

THIS IS NOT A SOLICITATION OF ACCEPTANCE OF THE PLAN. ACCEPTANCE MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT HAS BEEN SUBMITTED FOR APPROVAL, BUT HAS NOT YET BEEN APPROVED BY THE BANKRUPTCY COURT.

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: ) Chapter 11  
 )  
PRINCE SPORTS, INC., et al.,<sup>1</sup> ) Case No. 12-11439 ( )  
 )  
Debtors. ) (Joint Administration Requested)

**DISCLOSURE STATEMENT IN SUPPORT  
OF CHAPTER 11 PLAN OF REORGANIZATION**

May 1, 2012

**PACHULSKI STANG ZIEHL & JONES LLP**

Laura Davis Jones (DE Bar No. 2436)  
David M. Bertenthal (CA Bar No. 167624)  
Joshua M. Fried (CA Bar No. 181541)  
919 North Market Street, 17th Floor  
P.O. Box 8705  
Wilmington, Delaware 19801 (Courier 19801)  
Telephone: (302) 652-4100  
Facsimile: (302) 652-4400

Attorneys for the Debtors and Debtors-in-Possession

- Voting Record Date: [·], 2012.
- Voting Deadline: [·] [·], 2012 at [·]:00 [·].m. prevailing Eastern Time.
- Deadline to file and serve objections to plan confirmation: [·] [·], 2012 at [·]:00 [·].m. prevailing Eastern Time.
- Hearing on confirmation of Plan: [·] [·], 2012 at [·]:00 [·].m. prevailing Eastern Time.

<sup>1</sup> The Debtors in these Chapter 11 Cases and the last four digits of each Debtors' federal tax identification numbers are: Prince Sports, Inc. (3936); Prince Sports Holdings, LLC (4436); Prince Sports Management Holdings, LLC (0407); and Prince Sports Acquisition Holdings Corporation (0819). The location of the Debtors' headquarters and the service address for each of the Debtors is 1 Advantage Court, Bordentown NJ, 08505.

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**THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED BY THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE UNDER SECTION 1125 OF THE BANKRUPTCY CODE FOR USE IN THE SOLICITATION OF ACCEPTANCES OF THE CHAPTER 11 PLAN DESCRIBED HEREIN. ACCORDINGLY, THE FILING AND DISTRIBUTION OF THIS DISCLOSURE STATEMENT IS NOT INTENDED, AND SHOULD NOT BE CONSTRUED, AS A SOLICITATION OF ACCEPTANCES OF SUCH PLAN. THE INFORMATION CONTAINED HEREIN SHOULD NOT BE RELIED UPON FOR ANY PURPOSE BEFORE A DETERMINATION BY THE BANKRUPTCY COURT THAT THIS DISCLOSURE STATEMENT CONTAINS “ADEQUATE INFORMATION” WITHIN THE MEANING OF SECTION 1125 OF THE BANKRUPTCY CODE.**

Prince Sports, Inc., Prince Sports Acquisition Holdings Corporation, Prince Sports Holdings, LLC and Prince Sports Management Holdings, LLC, as debtors and debtors in possession in these Chapter 11 Cases, hereby jointly file this *Disclosure Statement in Support of Chapter 11 Plan of Reorganization* (the “**Disclosure Statement**”). The Disclosure Statement describes the *Chapter 11 Plan of Reorganization* (the “**Plan**”), filed on May 1, 2012 and jointly proposed by both of the Debtors<sup>1</sup>. A copy of the Plan is attached to this Disclosure Statement as Exhibit A.

The Plan is the product of extensive negotiations among the Debtors and the Prepetition Lender, and the Prepetition Lender has consented to their treatment under the Plan. The Plan provides for (i) the reorganization of Prince Sports, Inc. and Prince Sports Acquisition Holdings Corporation and (ii) the dissolution of Prince Sports Holdings, LLC and Prince Sports Management Holdings, LLC and the treatment of all Claims against and Interests in the Debtors. The Plan and Disclosure Statement have been filed in the Debtors’ jointly-administered Chapter 11 Cases, which are currently pending in the United States Bankruptcy Court for the District of Delaware. The Plan is proposed by the Debtors as a consolidated plan under chapter 11 of the Bankruptcy Code.

If you have a Claim against or Interest in any Debtor, you should read the Disclosure Statement and Plan carefully. **The Debtors urge all holders of Claims in Impaired Classes receiving Ballots to accept the Plan.**

This Disclosure Statement is designed to provide adequate information to enable Holders of Claims against and Interests in the Debtors to make an informed judgment on the Plan. All Holders of Claims and Interests are hereby advised and encouraged to read this Disclosure Statement and the Plan in their entirety before voting to accept or reject the Plan. The Plan summary and statements made in this Disclosure Statement are qualified in their entirety by reference to the Plan of even date herewith, other appendices annexed hereto and other documents referenced as filed with the Bankruptcy Court before or concurrently with the filing of this Disclosure Statement. Furthermore, the projected financial information contained herein has not been the subject of an audit. Subsequent to the date hereof, there can be no assurance

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<sup>1</sup> Capitalized terms used herein but not otherwise defined shall have the meanings given to them in the Plan.

that: (a) the information and representations contained herein will continue to be materially accurate; or (b) this Disclosure Statement contains all material information.

All holders of Impaired Claims or Interests who are entitled to vote on the Plan should read and consider carefully the matters described in this Disclosure Statement as a whole, including the Section entitled "RISK FACTORS," prior to voting on the Plan. In making a decision to accept or reject the Plan, each Holder of a Claim or Interest must rely on its own examination of the Debtors as described in this Disclosure Statement and the terms of the Plan, including the merits and risks involved. In addition, Confirmation and consummation of the Plan are subject to conditions precedent that could lead to delays in consummation of the Plan. There can be no assurance that each of these conditions will be satisfied or waived (as provided in the Plan) or that the Plan will be consummated. Even after the Effective Date, distributions under the Plan may be subject to substantial delays for Holders of Claims and Interests that are Disputed.

Following a hearing on [-], this Disclosure Statement has been approved by order of the Bankruptcy Court as containing adequate information of a kind and in sufficient detail to enable Holders of Claims or Interests to make an informed judgment with respect to voting to accept or reject the Plan in accordance with section 1125 of the Bankruptcy Code. **However, the Bankruptcy Court's approval of this Disclosure Statement does not constitute a recommendation or determination by the Bankruptcy Court with respect to the merits of the Plan.**

With the exception of historical information, some matters discussed herein, including the projections and valuation analysis described herein are "forward looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such forward looking statements are subject to risks, uncertainties and other factors which could cause actual results to differ materially from future results expressed or implied by such forward looking statements.

**No party is authorized by the Debtors to give any information or make any representations with respect to the Plan other than that which is contained in this Disclosure Statement. No representations or information concerning the Debtors, their future business operations or the value of their properties have been authorized by the Debtors, other than as set forth herein. Any information or representations given to obtain your acceptance or rejection of the Plan which are different from or inconsistent with the information or representations contained herein and in the Plan should not be relied upon by any Holders of Claims or Interests in voting on the Plan.**

This Disclosure Statement has been prepared in accordance with section 1125 of the Bankruptcy Code and not in accordance with federal or state securities laws or other applicable nonbankruptcy law. Entities holding or trading in or otherwise purchasing, selling or transferring Claims against, Interests in, or securities of, the Debtors should evaluate this Disclosure Statement only in light of the purpose for which it was prepared.

This Disclosure Statement has not been approved or disapproved by the Securities and Exchange Commission (the "**Commission**") or by any state securities commission or similar

public, governmental or regulatory authority, and neither such Commission nor any such authority has passed upon the accuracy or adequacy of the statements contained herein.

Each Holder of a Claim or Interest should, therefore, consult with its own legal, business, financial and tax advisors as to any such matters concerning the solicitation, the Plan or the transactions contemplated thereby.

The terms of the Plan shall govern in the event of any inconsistency between the Plan and the summaries thereof contained in this Disclosure Statement.

This Disclosure Statement, the Plan (and the other appendices hereto), the accompanying forms of Ballot, if any, and the related materials delivered together herewith are being furnished by the Debtors to their respective Holders of Impaired Claims and Impaired Interests pursuant to § 1125, in connection with the solicitation by the Debtors of votes to accept or reject the Plan (and the transactions contemplated thereby), as described herein.

**The Bankruptcy Court has scheduled the Confirmation Hearing to commence on [·] [·], 2012, at [·]:00 [·].m. (prevailing Eastern Time) before the Honorable [·] in the United States Bankruptcy Court for the District of Delaware, located at 824 North Market Street, [·]th Floor, Wilmington, Delaware. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or any adjournment of such hearing.**

**Objections to Confirmation of the Plan must be filed and served on or before [·] [·], 2012, at [·]:00 [·].m. (prevailing Eastern Time). Objections that are not timely filed and served may not be considered by the Bankruptcy Court.**

**To be counted, Ballots must be received by the Debtors' Claims Agent, [·], no later than [·]:00 [·].m. (prevailing Eastern Time) on [·][·], 2012.**

#### **INCORPORATION OF DOCUMENTS BY REFERENCE**

This Disclosure Statement incorporates by reference certain documents relating to the Debtors that are not presented herein or delivered herewith.

The following documents are incorporated by reference herein in their entirety:

Each Debtor's *Schedules of Assets and Liabilities* filed in the Chapter 11 Cases, including all amendments thereto filed through the date of the approval of this Disclosure Statement.

Each Debtor's *Statement of Financial Affairs* filed in the Chapter 11 Cases, including all amendments thereto filed through the date of the approval of this Disclosure Statement.

