

REGAL ENTERTAINMENT GROUP

Form 10-K/A

March 28, 2012

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 10-K/A

Amendment No. 1

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

For the fiscal year ended December 29, 2011

Commission file number: 001-31315

Regal Entertainment Group

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

02-0556934
(Internal Revenue Service
Employer Identification Number)

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7132 Regal Lane
Knoxville, TN
(Address of principal executive offices)

37918
(Zip Code)

Registrant's telephone number, including area code: **865/922-1123**

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
Class A Common Stock, \$.001 par value	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act: **None**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

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

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K:

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

Large accelerated filer <input checked="" type="checkbox"/>	Accelerated filer <input type="checkbox"/>
Non-accelerated filer <input type="checkbox"/>	Smaller reporting company <input type="checkbox"/>

(Do not check if a smaller reporting company)

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

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant on June 30, 2011, computed by reference to the price at which the registrant's Class A common stock was last sold on the New York Stock Exchange on such date was \$1,595,386,128 (129,181,063 shares at a closing price per share of \$12.35).

Shares of Class A common stock outstanding 131,563,780 shares at March 21, 2012

Shares of Class B common stock outstanding 23,708,639 shares at March 21, 2012

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EXPLANATORY NOTE

The Company is filing this Amendment No. 1 to its Annual Report on Form 10-K (the "Form 10-K/A") to include separate audited financial statements of National CineMedia, LLC ("National CineMedia"), pursuant to Rule 3-09 of Regulation S-X ("Rule 3-09"). The audited National CineMedia financial statements (the "National CineMedia Financial Statements") were not available at the time of filing of the Company's Annual Report on Form 10-K (the "Form 10-K"). In accordance with Rule 3-09(b)(1), the National CineMedia Financial Statements are being filed as an amendment to the Form 10-K within 90 days after the end of the Company's fiscal year.

This Form 10-K/A amends the Form 10-K solely by the addition of the National CineMedia Financial Statements to Part IV, Item 15. No attempt has been made in this Form 10-K/A to update other disclosures presented in the Form 10-K and this Form 10-K/A does not reflect events occurring after the filing of the Form 10-K or modify or update those disclosures, including the exhibits to the Form 10-K affected by subsequent events. The following sections of the Form 10-K have been amended by this Form 10-K/A:

- Part IV Item 15 Exhibits, Financial Statement Schedules

This Form 10-K/A has been signed as of a current date and all certifications of the Company's Chief Executive Officer and Chief Financial Officer are given as of a current date. Accordingly, this Form 10-K/A should be read in conjunction with our filings made with the SEC subsequent to the filing of the Form 10-K for the year ended December 29, 2011, including any amendments to those filings.

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REGAL ENTERTAINMENT GROUP

PART IV

Item 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES

(a)

The following documents are filed as a part of Amendment No. 1 to this report on Form 10-K:

(2) Financial Statement Schedules:

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NATIONAL CINEMEDIA, LLC	
<u>Report of Independent Registered Public Accounting Firm</u>	4
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<u>Statements of Cash Flows for the years ended December 29, 2011, December 30, 2010, and December 31, 2009</u>	9
<u>Notes to Financial Statements</u>	11

(3) Exhibits: The following exhibits are filed as part of Amendment No. 1 to this annual report on Form 10-K.

Exhibit Number	Description
23.1	Consent of Deloitte & Touche LLP, Independent Registered Public Accounting Firm

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31.1 Rule 13a-14(a) Certification of Chief Executive Officer of Regal

31.2 Rule 13a-14(a) Certification of Chief Financial Officer of Regal

32 Section 1350 Certifications

99.1 Consent of National CineMedia, LLC

The financial statements of National CineMedia, LLC are filed under Item 15(c) below:

(b) The exhibits required to be filed herewith are listed above.

(c) Financial Statement Schedules: Financial Statement of National CineMedia, LLC.

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Members of

National CineMedia, LLC

Centennial, Colorado

We have audited the accompanying balance sheets of National CineMedia, LLC (the Company) as of December 29, 2011 and December 30, 2010, and the related statements of income, comprehensive income, members' equity (deficit), and cash flows for the years ended December 29, 2011, December 30, 2010 and December 31, 2009. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such financial statements present fairly, in all material respects, the financial position of the Company as of December 29, 2011 and December 30, 2010, and the results of its operations and its cash flows for the years ended December 29, 2011, December 30, 2010 and December 31, 2009, in conformity with accounting principles generally accepted in the United States of America.

