan or plans of reorganization. Such a plan or plan(s) might involve either a reorganization and continuation of the Debtors' businesses or an orderly liquidation of assets.

XI. CONCLUSION AND RECOMMENDATION

The Debtors believe that confirmation and implementation of the Plan is preferable to any other alternative under the circumstances. Other alternatives would involve significant delay, uncertainty, substantial additional administrative costs, and/or a lower recovery to the holders of impaired claims.

Consequently, the Debtors urge all holders of impaired claims to vote to accept the Plan and to evidence their acceptance by duly completing and returning their ballots so that they will be received on or before 4:00 p.m., prevailing eastern time, on January 16, 2014 by the Voting Agent.

Dated: November 26, 2013

EXCEL MARITIME CARRIERS LTD.
(for itself and on behalf of the other Debtors)

By: /s/ Pavlos Kanellopoulos
Name: Pavlos Kanellopoulos
Title: Chief Financial Officer

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APPENDIX A
TO
DISCLOSURE STATEMENT
OF EXCEL MARITIME CARRIERS LTD. AND CERTAIN OF ITS AFFILIATES
AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION
OF EXCEL MARITIME CARRIERS LTD. AND CERTAIN OF ITS AFFILIATES

APPENDIX B
TO
DISCLOSURE STATEMENT
OF EXCEL MARITIME CARRIERS LTD. AND CERTAIN OF ITS AFFILIATES
LIST OF DEBTORS

List of Debtors

1. Excel Maritime Carriers LLC
2. Excel Maritime Carriers Ltd.
3. Amanda Enterprises Ltd.
4. Barland Holdings Inc.
5. Candy Enterprises Inc.
6. Castalia Services Ltd.
7. Centel Shipping Company Ltd.
8. Coal Gypsy Shipco LLC
9. Coal Hunter Shipco LLC
10. Coal Pride Shipco LLC
11. Fianna Navigation S.A.
12. Fountain Services Ltd.
13. Grain Express Shipco LLC
14. Grain Harvester Shipco LLC
15. Harvey Development Corp.
16. Ingram Ltd.
17. Iron Anne Shipco LLC
18. Iron Beauty Shipco LLC
19. Iron Bill Shipco LLC
20. Iron Bradyn Shipco LLC
21. Iron Brooke Shipco LLC
22. Iron Fuzeyya Shipco LLC
23. Iron Kalypso Shipco LLC
24. Iron Knight Shipco LLC
25. Iron Lindrew Shipco LLC
26. Iron Manolis Shipco LLC
27. Iron Miner Shipco LLC
28. Iron Vassilis Shipco LLC
29. Kirmar Shipco LLC
30. Liegh Jane Navigation S.A.
31. Lowlands Beilun Shipco LLC
32. Marias Trading Inc.
33. Ore Hansa Shipco LLC
34. Pascha Shipco LLC
35. Point Holdings Ltd.
36. Sandra Shipco LLC
37. Santa Barbara Shipco LLC
38. Snapper Marine Ltd.
39. Tanaka Services Ltd.
40. Teagan Shipholding S.A.
41. Thurman International Ltd.
42. Whitelaw Enterprises Co.
43. Yasmine International Inc.

APPENDIX C
TO
DISCLOSURE STATEMENT
OF EXCEL MARITIME CARRIERS LTD. AND CERTAIN OF ITS AFFILIATES
CORPORATE ORGANIZATION CHART

APPENDIX D
TO
DISCLOSURE STATEMENT
OF EXCEL MARITIME CARRIERS LTD. AND CERTAIN OF ITS AFFILIATES
LIQUIDATION ANALYSIS

APPENDIX E
TO
DISCLOSURE STATEMENT
OF EXCEL MARITIME CARRIERS LTD. AND CERTAIN OF ITS AFFILIATES
FINANCIAL PROJECTIONS

APPENDIX F
TO
DISCLOSURE STATEMENT
OF EXCEL MARITIME CARRIERS LTD. AND CERTAIN OF ITS AFFILIATES
AUDITED FINANCIAL STATEMENTS FOR FISCAL YEAR 2011

APPENDIX G
TO
DISCLOSURE STATEMENT
OF EXCEL MARITIME CARRIERS LTD. AND CERTAIN OF ITS AFFILIATES
UNAUDITED FINANCIAL STATEMENTS FOR FISCAL YEAR 2012

APPENDIX H
TO
DISCLOSURE STATEMENT
OF EXCEL MARITIME CARRIERS LTD. AND CERTAIN OF ITS AFFILIATES
PENDING LITIGATION AS OF NOVEMBER 18, 2013

	Defendant (debtor entity)	Type	Jurisdiction	Date of the occurrence of the event giving rise to the claim	Claimant	Amount claimed in \$ (unless otherwise indicated)**
1.	CASTALIA SERVICES LTD.	Cargo Claim	Peru	04.04.2008	San Fernando S.A.	45,000.00
2.	EXCEL MARITIME CARRIERS LTD. <i>et al.</i>	Employee Claim	Greece	Action served: 05.10.2011 Action reinstated and served: 10.07.2012	Dimos Iliopoulos	180,000 EUR 20,000 EUR 56,267.32
3.	GRAIN EXPRESS SHIPCO LLC	Cargo Claim	UAE	06.04.2012	Omar Insurance Co.	\$15,309.70
4.	HARVEY DEVELOPMENT CORP.	Cargo Claim	China	10.08.2013	PICC P&C Kaiyuan Branch	RMB 94,239.00
5.	IRON BRADYN SHIPCO LLC	Cargo Claim	Italy	15.06.2010	Luis Dreyfus Commodities Italia S.p.A.	183,378.00
6.	IRON KALYPSO SHIPCO LLC	Cargo Claim	Pakistan	21.12.2012	EFU General Insurance Ltd	10,600.00
7.	MARIAS TRADING INC.	Cargo Claim	England	09.07.2010	WK Webster	40,000.00

**The Debtors believe that a number of these claims are covered in whole or in part by the Debtors' existing insurance coverage.