The Debtors' Monthly Operating Reports, including all amendments thereto filed through the date of the approval of this Disclosure Statement.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein, or contained in this Disclosure Statement, shall be deemed to be modified or superseded for purposes of this Disclosure Statement to the extent that a statement contained herein modifies or supersedes such statement.

#### **AVAILABLE INFORMATION**

Certain documents filed in the Chapter 11 Cases are available through the Bankruptcy Court at the following website: <http://www.deb.uscourts.gov/> and through the Debtors' Claims Agent at the following website: [·].

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## **EXHIBITS**

EXHIBIT A    Prepackaged Joint Plan of Reorganization

EXHIBIT B    Financial Projections

EXHIBIT C    Liquidation Analysis

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## I. INTRODUCTION AND SUMMARY

The following introduction and summary is qualified in its entirety by, and should be read in conjunction with, the more detailed information and financial statements and notes thereto appearing elsewhere in this Disclosure Statement. References herein to a “fiscal” year refer to the fiscal year of the Debtors ending the last day of December in the calendar year indicated. Capitalized terms used but not defined in the Disclosure Statement have the meanings assigned to them in the Plan. Unless otherwise noted, section (§) references are to title 11 of the United States Code (the “*Bankruptcy Code*”).

The Debtors are sending you this Disclosure Statement because the Debtors are asking you to vote to approve the Plan. This Disclosure Statement describes certain aspects of the Plan, including the treatment of the Holders of the Claims and Interests, and also describes certain aspects of the Company’s operations, financial projections, and other related matters.

Pursuant to the provisions of the Bankruptcy Code, only Classes of Claims and Interests that are “impaired” under the Plan may vote to accept or reject the Plan. Generally, a claim or interest is impaired under a plan if the holder’s legal, equitable, or contractual rights are changed under such plan. In addition, if the holders of claims or interests in an impaired class do not receive or retain any property under the plan on account of such claims or interests, such impaired class is deemed to have rejected the plan and will not be afforded an opportunity to vote to accept or reject the plan.

Under the Plan, Claims in Classes 5 and 6 are Impaired. Holders of Interests in Class 7 will receive no distribution, and, accordingly, such Interest Holders are deemed to reject the Plan, and their votes are not being solicited. Under the Plan, Claims in Classes 1, 2, 3 and 4 are Unimpaired and conclusively deemed to have accepted the Plan, and their votes are likewise not being solicited. ACCORDINGLY, A BALLOT FOR ACCEPTANCE OR REJECTION OF THE PLAN IS BEING PROVIDED ONLY TO HOLDERS OF CLAIMS IN CLASSES 5 (PREPETITION LENDER SECURED CLAIMS) AND 6 (GENERAL UNSECURED CLAIMS).

### 1.1 *Overview of Chapter 11*

Chapter 11 is the principal reorganization chapter of the Bankruptcy Code. Pursuant to chapter 11, a debtor in possession attempts to reorganize its business and financial affairs for the benefit of the debtor, its creditors, and other parties in interest. Formulation of a plan of reorganization is the principal purpose of a chapter 11 case. The chapter 11 plan sets forth the means for satisfying the Claims of creditors against and interests of equity security holders in the debtor.

The commencement of a chapter 11 case creates an estate comprising all the legal and equitable interests of the debtor in property as of the date the petition is filed. Unless the Bankruptcy Court orders the appointment of a trustee, a chapter 11 debtor may continue to

operate its business and control the assets of its estate as a debtor in possession. The Debtors have so operated since the Petition Date.

The filing of a chapter 11 petition also triggers the automatic stay, which is set forth in § 362. The automatic stay essentially halts all attempts to collect pre-petition Claims from the debtor or to otherwise interfere with the debtor's business or its estate.

## 1.2 *Solicitation*

On May 1, 2012, the Debtors filed the Plan with the United States Bankruptcy Court for the District of Delaware. The Debtors filed this Disclosure Statement with the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code and in connection with the solicitation with respect to the Plan.

On [·] [·], 2012, the Bankruptcy Court determined that this Disclosure Statement contains "adequate information" in accordance with § 1125. Pursuant to § 1125(a)(1), "adequate information" is defined as information of a kind, and in sufficient detail, as far as reasonably practicable in light of the nature and history of the Debtors and the condition of the Debtors' books and records, that would enable a hypothetical reasonable investor typical of Holders of Claims or Interests of the relevant class to make an informed judgment about the Plan.

The Bankruptcy Court has scheduled a hearing to consider Confirmation of the Plan before the Honorable [·], United States Bankruptcy Judge on [·][·], 2012 at [·]:00 [·].m. (prevailing Eastern Time). The hearing may be adjourned from time to time without further notice other than by announcement in the Bankruptcy Court on the scheduled date of such hearing. Any objections to Confirmation of the Plan must be in writing and must be filed with the Clerk of the Bankruptcy Court and served on the counsel listed below to ensure receipt by them on or before [·][·], 2012 at [·]:00 p.m. (prevailing Eastern Time). Bankruptcy Rule 3007 governs the form of any such objection. Counsel on whom objections must be served are:

(a) To the Debtors:

Pachulski Stang Ziehl & Jones LLP  
Attn: Laura Davis Jones, Esq.  
919 North Market Street, 17th Floor  
Wilmington, Delaware  
Telephone: (302) 652-4100  
Facsimile: (302) 652-4400

(b) To the Prepetition Lender and the DIP Lender:

DLA Piper LLP (US)  
Attn: Richard A. Chesley, Esq.  
Attn: Matthew M. Murphy, Esq.  
203 North LaSalle Street, Suite 1900  
Chicago, Illinois 60601-1293  
Telephone: (312) 368-4000

Facsimile: (630) 630-5330

and

DLA Piper LLP (US)  
Attn: Stuart Brown, Esq.  
919 N. Market Street, 15th Floor  
Wilmington, Delaware 19801  
Telephone: (302) 468-5700  
Facsimile: (302) 778-7913

(c) To the United States Trustee:

United States Trustee  
844 King Street, Room 2207  
Lockbox #35  
Wilmington, DE 19899-0035

### 1.3 *Recommendation*

THE DEBTORS RECOMMEND THAT EACH PERSON ENTITLED TO VOTE ON THE PLAN VOTE TO ACCEPT THE PLAN.

With respect to the Plan, the Debtors believe that: (i) the Plan provides the best possible result for the Holders of Impaired Claims and Impaired Interests; (ii) with respect to each Class of Impaired Claims or Impaired Interests, the distributions under the Plan are greater than the amounts that would be received if the Debtors were to liquidate under chapter 7 of the Bankruptcy Code; and (iii) acceptance of the Plan is in the best interest of Holders of Impaired Claims or Impaired Interests

In arriving at their conclusions, the Debtors considered (i) the limited alternatives available to the Debtors to restructure their respective debts, (ii) the Debtors' estimated liquidation value, and (iii) the rights, in both payment and security position, of all Holders of Claims and Interests.

### 1.4 *Disclaimers*

THIS DISCLOSURE STATEMENT CONTAINS INFORMATION THAT MAY BEAR UPON YOUR DECISION TO ACCEPT OR REJECT THE DEBTORS' PROPOSED PLAN. PLEASE READ THIS DOCUMENT WITH CARE. THE PURPOSE OF THE DISCLOSURE STATEMENT IS TO PROVIDE "ADEQUATE INFORMATION" OF A KIND, AND IN SUFFICIENT DETAIL, AS FAR AS IS REASONABLY PRACTICABLE IN LIGHT OF THE NATURE AND HISTORY OF THE DEBTORS AND THE CONDITION OF THE DEBTORS' BOOKS AND RECORDS, THAT WOULD ENABLE A HYPOTHETICAL REASONABLE INVESTOR TYPICAL OF HOLDERS OF CLAIMS OR INTERESTS OF THE RELEVANT CLASS TO MAKE AN INFORMED JUDGMENT CONCERNING THE PLAN.

FOR THE CONVENIENCE OF CREDITORS, THIS DISCLOSURE STATEMENT SUMMARIZES THE TERMS OF THE PLAN, BUT THE PLAN ITSELF QUALIFIES ANY SUMMARY. IF ANY INCONSISTENCY EXISTS BETWEEN THE PLAN AND THE DISCLOSURE STATEMENT, THE TERMS OF THE PLAN ARE CONTROLLING.

NO REPRESENTATIONS CONCERNING THE DEBTORS' FINANCIAL CONDITION OR ANY ASPECT OF THE PLAN ARE AUTHORIZED BY THE DEBTORS OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT. ANY REPRESENTATIONS OR INDUCEMENTS MADE TO SECURE YOUR ACCEPTANCE OR REJECTION THAT ARE OTHER THAN AS CONTAINED IN OR INCLUDED WITH THIS DISCLOSURE STATEMENT SHOULD NOT BE RELIED UPON BY YOU IN ARRIVING AT YOUR DECISION.

THE FINANCIAL INFORMATION CONTAINED HEREIN, UNLESS OTHERWISE INDICATED, IS UNAUDITED. MOREOVER, BECAUSE OF THE DEBTORS' FINANCIAL DIFFICULTIES, AS WELL AS THE COMPLEXITY OF THE DEBTORS' FINANCIAL MATTERS, THE BOOKS AND RECORDS OF THE DEBTORS, UPON WHICH THIS DISCLOSURE STATEMENT IN PART IS BASED, MAY BE INCOMPLETE OR INACCURATE. HOWEVER, REASONABLE EFFORT HAS BEEN MADE TO ENSURE THAT ALL SUCH INFORMATION IS FAIRLY PRESENTED.