/s/ Deloitte & Touche LLP

Denver, Colorado
March 20, 2012

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NATIONAL CINEMEDIA, LLC

BALANCE SHEETS

(In millions)

	December 29, 2011	December 30, 2010
ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents	\$ 9.2	\$ 13.8
Receivables, net of allowance of \$4.3 and \$3.7 million, respectively	96.6	100.1
Prepaid expenses	1.7	1.7
Prepaid management fees to managing member	1.0	0.8
Total current assets	108.5	116.4
NON-CURRENT ASSETS:		
Property and equipment, net of accumulated depreciation of \$54.8 and \$46.4 million, respectively	24.6	19.8
Intangible assets, net of accumulated amortization of \$20.8 and \$10.8 million, respectively	274.9	275.2
Debt issuance costs, net	12.6	7.3
Other investment	0.2	6.7
Other long-term assets	0.6	0.6
Total non-current assets	312.9	309.6
TOTAL	\$ 421.4	\$ 426.0
LIABILITIES AND MEMBERS EQUITY/(DEFICIT)		
CURRENT LIABILITIES:		
Amounts due to founding members	22.0	25.2
Amounts due to managing member	21.2	28.2
Accrued expenses	16.2	8.6
Current portion of long-term debt	0.0	1.2
Current portion of interest rate swap agreements	24.0	25.3
Accrued payroll and related expenses	9.0	9.3
Accounts payable	12.8	10.5
Deferred revenue	2.9	3.8
Total current liabilities	108.1	112.1
NON-CURRENT LIABILITIES:		
Borrowings	794.0	775.0
Interest rate swap agreements	46.8	45.5
Total non-current liabilities	840.8	820.5
Total liabilities	948.9	932.6
COMMITMENTS AND CONTINGENCIES (NOTE 9)		
MEMBERS EQUITY/(DEFICIT) (including accumulated other comprehensive loss of \$56.9 and \$58.3 million, respectively)	(527.5)	(506.6)
TOTAL	\$ 421.4	\$ 426.0

See accompanying notes to financial statements.

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NATIONAL CINEMEDIA, LLC

STATEMENTS OF INCOME

(In millions)

	Year Ended December 29, 2011	Year Ended December 30, 2010	Year Ended December 31, 2009
REVENUE:			
Advertising (including revenue from founding members of \$38.2, \$38.5 and \$38.2 million, respectively)	\$ 386.1	\$ 379.4	\$ 335.1
Fathom Events	49.2	48.0	45.5
Other	0.1	0.1	0.1
Total	435.4	427.5	380.7
OPERATING EXPENSES:			
Advertising operating costs	24.6	21.7	20.0
Fathom Events operating costs (including \$9.3, \$8.6, and \$7.7 million to founding members, respectively)	34.1	32.4	29.1
Network costs	17.7	20.0	18.6
Theatre access fees founding members	55.4	52.6	52.7
Selling and marketing costs (including \$1.1, \$1.2 and \$1.1 million to founding members, respectively)	59.8	57.9	50.2
Administrative costs	17.6	17.9	14.8
Administrative fee managing member	13.7	16.6	10.8
Depreciation and amortization	18.8	17.8	15.6
Other costs	0.0	0.0	0.7
Total	241.7	236.9	212.5
OPERATING INCOME	193.7	190.6	168.2
NON-OPERATING EXPENSES:			
Interest on borrowings	49.2	44.4	47.1
Interest income	0.0	0.0	(0.1)
Change in derivative fair value	1.3	5.3	(7.0)
Impairment on investment	6.7	0.0	0.0
Other non-operating	1.7	0.2	(1.9)
Total	58.9	49.9	38.1
INCOME BEFORE INCOME TAXES	134.8	140.7	130.1
Provision for income taxes	0.3	0.5	0.8
Equity loss from investment, net	0.0	0.7	0.8
NET INCOME	\$ 134.5	\$ 139.5	\$ 128.5

See accompanying notes to financial statements.

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NATIONAL CINEMEDIA, LLC
STATEMENTS OF COMPREHENSIVE INCOME

(In millions)

	Year Ended December 29, 2011	Year Ended December 30, 2010	Year Ended December 31, 2009
NET INCOME	\$ 134.5	\$ 139.5	\$ 128.5
OTHER COMPREHENSIVE INCOME (LOSS):			
Unrealized gain (loss) on cash flow hedge	1.4	(10.9)	26.1
COMPREHENSIVE INCOME	\$ 135.9	\$ 128.6	\$ 154.6

See accompanying notes to financial statements.

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NATIONAL CINEMEDIA, LLC

STATEMENTS OF MEMBERS EQUITY/(DEFICIT)

(In millions)

	Units	Amount
Balance January 1, 2009	99,419,620	\$ (685.6)
Capital contribution from founding members	11,781	0.1
Distribution to managing member		(57.8)
Distribution to founding members		(81.5)
Units issued for purchase of intangible asset	2,126,104	28.5
Comprehensive Income		154.6
Share-based compensation expense/capitalized		2.1
Balance December 31, 2009	101,557,505	\$ (639.6)
Capital contribution from managing member	472,259	3.5
Distribution to managing member		(71.0)
Distribution to founding members		(85.1)
Units issued for purchase of intangible asset	8,722,428	151.3
Comprehensive Income		128.6
Share-based compensation issued		(0.1)
Share-based compensation expense/capitalized		5.8
Balance December 30, 2010	110,752,192	\$ (506.6)
Capital contribution from managing member	385,128	5.5
Distribution to managing member		(78.7)
Distribution to founding members		(83.0)
Equity returned from purchase of intangible asset	(322,751)	(5.5)
Comprehensive Income		135.9
Share-based compensation issued		(0.1)
Share-based compensation expense/capitalized		5.0
Balance December 29, 2011	110,814,569	\$ (527.5)

See accompanying notes to financial statements.