PACHULSKI STANG ZIEHL & JONES LLP ("PSZ&J") IS GENERAL INSOLVENCY COUNSEL TO THE DEBTORS. PSZ&J HAS RELIED UPON INFORMATION PROVIDED BY THE DEBTORS IN CONNECTION WITH PREPARATION OF THIS DISCLOSURE STATEMENT. ALTHOUGH PSZ&J HAS PERFORMED CERTAIN LIMITED DUE DILIGENCE IN CONNECTION WITH THE PREPARATION OF THIS DISCLOSURE STATEMENT, COUNSEL HAS NOT INDEPENDENTLY VERIFIED ALL OF THE INFORMATION CONTAINED HEREIN.

THE CONTENTS OF THIS DISCLOSURE STATEMENT SHOULD NOT BE CONSTRUED AS LEGAL, BUSINESS OR TAX ADVICE. EACH CREDITOR OR INTEREST HOLDER SHOULD CONSULT HIS OR HER OWN LEGAL COUNSEL AND ACCOUNTANT AS TO LEGAL, TAX AND OTHER MATTERS CONCERNING HIS OR HER CLAIM.

### 1.5 *Summary of the Plan*

The Plan is the product of extensive negotiations among the Debtors and the Prepetition Lender. The Plan contemplates a reorganization of the Debtors. Other Secured Claims, Other Priority Claims, Intercompany Claims and Subsidiary Interests are Unimpaired. Prepetition Lender Secured Claims are Impaired, but the Holders of Prepetition Lender will receive New Equity Interests in the Reorganized Debtors. General Unsecured Claims are Impaired, but the Holders of General Unsecured Claims will receive their pro rata share of the General Unsecured Claim Plan Distribution and may also receive a Cash Distribution. Interests and Interest Related Claims are Impaired, and because Holders of Interests and Interest Related Claims will not receive any distribution they are deemed to have rejected the Plan.

**The Debtors believe the Plan treats all Holders of Claims and Interests fairly and equitably, in observance of the absolute priority rule of section 1129(b)(2) of the Bankruptcy Code. The Debtors believe the Plan provides all Holders of Claims and Interests with at least as much as they would receive in a chapter 7 liquidation of the Debtors and provides the Holders of General Unsecured Claims substantially more than they would receive in a chapter 7 liquidation. Because, among other things, certain contemplated settlements and objections to Claims have not been resolved, the Debtors are not yet certain what the total amount of Allowed General Unsecured Claims will be.**

Set forth in detail elsewhere in this Disclosure Statement is a description of the technical aspects of the classification of Claims and Interests, the relative allocations of property to Holders of such Claims and Interests, the methodology as to how such property is to be distributed, the risks inherent in the proposed Plan, and the applicable bankruptcy and tax consequences of the reorganization of the Debtors. The Plan is complex and is the product of lengthy discussions between the Debtors and the Prepetition Lenders and is based upon the Debtors' analysis of all Claims and Interests asserted or known as of the date hereof, an evaluation of the relative merits of potential conflicting Claims and Interests and a compromise between such Claims and Interests consistent with the goals of the Bankruptcy Code. The Debtors believe that the following broad overview of what Holders of Claims and Interests will receive under the Plan will be helpful in your consideration of whether you wish to accept or reject the Plan. This summary does not purport to be complete and should only be relied upon for voting purposes when read in conjunction with the Plan and the Disclosure Statement in their entirety. In the event of any inconsistency between the Plan, on the one hand, and this Disclosure Statement, on the other hand, the Plan shall control and take precedence with respect to such inconsistency.

The following Table 1 sets forth a quick reference guide to the classification and treatment of Allowed Claims against and Allowed Interests in the Debtors. Table 1 is a summary only and is subject in all respects to the specific provisions of the Plan.

<b>Table 1</b> <b>Summary of Claims Against and Interests in the Debtors</b>			
<b>Class</b>	<b>Claim or Interest</b>	<b>Estimated Amount of Allowed Claims<sup>2</sup></b>	<b>General Description</b>
1	Other Secured Claims	[-]	"Other Secured Claims" shall mean Claims other than the DIP Claims or the Prepetition Lender Claims that are secured by a Lien on property in which the Debtors have an interest, which Liens are valid, perfected and enforceable under applicable law or by reason of a Final Order of the Bankruptcy Court, or that are subject to setoff under § 553, to the extent of the value of the Claim Holder's interest in the Debtors' interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to § 506(a).
2	Other Priority Claims	[-]	"Other Priority Claim" shall mean a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy

<sup>2</sup> Unless otherwise indicated, the total amounts of Allowed Claims are estimated as of the Petition Date.



<b>Table 1</b> <b>Summary of Claims Against and Interests in the Debtors</b>			
<b>Class</b>	<b>Claim or Interest</b>	<b>Estimated Amount of Allowed Claims<sup>2</sup></b>	<b>General Description</b>
			Code other than a Priority Tax Claim or an Administrative Claim.
3	Intercompany Claims	[-]	“Intercompany Claim” shall mean a Claim of any Debtor against any other Debtor, any Affiliate of a Debtor, any member of a Debtor, any partner of a Debtor or any direct or indirect holder of an interest in any Debtor or its Affiliate regardless of whether such Claim arose before, on or after the Petition Date (subject to any releases provided herein).
4	Subsidiary Interests	N/A	“Subsidiary Interests” shall mean, collectively, all of the issued and outstanding shares of stock, membership interests, other equity interests or other instruments evidencing an ownership interest in a Subsidiary Debtor as of the Effective Date, and all options, warrants and rights (whether fixed or contingent, matured or unmatured, disputed or undisputed), contractual, legal, equitable or otherwise, to acquire shares of stock, membership interests or other equity interests in a Subsidiary Debtor, as of the Effective Date.
5	Prepetition Lender Secured Claims	\$65,000,000	“Prepetition Lender Secured Claims” shall mean the secured portion of the Prepetition Lender Claims under section 506(a) of the Bankruptcy Code.
6	General Unsecured Claims	[-]	“General Unsecured Claim” shall mean any Claim that is not a DIP Claim, Administrative Claim, Priority Tax Claim, Other Secured Claim, Other Priority Claim, Intercompany Claim and Prepetition Lender Secured Claim; <u>provided that</u> General Unsecured Claims shall include Prepetition Lender Deficiency Claims.
7	Interests and Interest Related Claims	N/A	“Interest” shall mean any “equity security” in a Debtor, as such term is defined in § 101(16), including any stock, partnership, membership interest, warrants, options or other rights to purchase or acquire any equity interest in a Debtor. “Interest Related Claim” shall mean any Claim, including pursuant to § 510(b), against a Debtor arising from the purchase or sale of an Interest in such Debtor, or any Claim against a Debtor by a Person that asserts equitable or contractual rights of reimbursement, contribution or indemnification arising from such Claim.

Table 2 is a summary of estimated recoveries for the different Classes under the Plan and is subject in all respects to the Plan.

<b>Table 2</b> <b>Projected Treatment of Claims Against and Interests in the Debtor</b>		
<b>If you have an Allowed Claim in this Class:</b>	<b>You are expected to receive this treatment:</b>	<b>Your estimated percentage recovery is:</b>
Class 1 Other Secured Claims	Except to the extent a Holder of an Other Secured Claim has been paid by the Debtors prior to the Effective Date or the Holder of an Allowed Other Secured Claim agrees otherwise, each Holder of an Allowed Other Secured Claim shall receive in full and final satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Other Secured Claim, in the discretion of the Debtors, with the consent of the Prepetition Lender and DIP Lender, one of the following treatments: (i) payment of the Allowed Other Secured Claim in full in Cash on the later of (x) the Effective Date, and (y) the date on which such Other Secured Claim becomes an Allowed Other Secured Claim, (ii) delivery to the Holder of the Allowed Other Secured Claim the collateral securing such Allowed Other Secured Claim or (iii) the Holder shall retain its Lien on such property and such Allowed Other Secured Claim shall be reinstated pursuant to section 1129 of the Bankruptcy Code. Notwithstanding the foregoing, at the discretion of the Reorganized Debtors any Allowed Other Secured Claim that is a Claim for taxes by a governmental unit may be treated in accordance with section 3.3 of the Plan pursuant to §1129(a)(9)(D).	100%
Class 2 Other Priority Claims	Each Holder of an Allowed Other Priority Claim shall receive on or as soon as practicable after the Effective Date, or when otherwise due in the ordinary course, one of the following treatments at the option of the Debtors: (a) Cash in an amount equal to the amount of such Allowed Other Priority Claim; (b) with the Consent of the Prepetition Lender and DIP Lender, such other treatment as may be agreed upon by such Holder and the Debtors or otherwise determined by order of the Bankruptcy Court; or (c) such other treatment as may leave such Allowed Other Priority Claim Unimpaired.	100%

<b>Table 2</b> <b>Projected Treatment of Claims Against and Interests in the Debtor</b>		
<b>If you have an Allowed Claim in this Class:</b>	<b>You are expected to receive this treatment:</b>	<b>Your estimated percentage recovery is:</b>
Class 3 Intercompany Claims	Intercompany Claims against each of the Debtors will be, in the discretion of the applicable Reorganized Debtor holding such Claim, (i) released, waived and discharged as of the Effective Date, or (ii) remain unimpaired. However, except for such Claims against a Released Party to the extent released pursuant to the provisions of Article 9, below, the Debtors will not release or waive any Intercompany Claim they may hold against a non-debtor, and any such Intercompany Claim shall remain an asset of the Estates and vest in the applicable Reorganized Debtor pursuant to section 6.2 of the Plan.	[·]%
Class 4 Subsidiary Interests	Class 4 Subsidiary Interests shall be unaffected by the Plan, except to the extent otherwise required by the Restructuring Transactions.	100%
Class 5 Prepetition Lender Secured Claims	Notwithstanding any provision to the contrary herein, upon entry of the Confirmation Order, all Prepetition Lender Secured Claims shall be allowed in full for all purposes in these Chapter 11 Cases, not subject to defense, offset, counterclaim, recoupment, reduction, subordination or recharacterization by the Debtors or any party in interest. On the Effective Date, each Holder of an Allowed Prepetition Lender Secured Claim shall receive in full satisfaction, settlement, release and discharge of and in exchange for such Claim, the Prepetition Lender Secured Claim Plan Distribution.	100% of the New Equity Interests in Reorganized Prince Sports Acquisition Holdings Corporation

**Table 2**  
**Projected Treatment of Claims Against and Interests in the Debtor**

If you have an Allowed Claim in this Class:	You are expected to receive this treatment:	Your estimated percentage recovery is:
Class 6 General Unsecured Claims	<p>Except to the extent the Holder of an Allowed General Unsecured Claim agrees otherwise, each Holder of an Allowed General Unsecured Claim shall receive in full and final satisfaction, settlement, release and discharge of, and in exchange for, such Allowed General Unsecured Claim, on the later of (i) the Effective Date and (ii) the Quarterly Distribution Date following the date on which such General Unsecured Claim becomes an Allowed General Unsecured Claim, its Pro Rata share of (x) the General Unsecured Claim Plan Distribution and (y) the Cash Distribution, with the amount of each Holder's pro rata share to be determined by a fraction, the numerator of which is equal to the amount of such Holder's Allowed General Unsecured Claim, and the denominator of which is equal to the aggregate amount of all Allowed General Unsecured Claims; provided, however, that the Cash Distribution shall only be available to a Holder of a General Unsecured Claim that grants the releases provided to the Released Parties pursuant to the Plan, but that in no circumstances shall the Holder of an Allowed General Unsecured Claim receive a Cash Distribution for such claim in excess of the Face Amount of such claim. To the extent that the Holder of a General Unsecured Claim does not grant the releases provided to the Released Parties pursuant to the Plan, such holder shall not be entitled to receive its pro rata share of the Cash Distribution. The Distribution of the Cash Distribution is a good faith compromise of any potential controversies that may exist and shall constitute the requisite consideration for the releases provided herein. Notwithstanding any provision to the contrary herein, upon entry of the Confirmation Order all Prepetition Lender Deficiency Claims shall be allowed in full for all purposes in these Chapter 11 Cases, not subject to defense, offset, counterclaim, recoupment, reduction, subordination or recharacterization by the Debtors or any party in interest. However, the Prepetition Lender shall be deemed to have waived its right to any Distribution by virtue of its Prepetition Lender Deficiency Claim on the Effective Date.</p>	[-]%

<b>Table 2</b> <b>Projected Treatment of Claims Against and Interests in the Debtor</b>		
<b>If you have an Allowed Claim in this Class:</b>	<b>You are expected to receive this treatment:</b>	<b>Your estimated percentage recovery is:</b>
Class 7 Interests and Interest Related Claims	No Distribution shall be paid or made under the Plan on account of any Interest or Allowed Interest Related Claim. On the Effective Date, all Interests in the Debtors, except the Subsidiary Interests, shall be deemed canceled, null and void, and of no force and effect.	0%

The Debtors believe that the Plan treats the respective Classes fairly and equitably in observance of the absolute priority rule of § 1129(b)(2). The Debtors believe that the Plan provides each Holder of a Claim or Interest of each Debtor with at least as much as it would receive if the corresponding Debtor were liquidated under Chapter 7 of the Bankruptcy Code, and provides each Holder of a General Unsecured Claim substantially more than it would receive if the corresponding Debtor were liquidated under Chapter 7 of the Bankruptcy Code.

#### 1.6 *Voting Eligibility and Procedures*

Table 3 provides a summary of the voting eligibility of Holders of Claims and Interests in each Class under the Plan, based on whether or not those Claims and Interests are Impaired or Unimpaired.

<b>Table 3</b> <b>Voting Eligibility Under the Plan</b>			
<b>Class</b>	<b>Description</b>	<b>Impairment</b>	<b>Entitled to vote?</b>
Class 1	Other Secured Claims	Unimpaired	NO (deemed to accept)
Class 2	Other Priority Claims	Unimpaired	NO (deemed to accept)
Class 3	Intercompany Claims	Unimpaired	NO (deemed to accept)
Class 4	Subsidiary Interests	Unimpaired	NO (deemed to accept)
Class 5	Prepetition Lender Secured Claims	Impaired	YES
Class 6	General Unsecured Claims	Impaired	YES
Class 7	Interests and Interest Related Claims	Impaired	NO (deemed to reject)

Some Holders of Claims and Interests might hold Impaired Claims or Interests in more than one Class and must vote separately for each Class. If you hold Claims or Interests in more than one Class you must cast a separate vote based on each individual Claim or Interest.

Please do not return any other documentation with your Ballot. For further information on casting a Ballot to vote on the Plan, please see Article XI of this Disclosure Statement.

#### 1.7 *Votes Required for Acceptance; Confirmation*

The Bankruptcy Code defines acceptance of a plan by Holders of an Impaired Class of Claims or Interests as acceptance by Holders of at least two-thirds in dollar amount, and more than one-half in number, of the Claims or Interests of that Class which actually cast ballots. The vote of a Holder of a Claim or Interest may be disregarded if the Bankruptcy Court determines,

after notice and hearing, that the acceptance or rejection was not solicited or procured in good faith.

In addition to this voting requirement, § 1129 requires that the Plan be accepted by each Holder of a Claim or Interest in an Impaired Class or that the Plan be found by the Bankruptcy Court to provide the Holder with at least as much value on account of its Claim or Interest as it would receive on a liquidation of the Debtors under chapter 7 of the Bankruptcy Code. If the Plan is not accepted by one or more Classes of Impaired Claims or Interest, the Debtors may nevertheless ask the Court to confirm the Plan despite such lack of acceptance if the Court finds that the Plan does not discriminate unfairly and is “fair and equitable” with respect to any such non-accepting Impaired Class. Refer to Article XI of the Disclosure Statement for a detailed discussion of the procedures by which the Plan may be confirmed based upon the votes of Holders of Impaired Claims.

Section 1129(b) provides that upon request of the proponent of the Plan, the Bankruptcy Court shall confirm the Plan despite the lack of acceptance by an Impaired Class or Classes if the Bankruptcy Court finds that (a) the Plan does not discriminate unfairly with respect to each non-accepting Impaired Class, (b) the Plan is “fair and equitable” with respect to each non-accepting Impaired Class, (c) at least one Impaired Class has accepted the Plan (without counting acceptances by insiders) and (d) the Plan satisfies the requirements set forth in § 1129(a) other than § 1129(a)(8). In general, § 1129(b) permits Confirmation notwithstanding non-acceptance by an Impaired Class if that Class and all more junior Classes are treated in accordance with the “absolute priority” rule, which requires that the dissenting Class be paid in full before a junior Class may receive anything under a Plan.

Confirmation of the Plan will make the Plan binding upon the Debtors and all Holders of Claims against and Interests in the Debtors and other parties in interest regardless of whether they have accepted the Plan, and such Holders of Claims and Interests will be prohibited from receiving payment from, or seeking recourse against, any assets that are distributed to other Holders of Claims or Interests under the confirmed Plan. In addition, Confirmation of the Plan will enjoin Holders of Claims and Interests from taking a wide variety of actions on account of a debt, Claim, liability, Interest or right that arose prior to the Confirmation Date. As of the Effective Date of the Plan, Confirmation will also operate as a discharge of all Claims against and Interests in the Debtors to the full extent authorized by § 1141(d). Section 1141(d) provides generally that, except as otherwise provided in the Plan or order confirming the Plan, Confirmation of the Plan (i) discharges the Debtors from any debt that arose before the date of such confirmation, including a debt of a kind specified under specified sections of the Bankruptcy Code (such as rejection damages Claims), whether or not a proof of Claim based on such debt is filed or deemed filed, whether or not such Claim is Allowed, and whether or not the Holder of such Claim has accepted the Plan, and (ii) terminates all rights and interests of Interest Holders as provided for in the Plan.

### 1.8 *Effective Date of the Plan*

The Plan will not be consummated immediately upon Confirmation, but only upon the Effective Date. The Effective Date will not occur unless various conditions to the occurrence of the Effective Date are satisfied (or waived to the extent permitted by, and in accordance with the

terms of, the Plan). The Confirmation Order may be vacated if the conditions to the Effective Date are not timely met or waived.

The implementation of the Plan involves certain risks. For a discussion of these risks, see Article XI, entitled "RISK FACTORS."

The Debtors currently believe that all conditions to the occurrence of the Effective Date of the Plan will be satisfied, and that the Effective Date of the Plan is likely to occur by [·] [·], 2012.

### 1.9 *Sources of Information*

Except as otherwise expressly indicated, the portions of this Disclosure Statement describing the Debtors, their business, properties and management, and the Plan have been prepared from information furnished by the Debtors.

The statements contained in this Disclosure Statement are made as of the date hereof unless another time is specified, and neither the delivery of this Disclosure Statement nor any exchange of rights made in connection with it shall, under any circumstances, create an implication that there has been no change in the facts set forth herein since the date of this Disclosure Statement.

No statements concerning the Debtors, the value of their property, or the value of any benefit offered to the Holder of a Claim or Interest in connection with the Plan should be relied on other than as set forth in this Disclosure Statement. In arriving at a decision, parties should not rely on any representation or inducement made to secure their acceptance or rejection that is contrary to information contained in this Disclosure Statement. Any such additional representations or inducements should be reported immediately to counsel for the Debtors, Laura Davis Jones, Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, Delaware 19801, Telephone: (302) 652-4100, Facsimile: (302) 652-4400, E-mail: [ljones@pszjlaw.com](mailto:ljones@pszjlaw.com).

## II. BACKGROUND

### 2.1 *Overview of the Debtors and Their Operations*

Prince Sports, Inc. ("Prince") and its debtor affiliates (together with Prince, the "Company") constitute a premier branded sporting goods company that develops, sources and markets racquet sports equipment, footwear, apparel and accessories for tennis and indoor court sports, including squash and racquetball. The Company enjoys leading market shares across a number of these categories worldwide. The Company also licenses the Prince trademark in certain countries for apparel, footwear and accessories, and also licenses its proprietary technology patents for application in non-racquet sports categories.

Founded in 1970, Prince has a 42-year track record of developing premium quality products for the racquet sports industry. In August 2007, Nautic Partners LLC ("Nautic") acquired the Company from Lincolnshire Management, Inc. ("Lincolnshire"). Lincolnshire acquired the Company from Benneton Group S.p.A. ("Benneton") in 2003, where the business

had been managed as part of a recreational sports portfolio along with other brands, including Rollerblade (which manufactures in-line skates and related accessories) and Nordica (which manufactures skis and related equipment). The Company pioneered many innovative designs, including the “oversized” racquet, the “longbody” racquet, and technology for racquet applications such as Triple Threat, O3 and EXO3. The Company’s brands include Prince (tennis and squash racquets and other equipment and accessories, apparel and footwear), Viking Athletics (platform tennis equipment), and Ektelon (racquetball equipment, apparel and accessories).

Prince sells its products through an extensive sales force of representatives and distributors in around 50 major countries reaching over 5,000 retailers globally. Prince’s largest market is in the United States, where the Company services specialty retail stores in addition to more traditional retail channels including national and regional sporting goods chains. However, the Company has extensive sales, research and development, and sourcing operations worldwide.

The Company has four product lines that are designed, developed, sourced and marketed through the Company’s global operations group and then sold worldwide through the Company’s local operating groups. The Company’s four products lines are described below.

The Company’s four product lines are (1) Prince Tennis; (2) Prince Squash; (3) Racquetball (through the Company’s Ektelon brand); and (4) Platform Tennis (through the Company’s Viking Athletics brand).

*Prince Tennis* – Prince Tennis products include racquets and replacement racquet components (including strings, grips, and accessories), tennis balls, equipment bags, footwear, and tennis ball machines. Additionally, the Company provides “Play and Stay” products, which are racquets, balls and accessories specifically targeted toward the 10-and-under tennis format. The Company produced, among other things, the first “oversize” and “longbody” racquets; the O3 tennis racquet technology; the “Natural Foot Shape” tennis shoe offering a more anatomical fit more aligned with the foot than typical tennis shoes; the T22 tennis shoe, which is a leading tennis shoe in the market; the first “synthetic gut” strings, and the first electronic ball machines. Prince Tennis has sponsored and continues to sponsor some of the sport’s most elite athletes, including, historically, Jennifer Capriati, Patrick Rafter, Jimmy Connors, Martina Navratilova, and currently, Gael Monfils, David Ferrer, Vera Zvonereva, and the Bryan Brothers, among other players. The Company also works closely with local level organizations throughout the country to develop grassroots programs designed to provide opportunities for the sport’s next generation. For the fiscal year 2011, worldwide sale of tennis racquets related tennis equipment and accessories generated approximately \$59 million, or approximately 83% of the Company’s revenue.

*Prince Squash* – Prince Squash is an established leader in the sport of squash and offers racquets, squash balls, equipment bags, footwear, eyewear and stringing machines. The Company owns patents on several technological innovations in racquet frames, strings, and mounting designs, including the Company’s EXO3 design, which utilizes large holes and string suspension to deliver racquets with the largest hitting area on the market.



*Racquetball* – The Company’s Ektelon brand designs and sources products for racquetball, including racquets, balls, gloves, footwear, eyewear and accessories. Ektelon has introduced many revolutionary technologies and programs to the sport of racquetball. Ektelon innovations include oversized racquetball racquets, the Racquet Taper System, Power Ring® racquets and Total Racquet Customization, VisionGrip and O3. Ektelon was founded in 1964 through the development of aluminum tennis racquet and racquet stringing machine in San Diego, California, and was acquired by Prince Manufacturing, Inc. in 1987. Ektelon’s balls are the official racquetballs of several national and international racquetball associations, tours and leagues.

*Platform Tennis* – Viking Athletics was founded in 1995 by David Kjeldsen. The Company acquired Viking Athletics in March 2008. Viking Athletics produces platform tennis paddles, balls, gloves and accessories, through a network of authorized dealers. Viking’s OZ(tm) paddle has been the sport’s best selling paddle for twelve consecutive years, and currently over 70% of the top men and 60% of the top women players in the world use Viking paddles. Viking enjoys a dominant ball market share position, having sold over half of all platform tennis balls sold during 2007. Viking’s platform tennis balls are the official ball of all American Platform Tennis Association National Championships through 2013.

For the fiscal year 2011, sales of the Company’s squash, racquetball, and platform tennis products generated approximately \$12.0 million, or approximately 17% of the Company’s sales.

## *2.2 The Debtors’ Corporate Structure and Management*

Prince is a wholly-owned subsidiary of Prince Sports Acquisition Holdings Corporation. (“Acquisition”), which itself is a wholly-owned subsidiary of Prince Sports Holdings, LLC (“Holdings”). Holdings in turn is a wholly owned subsidiary of Prince Sports Management Holdings, LLC (“Management Holdings”), which is 94% owned by Nautic with the remaining 6% of Management Holdings owned by former lenders, employees and former employees of the Company. Neither Acquisition, Holdings nor Management Holdings conduct any operations.

In addition, Prince owns several non-debtor foreign subsidiaries incorporated in Taiwan, China, the United Kingdom, France and Italy. These foreign subsidiaries provide the operations described above in the discussion of the Company’s Global Operations.

## *2.3 Financing and Significant Indebtedness*

As summarized below, the Debtors currently owe a total of approximately \$65,000,000 in secured indebtedness (the “Secured Debt”) to ABG-Prince LLC (“Authentic”). In addition, the Company owes approximately \$10.2 million in trade debt to its vendors and approximately \$1.8 million in other payables.

For the fiscal year ending December 31, 2012, on an unaudited consolidated basis, the Debtors reported total book value assets of approximately \$54.2 million including approximately \$9.7 million in accounts receivable.

## 2.4 *Circumstances Leading to the Commencement of the Chapter 11 Cases*

Declines in the global racquet sports market and demand for the industry's products, combined with increased competition over the past five years, have resulted in lower sales of the Debtors' product lines. The downturn in the economy commencing around 2008 has particularly negatively impacted consumer discretionary spending and thus sales industry-wide.

In response to these economic challenges, the Company aggressively worked to mitigate the economic impact caused by the above circumstances. Around November, 2010, the Company engaged UBS to commence a formal process to sell rights to the Company's brands in certain product categories as well as to attempt to sell the Company's ongoing operations in China in order to pay down a significant portion of the Secured Debt as well as restructure its debt obligations with its then-lenders, GE Capital and Madison Capital. This process continued through around February 2011, but ended when the Company did not receive any acceptable bids for the marketed asset classes. Following the conclusion of this sale process, the Company created a new brand and marketing strategy. These changes include a new brand and advertising strategy and an upgrade of the Company's products in order to develop increased market share, resulting in a meaningful increase in booking orders in many markets.

In October 2011, the Company decided to commence another sale process to sell one or more of its assets and/or enter into additional licensing arrangements with third parties. Unlike the first sale process in 2010, the Company decided to broaden the focus of the marketing of its assets and engaged Robert W. Baird and Company ("Baird") to explore entering into licensing arrangements for the Company's products and to market a wider array of the Company's assets in order to accomplish this goal. Based on Baird's marketing efforts, several potential buyers indicated a willingness to not only acquire certain of the Company's assets on a piecemeal basis, but also to acquire the Company as a going concern.

In December 2011, when shareholders, the former lenders, and the Board of Directors agreed that the focus should shift to sale of the Company as a going concern, Baird's assignment changed to focus on a potential sale of the Company as a going concern. Baird contacted over 82 potential investors. The Company received 9 indications of interest, all of whom conducted due diligence. By March 2012, the Company was in the process of negotiating a potential sale of the Company with three potential third party purchasers (for substantially less than the existing amount of the Secured Debt) when Authentic acquired the Secured Debt from GE Capital and Madison Capital on March 27, 2011 and obtained from GE Capital and Madison Capital their previously-held liens on substantially all of the Company's assets.. Thereafter, Authentic indicated its interest in acquiring ownership of the Company. Given Authentic's proven track record in successfully acquiring and managing companies with extensive intellectual property holdings and the fact that Authentic is now the single holder of the Secured Debt, the Company believes that its acquisition by Authentic pursuant to the terms set forth in the Plan are in the best interests of the Company's economic constituents and provide the best prospects for the Company's successful reorganization as well as the deleveraging of the Secured Debt from the reorganized Company's balance sheet.

### III. THE CHAPTER 11 CASES

#### 3.1 *Continuation of Business; Stay of Litigation*

On May 1, 2012, the Debtors commenced their Chapter 11 Cases. Since the Petition Date, the Debtors have continued to operate as Debtors in Possession subject to the supervision of the Bankruptcy Court in accordance with the Bankruptcy Code. The Debtors are authorized to operate in the ordinary course of business. Transactions out of the ordinary course of business must receive prior Bankruptcy Court approval. In addition, the Bankruptcy Court has supervised the Debtors' employment of attorneys, accountants and other professionals.

An immediate effect of the commencement of the Chapter 11 Cases was the imposition of the automatic stay under section 362 of the Bankruptcy Code. With limited exceptions, the automatic stay enjoins the commencement or continuation of all collection efforts by creditors, the enforcement of liens against the Debtors and litigation against the Debtors. This injunction remains in effect unless modified or lifted by order of the Bankruptcy Court.

#### 3.2 *Significant Events During the Chapter 11 Cases*

##### 1. *First Day Motions.*

On the Petition Date, the Debtors submitted numerous so-called "*First Day Motions*" seeking various relief in the first few weeks of the Chapter 11 Cases. Among the more notable First Day Motions, the Debtors filed motions seeking authority: (i) to pay certain prepetition wages, salaries, commissions, reimbursable expenses and benefits and authorize certain banks to honor prepetition checks; (ii) to maintain the Debtors' existing Cash management system, bank accounts, checks and business forms; (iii) to establish procedures for the interim compensation and reimbursement of expenses for Professionals; and (iv) to use Cash collateral, incur certain postpetition indebtedness and grant adequate protection to the DIP Lender.

Some of the First Day Motions are summarized below:

##### (a) *Prepetition Wage and Benefits.*

On the Petition Date, the Debtors filed a motion for an order of the Bankruptcy Court authorizing the Debtors to pay certain prepetition wages, salaries and commissions to their direct employees, indirect employees and independent contractors, and to continue reimbursing those employees and independent contractors and employees for certain reimbursable business expenses and employee benefits. The Debtors believe such relief was necessary to avoid serious disruption to their business at a critical juncture in their reorganization. Payments made pursuant to this order will reduce the amount of Allowed Priority Claims.

##### (b) *Retention of Professionals.*

As of the commencement of the Chapter 11 Cases, the Debtors filed an application to retain Pachulski, Stang, Ziehl & Jones LLP as bankruptcy counsel. On the Petition Date, the Debtors filed a motion to retain FTI Consulting, Inc. (i) provide David J. Woodward as Chief Restructuring Officer of the Debtors, (ii) provide Brian Cashman as Chief Financial Officer, and

(iii) provide additional personnel to provide additional restructuring support to the Debtors. The Debtors have also engaged Epiq Bankruptcy Solutions, LLC to serve as Claims and noticing agent in the Chapter 11 Cases.

*(c) DIP Financing and Use of Cash Collateral.*

On May 1, 2012, the Debtors filed a motion seeking entry of an order: (i) authorizing the Debtors to obtain up to Two Million Five Hundred Thousand (\$2,500,000.00) Dollars of secured postpetition financing, plus additional amounts as may be agreed upon with the DIP Lender for the purpose of funding the Debtors' foreign subsidiaries, (ii) authorizing the Debtors to execute the DIP Documents (as defined in the motion) and to perform such other acts as may be necessary or desirable in connection with the DIP Documents, (iii) subject to the Carve-Out (as defined in the motion) and the limitations provided for herein, granting the DIP Lender first-priority security interests in and liens on all of the DIP Collateral (as defined in the motion) on account of the DIP Facility and all obligations owing thereunder and under the DIP Documents, (iv) subject to the Carve-Out and the limitations provided for herein, granting allowed superpriority expense claims to the DIP Lender, (v) authorizing the use of the Prepetition Lender's Cash Collateral (as defined in the motion), and (vi) providing adequate protection for any diminution in value of the Prepetition Collateral (as defined in the motion) to the Prepetition Lender.

*(d) Cash Management System*

On the Petition Date, the Debtors filed a motion seeking authorization to (1) maintain their existing bank accounts, (2) continue to use their existing business forms, (3) continue to use their existing cash management system, (4) continue to perform intercompany transactions between the Debtors and their non-Debtor Affiliates, including meeting the ordinary course funding requirements of the non-Debtor Affiliates in a manner consistent with any approved budget for the use of the Debtors' cash collateral subject to the provisions of an order of the Bankruptcy Court authorizing the Debtors to obtain postpetition financing, and (5) to obtain a limited waiver of Bankruptcy Code § 345(b) requirements. Maintaining the Debtors' cash management system postpetition facilitates the timely and efficient collection, management and disbursement of funds used in the Debtors' businesses.

*(e) Customer Programs*

On the Petition Date, the Debtors filed a motion to, in the ordinary course of business, engage in certain practices (the "Customer Programs") to maximize sales, engender customer loyalty, and develop and sustain brand loyalty and a positive reputation in the marketplace. The common goals of the Customer Programs are to meet competitive pressures, ensure customer satisfaction, and generate brand loyalty and goodwill for the Debtors, thereby retaining current customers, attracting new ones, and ultimately enhancing net revenue and the going concern value of the business. The Debtors need to continue those Customer Programs post-petition that have been cost-effective and beneficial to their business and, in connection therewith, filed the Customer Programs Motion to request authority to honor their prepetition obligations with respect to such Customer Programs.

(f) *Shippers Motion*

The Debtors filed a motion on the Petition Date seeking an order authorizing the Debtors, in their business judgment, to pay prepetition obligations owed to common carriers for ground transportation, air freight, ocean freight, and similar charges and freight forwarding charges (which freight forwarding charges may include in the amount payable to the freight forwarder for charges for customs duties and dock facilities)(collectively, the “Shippers”) incurred by the Debtors, including those that give rise (or legitimately may give rise) to any statutory or common-law possessory liens on account of unpaid charges owing from the Debtors to such Shippers (collectively, “Shipping Obligations”). The Debtors also sought authorization to pay, in the exercise of their business judgment, warehousing and port facility charges (the “Warehousing Obligations”) to any third party Warehousemen as further described in this Motion. The Debtors propose to pay such claims, when, in the Debtors’ sole discretion, the Shippers’ and Warehousemen’s exercise of contractual or statutory self-help remedies would unduly disrupt the Debtors’ businesses.

(g) *Stay Enforcement Motion*

The Debtors’ affiliated companies include companies that are organized and/or operate in foreign jurisdictions including, without limitation, France, Italy, Hong Kong, Taiwan and China, among other locations. In order to address potential attempts to seize assets located outside of the United States to the detriment of the Debtors’ estates and creditors, or take other actions in contravention of the automatic stay provided for under section 362 of the Bankruptcy Code, the Debtors filed a first day motion seeking an order (a) enforcing and restating the automatic stay and bankruptcy termination provisions of the Bankruptcy Code and (b) stating that all Persons shall continue performance under, and shall not terminate, any unexpired lease or executory contract with the Debtors without further order of the Bankruptcy Court.

(h) *Utilities*

On the Petition Date, the Debtors filed a motion to approve certain procedures for, among other things, determining adequate assurances for their utility providers, prohibiting utility providers from altering, refusing, or discontinuing service and determining that the Debtors are not required to provide any additional adequate assurance pending entry of a final order approving this motion. The Debtors believe that uninterrupted utility service are essential to their ongoing operations.

**2. 341 Meeting.**

A formal meeting of creditors pursuant to § 341 is scheduled to take place on [·] [·], 2012 in Wilmington, Delaware.

**3. Claims Process and Bar Date.**

The Debtors filed their *Schedules of Assets and Liabilities* and *Statements of Financial Affairs* on [·] [·], 2012. In that vein, the Debtors filed a motion on [·] [·], 2012 seeking to establish certain deadlines for the filing of proofs of Claim, including requests for payment of Administrative Expenses arising under § 503(b)(9).

The Debtors will review all Claims filed and develop and analyze a database of all Claims asserted against them. Each proof of Claim and proof of Interest will be analyzed to determine whether to object to the allowance of such Claims or Interests.

The Claims asserted against the Debtors may be materially in excess of the total amount of Allowed Claims estimated by the Debtors in connection with the development of the Plan because, among other things, certain Claims: (i) are filed in duplicate; (ii) consist of amendments to previously filed Claims; (iii) assert Claims in excess of the amount actually owed; (iv) do not allege an obligation of the Debtors or have been erroneously asserted against the Debtors; (v) assert contingent Claims against the Debtors; (vi) were filed after the Bar Date or (vii) include postpetition interest and other disallowable charges. Claims falling into the foregoing categories are subject to objection.

#### **4. *Operation of the Debtors.***

The Debtors intend to operate in Chapter 11 substantially in accordance with their budget, which was approved by the DIP Lender, and anticipate that they will continue to meet all of their obligations incurred during the course of the Chapter 11 Cases.

### **IV. THE PLAN**

#### **4.1 *Overall Structure of the Plan***

A summary description of the principal provisions of the Plan and the treatment of Classes of Allowed Claims and Interests is set out below. This summary is qualified in its entirety by the Plan, and in the event of any discrepancy between this summary and the terms of the Plan, the Plan will control.

The Plan constitutes a chapter 11 plan of reorganization for each of the Debtors. Except for Administrative Claims and Priority Tax Claims, all Claims against and Interests in a particular category of Debtors are placed in Classes for each category of the Debtors described below. In accordance with § 1123(a)(1), the Debtors have not classified Administrative Claims or Priority Tax Claims, as described below.

#### **4.2 *Administrative and Priority Tax Claims Against All of the Debtors***

As provided in § 1123(a)(1), Administrative Claims and Priority Tax Claims shall not be classified for the purposes of voting or receiving Distributions under the Plan. Rather, all such Claims shall be treated separately as unclassified Claims in accordance with the terms set forth in Article III of the Plan.

#### **1. *DIP Facility Claims***

On the Effective Date, all DIP Claims shall be Allowed in an amount asserted by the Holders of DIP Claims, and all obligations of the Debtors under the DIP Facility shall be paid in full in Cash or otherwise satisfied in a manner acceptable to the Holders of DIP Claims in accordance with the terms of the DIP Facility.

## 2. *Administrative Claims*

(a) General. The Debtors shall pay each Holder of an Allowed Administrative Claim against any Debtor (excluding Professional Fee Claims) the full amount of such Allowed Administrative Claim, without interest, in Cash, on the later to occur of (i) the Effective Date and (ii) within ten (10) days after the date such Claim becomes an Allowed Claim and (iii) when such Allowed Administrative Claim first becomes due and payable in the ordinary course after the Effective Date. Notwithstanding anything herein to the contrary, a Holder of an Allowed Administrative Claim against any Debtor may be paid on such other date or dates and upon such other terms as may be agreed upon by such Holder and the Debtors or Reorganized Debtors.

(b) Statutory Fees. All outstanding fees payable to the Office of the United States Trustee under 28 U.S.C. §1930 that have not been paid as of the Effective Date shall be paid by the Reorganized Debtors no later than thirty (30) days after the Effective Date or when due in the ordinary course.

(c) Bar Date for Administrative Claims. Each Holder of an Administrative Claim, other than the DIP Lender and Holders of Professional Fee Claims, must file an Administrative Expense Request requesting allowance and payment of such Administrative Claim with the Bankruptcy Court by no later than the Administrative Expense Request Deadline for all Administrative Claims that are not subject to the Bar Date Order; provided, however, that any such Administrative Expense Request need not be filed with a hearing date; and provided, further, that the foregoing requirement to file an Administrative Claim Request shall not apply to Holders of Administrative Claims arising under §§ 503(b)(1)(B) or (C) or which have otherwise been required to be filed by the Bar Date.

### (d) Professional Fee Claims.

(i) The Reorganized Debtors shall pay Professionals who are entitled to reimbursement or allowance of fees and expenses from the Debtors' Estates pursuant to §§ 327-331 and 503(b)(2)-(b)(6), in Cash, subject to the Budget, as defined in the DIP Orders, in the amount awarded to such Professionals by interim fee application order or Final Order of the Bankruptcy Court, as soon as practicable after the Effective Date in accordance with the terms of any order entered by the Bankruptcy Court governing the payment of fees and expenses during the course of the Chapter 11 Cases or in accordance with any trial order issued by the Bankruptcy Court, but in any event within five (5) Business Days of the Bankruptcy Court's approval of such fees and expenses following the Effective Date; provided, however, a Professional may request that the DIP Lender consent to an increase in the amount set aside in the Budget for such Professional's fees and expenses (such consent not to be unreasonably withheld).

(ii) Any final application for allowance of a Professional Fee Claim for services rendered and costs incurred through the Effective Date must be filed with the Bankruptcy Court and served on counsel for the Debtors, the

Reorganized Debtors, the Prepetition Lender, the DIP Lender, and Committee, if applicable, at the addresses listed in section 11.13 of the Plan and on the Office of the United States Trustee so that it is received no later than forty-five (45) days after the Effective Date, unless otherwise extended by agreement of the Claimant and the Reorganized Debtors, or such Professional Fee Claim shall be forever barred and shall not be enforceable against the Debtors and their Estates, the Reorganized Debtors or their properties, and their successors and assigns. All such applications for final allowance of compensation and reimbursement of expenses will be subject to the authorization and approval of the Bankruptcy Court.

### **3. *Priority Tax Claims***

The Reorganized Debtors shall pay each Holder of an Allowed Priority Tax Claim against any Debtor (i) in full in Cash within ten (10) days after the later to occur of (a) the Effective Date and (b) the date such Claim becomes an Allowed Claim or (ii) in full in Cash in equal quarterly installments with interest as provided in §§ 511 and 1129(a)(9)(C) over a period not to exceed 60 months from the date such Allowed Priority Tax was assessed. All Allowed Priority Tax Claims against the Debtors which are not due and payable on or before the Effective Date shall be paid in the ordinary course of business in accordance with the terms thereof. The Reorganized Debtors can prepay any Allowed Priority Tax Claim at any time after the Effective Date without any penalty or charge.

### **4.3 *Classification and Treatment of Claims and Interests Against Debtors***

The categories of Claims and Interests listed below classify Claims and Interests in or against the Debtors for all purposes, including voting, confirmation, and Distribution, pursuant to the Plan and pursuant to §§ 1122 and 1123(a)(1). A Claim or Interest shall be deemed classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and the remaining portion of such Claim or Interest, if any, shall be deemed classified in a different Class to the extent that any remainder of such Claim or Interest qualifies within the description of such different Class. A Claim or Interest is in a particular Class only to the extent that such Claim or Interest is Allowed in that Class and has not been paid or otherwise satisfied prior to the Effective Date.

#### **1. *Class 1 - Other Secured Claims***

(a) Class 1 consists of Other Secured Claims against each of the Debtors.

(b) Except to the extent a Holder of an Other Secured Claim has been paid by the Debtors prior to the Effective Date or the Holder of an Allowed Other Secured Claim agrees otherwise, each Holder of an Allowed Other Secured Claim shall receive in full and final satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Other Secured Claim, in the discretion of the Debtors, with the consent of the Prepetition Lender and DIP Lender, one of the following treatments: (i) payment of the Allowed Other Secured Claim in full in Cash on the later of (x) the Effective Date, and (y) the date on which such Other



Secured Claim becomes an Allowed Other Secured Claim, (ii) delivery to the Holder of the Allowed Other Secured Claim the collateral securing such Allowed Other Secured Claim or (iii) the Holder shall retain its Lien on such property and such Allowed Other Secured Claim shall be reinstated pursuant to section 1129 of the Bankruptcy Code. Notwithstanding the foregoing, at the discretion of the Reorganized Debtors any Allowed Other Secured Claim that is a Claim for taxes by a governmental unit may be treated in accordance with section 3.3 of the Plan pursuant to §1129(a)(9)(D).

(c) Class 1 is Unimpaired. Holders of Claims in Class 1 are conclusively deemed to have accepted the Plan pursuant to §1126(f), and therefore Holders of Claims in Class 1 are not entitled to vote to accept or reject the Plan.

## **2. Class 2 - Other Priority Claims**

(a) Class 2 consists of Other Priority Claims against each of the Debtors.

(b) Each Holder of an Allowed Other Priority Claim shall receive on or as soon as practicable after the Effective Date one of the following treatments at the option of the Debtors: (a) Cash in an amount equal to the amount of such Allowed Other Priority Claim; (b) with the Consent of the Prepetition Lender and DIP Lender, such other treatment as may be agreed upon by such Holder and the Debtors or otherwise determined by order of the Bankruptcy Court; or (c) such other treatment as may leave such Allowed Other Priority Claim Unimpaired.

(c) Class 2 is Unimpaired. Holders of Claims in Class 2 are conclusively deemed to have accepted the Plan pursuant to § 1126(f), and therefore Holders of Claims in Class 2 are not entitled to vote to accept or reject the Plan.

## **3. Class 3 – Intercompany Claims**

(a) Class 3 consists of Intercompany Claims against each of the Debtors.

(b) Intercompany Claims against each of the Debtors will be, in the discretion of the applicable Reorganized Debtor holding such Claim, (i) released, waived and discharged as of the Effective Date, or (ii) remain unimpaired. However, except for such Claims against a Released Party to the extent released pursuant to the provisions of Article 9 of the Plan, the Debtors will not release or waive any Intercompany Claim they may hold against a non-debtor, and any such Intercompany Claim shall remain an asset of the Estates and vest in the applicable Reorganized Debtor pursuant to section 6.2 of the Plan.

(c) Class 3 is Unimpaired. Holders of Claims in Class 3 are conclusively deemed to have accepted the Plan pursuant to §1126(f), and therefore Holders of Claims in Class 3 are not entitled to vote to accept or reject the Plan.

## **4. Class 4 – Subsidiary Interests**

(a) Class 4 consists of the Subsidiary Interests in a Subsidiary Debtor.

(b) Class 4 Subsidiary Interests shall be unaffected by the Plan, except to the extent

otherwise required by the Restructuring Transactions.

(c) Class 4 is Unimpaired. Holders of Interests in Class 4 are conclusively deemed to have accepted the Plan pursuant to § 1126(f), and therefore Holders of Claims in Class 4 are not entitled to vote to accept or reject the Plan.

**5. Class 5 – Prepetition Lender Secured Claims**

(a) Class 5 consists of the Prepetition Lender Secured Claims against each of the Debtors.

(b) Notwithstanding any provision to the contrary herein, upon entry of the Confirmation Order, all Prepetition Lender Secured Claims shall be allowed in full for all purposes in these Chapter 11 Cases, not subject to defense, offset, counterclaim, recoupment, reduction, subordination or recharacterization by the Debtors or any party in interest. On the Effective Date, each Holder of an Allowed Prepetition Lender Secured Claim shall receive in full satisfaction, settlement, release and discharge of and in exchange for such Claim, the Prepetition Lender Secured Claim Plan Distribution.

(c) Class 5 is Impaired. Therefore, Holders of Class 5 Claims are entitled to vote to accept or reject the Plan.

**6. Class 6 – General Unsecured Claims**

(a) Class 6 consists of the General Unsecured Claims against each of the Debtors.

(b) Except to the extent the Holder of an Allowed General Unsecured Claim agrees otherwise, each Holder of an Allowed General Unsecured Claim shall receive in full and final satisfaction, settlement, release and discharge of, and in exchange for, such Allowed General Unsecured Claim, on the later of (i) the Effective Date and (ii) the Quarterly Distribution Date following the date on which such General Unsecured Claim becomes an Allowed General Unsecured Claim, its Pro Rata share of (x) the General Unsecured Claim Plan Distribution and (y) the Cash Distribution, with the amount of each Holder's pro rata share to be determined by a fraction, the numerator of which is equal to the amount of such Holder's Allowed General Unsecured Claim, and the denominator of which is equal to the aggregate amount of all Allowed General Unsecured Claims; provided, however, that the Cash Distribution shall only be available to a Holder of a General Unsecured Claim that grants the releases provided to the Released Parties pursuant to the Plan, but that in no circumstances shall the Holder of an Allowed General Unsecured Claim receive a Cash Distribution for such claim in excess of the Face Amount of such claim. To the extent that the Holder of a General Unsecured Claim does not grant the releases provided to the Released Parties pursuant to the Plan, such holder shall not be entitled to receive its pro rata share of the Cash Distribution. The Distribution of the Cash Distribution is a good faith compromise of any potential controversies that may exist and shall constitute the requisite consideration for the releases provided herein.

Notwithstanding any provision to the contrary herein, upon entry of the Confirmation Order all Prepetition Lender Deficiency Claims shall be allowed in full for all

purposes in these Chapter 11 Cases, not subject to defense, offset, counterclaim, recoupment, reduction, subordination or recharacterization by the Debtors or any party in interest. However, the Prepetition Lender shall be deemed to have waived its right to any Distribution by virtue of its Prepetition Lender Secured Claim on the Effective Date.

(c) Class 6 is Impaired. Therefore, Holders of Class 6 Claims are entitled to vote to accept or reject the Plan.

## **7. Class 7 – Interests and Interest Related Claims**

(a) Class 7 consists of all Interests, other than the Subsidiary Interests, and Interest Related Claims against each of the Debtors.

(b) No Distribution shall be paid or made under the Plan on account of any Interest or Allowed Interest Related Claim. On the Effective Date, all Interests in the Debtors, except the Subsidiary Interests, shall be deemed canceled, null and void, and of no force and effect.

(c) Holders of Interests and Interest Related Claims in Class 7 are conclusively deemed to reject the Plan pursuant to § 1126(g). Therefore, Holders of Interests and Allowed Interest Related Claims in Class 7 are not entitled to vote to accept or reject the Plan.

## **V. MEANS FOR IMPLEMENTATION**

### **5.1 Substantive Consolidation**

The Plan provides for the substantive consolidation of the Estates only for purposes of voting, confirmation and Distribution. Except for the Restructuring Transactions, the Plan does not contemplate the merger of any Debtor entity or the transfer or commingling of any assets of the Debtors.

a. Substantive Consolidation Order. The Plan shall serve as a motion seeking entry of an order substantively consolidating these Chapter 11 Cases for purposes of voting, confirmation and Distribution. Unless an objection to substantive consolidation is made in writing by any Creditor affected by the Plan as herein provided on or before the deadline for objections to the Plan, an order substantively consolidating these Chapter 11 Cases may be entered by the Bankruptcy Court, which order may be the Confirmation Order. In the event any such objections are timely filed, a hearing with respect thereto shall be scheduled by the Bankruptcy Court, which hearing may, but need not, coincide with the Confirmation Hearing.

b. Effect/Extent of Substantive Consolidation. In effectuation of such substantive consolidation, on the Effective Date: (a) no Distributions will be made under the Plan on account of the Intercompany Claims against each of the Debtors; (b) the guarantees of the Debtors will be deemed eliminated so that any Claim against the Debtors and any guarantee thereof executed by any Debtor and any joint and several liability of the Debtors with one another will be deemed to be one obligation of these Debtors; and (c) each and every Claim against the Debtors will be deemed asserted as a single Claim against the Estates as a whole, and will be treated in the same Class regardless of the Debtor. Additionally, notwithstanding the substantive consolidation

herein, substantive consolidation shall not affect the obligation of each and every one of these Debtors under 28 U.S.C. § 1930(a)(6) until a particular case is closed, converted or dismissed.

c. **Reservation of Rights.** The Debtors reserve the right at any time up to the conclusion of the Confirmation Hearing to withdraw their request for substantive consolidation of these Chapter 11 Cases, to seek confirmation of the Plan as if there were no substantive consolidation, and to seek confirmation of the Plan with respect to one Debtor even if confirmation with respect to the other Debtors is denied.

## *5.2 Terminated Corporate Existence of the Dissolving Debtors*

On the Effective Date, the Dissolving Debtors shall be deemed dissolved for all purposes without the necessity for any other or further actions to be taken by or on behalf of the Dissolving Debtors or payments to be made in connection therewith; provided, however, without the need of any further approval, the Dissolving Debtors in their discretion may execute and file documents and take all other actions as appropriate relating to the dissolution of the Dissolving Debtors under the laws of Delaware and/or any other applicable states, and in such event, all applicable regulatory or governmental agencies shall take all steps necessary to allow and effect the prompt dissolution of the Dissolving Debtors as provided herein, without the payment of any fee, tax, or charge and without need for the filing of reports or certificates.

## *5.3 Vesting of Assets in the Reorganized Debtors*

Except as otherwise provided in the Plan or any agreement, instrument, or other document incorporated therein, on the Effective Date, all property in each Estate, the Assumed Contract Causes of Action and any property acquired by any of the Debtors pursuant to the Plan shall vest in each respective Reorganized Debtor, free and clear of all Liens, Claims, charges, or other encumbrances. On and after the Effective Date, except as otherwise provided in the Plan, each Reorganized Debtor (except the Dissolving Debtors) may operate its business and may use, acquire, or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. For the avoidance of doubt, the Debtors' Intellectual Property shall vest in the Reorganized Debtors.

## *5.4 Corporate Existence of Reorganized Debtors*

The Reorganized Debtors (except for the Dissolving Debtors) shall continue to exist after the Effective Date as separate corporate entities, limited liability companies, partnerships, or other forms, as the case may be, with all the powers of corporations, limited liability companies, partnerships, or other forms, as the case may be, pursuant to the applicable law in the jurisdiction in which each respective Debtor is incorporated or formed and pursuant to such Debtor's certificate of incorporation and bylaws (or other formation documents) in effect before the Effective Date, except to the extent such certificate of incorporation and bylaws (or other formation documents) are amended by the Plan or otherwise, and to the extent such documents are amended, such documents are deemed to be amended pursuant to the Plan and require no further action or approval (other than any requisite filings required under applicable state law).

Notwithstanding the foregoing, on or as of the Effective Date or as soon as practicable thereafter and without need for any further action, the Reorganized Debtors may: (a) cause any or all of the Reorganized Debtors to be merged into one or more of the Reorganized Debtors, dissolved or otherwise consolidated; (b) cause the transfer of assets between or among the Reorganized Debtors; or (c) engage in any other transaction in furtherance of the Plan.

#### *5.5 New Certificates of Incorporation and New By-Laws*

The Debtors' organizational documents shall be amended as necessary to satisfy the provisions of the Plan and the Bankruptcy Code. On or immediately before the Effective Date, the Reorganized Debtors (except the Dissolving Debtors) will file their respective new certificates of incorporation with the applicable secretaries of state and/or other applicable authorities in their respective states of incorporation in accordance with the corporate laws of the respective states of incorporation. After the Effective Date, the Reorganized Debtors (except the Dissolving Debtors) may amend and restate their respective new certificates of incorporation and new by-laws and other constituent documents as permitted by the laws of their respective states of incorporation and their respective new certificates of incorporation and new by-laws.

#### *5.6 Issuance of New Equity Interests; Securities Exemption*

The issuance of the New Equity Interests is authorized without the need for any further corporate action or without any further action by a holder of Claims or Interests. The New Equity Interests shall have voting rights, and the Reorganized Debtors shall not issue non-voting New Equity Interests. On the Effective Date, the New Equity Interests shall be issued to Holders of the Prepetition Lender Secured Claims.

All of the shares of the New Equity Interests issued pursuant to the Plan shall be duly authorized, validly issued and fully paid and non-assessable. Each Distribution and issuance referred to in Article VIII hereof shall be governed by the terms and conditions set forth herein applicable to such Distribution or issuance and by the terms and conditions of the instruments evidencing or relating to such distribution or issuance.

Pursuant to section 1145 of the Bankruptcy Code, the offering, issuance, and distribution of any New Equity Interests contemplated by the Plan and all agreements incorporated herein shall be exempt from, among other things, the registration requirements of section 5 of the Securities Act and any other applicable law requiring registration before the offering, issuance, distribution or sale of securities. In addition, under section 1145 of the Bankruptcy Code, the New Equity Interests contemplated by the Plan and any and all agreements incorporated therein will be freely tradable by the recipients thereof, subject to (a) the provisions of section 1145(b)(1) of the Bankruptcy Code relating to the definition of an underwriter in section 2(a)(11) of the Securities Act; (b) compliance with any rules and regulation of the Securities and Exchange Commission, if any, applicable at the time of any future transfer of such securities or instruments; (c) the restrictions on the transferability of such securities and instruments; and (d) applicable regulatory approval.