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NATIONAL CINEMEDIA, LLC

STATEMENTS OF CASH FLOWS

(In millions)

	Year Ended December 29, 2011	Year Ended December 30, 2010	Year Ended December 31, 2009
CASH FLOWS FROM OPERATING ACTIVITIES:			
Net income	\$ 134.5	\$ 139.5	\$ 128.5
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	18.8	17.8	15.6
Non-cash share-based compensation	4.8	5.6	2.0
Net unrealized loss (gain) on hedging transactions	1.3	5.3	(7.0)
Impairment on investment	6.7	0.0	0.0
Equity loss from investment	0.0	0.7	0.8
Amortization of debt issuance costs	2.3	1.9	1.9
Write-off of debt issuance costs	1.5	0.0	0.0
Other non-cash operating activities	0.0	0.6	0.0
Changes in operating assets and liabilities:			
Receivables net	3.3	(11.1)	3.0
Accounts payable and accrued expenses	9.7	(1.6)	6.9
Amounts due to founding members and managing member	(4.6)	4.1	1.2
Other operating	(1.1)	0.8	(3.5)
Net cash provided by operating activities	177.2	163.6	149.4
CASH FLOWS FROM INVESTING ACTIVITIES:			
Purchases of property and equipment	(13.5)	(10.1)	(8.4)
Proceeds from sale of property and equipment to founding member	0.0	3.0	0.0
Increase in investment in affiliate	0.0	0.0	(2.0)
Purchase of intangible assets	(15.9)	0.0	0.0
Net cash used in investing activities	(29.4)	(7.1)	(10.4)
CASH FLOWS FROM FINANCING ACTIVITIES:			
Proceeds from borrowings	335.0	124.3	0.0
Repayments of borrowings	(317.2)	(152.5)	(3.0)
Payment of debt issuance costs	(9.1)	0.0	0.0
Founding members integration payments	1.9	3.9	3.6
Distributions to founding members and managing member	(168.4)	(159.6)	(135.9)
Unit settlement for share-based compensation	5.4	3.4	0.0
Net cash used in financing activities	(152.4)	(180.5)	(135.3)
CHANGE IN CASH AND CASH EQUIVALENTS	(4.6)	(24.0)	3.7
CASH AND CASH EQUIVALENTS:			
Beginning of period	13.8	37.8	34.1
End of period	\$ 9.2	\$ 13.8	\$ 37.8

See accompanying notes to financial statements.

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NATIONAL CINEMEDIA, LLC

STATEMENTS OF CASH FLOWS (CONTINUED)

(In millions)

	Year Ended December 29, 2011		Year Ended December 30, 2010		Year Ended December 31, 2009
Supplemental disclosure of non-cash financing and investing activity:					
Purchase of an intangible asset with equity (equity returned)	\$ (5.5)	\$	151.3	\$	28.5
Settlement of put liability by issuance of debt	\$ 0.0	\$	0.0	\$	7.0
Assets acquired in settlement of put liability	\$ 0.0	\$	0.0	\$	2.5
Increase in cost method investment	\$ 0.2	\$	0.0	\$	0.0
Supplemental disclosure of cash flow information:					
Cash paid for interest	\$ 39.2	\$	49.8	\$	38.8
Cash paid for income taxes	\$ 0.3	\$	0.5	\$	0.8

See accompanying notes to financial statements.

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NATIONAL CINEMEDIA, LLC

NOTES TO FINANCIAL STATEMENTS

1. THE COMPANY

Description of Business

National CineMedia, LLC (NCM LLC or the Company) commenced operations on April 1, 2005 and operates the largest digital in-theatre network in North America, allowing NCM LLC to distribute advertising, Fathom entertainment programming events and corporate events (the Services) under long-term exhibitor services agreements (ESAs) with American Multi-Cinema, Inc. (AMC), a wholly owned subsidiary of AMC Entertainment, Inc. (AMCE), Regal Cinemas, Inc., a wholly owned subsidiary of Regal Entertainment Group (Regal), and Cinemark USA, Inc. (Cinemark USA), a wholly owned subsidiary of Cinemark Holdings, Inc. (Cinemark). AMC, Regal and Cinemark and their affiliates are referred to in this document as founding members. NCM LLC also provides the Services to certain third-party theatre circuits under network affiliate agreements, which expire at various dates.

At December 29, 2011, NCM LLC had 110,814,569 common membership units outstanding, of which 53,934,605 (48.7%) were owned by National CineMedia, Inc. (NCM, Inc. , manager or managing member), 22,060,262 (19.9%) were owned by Regal, 17,495,920 (15.8%) were owned by Cinemark, and 17,323,782 (15.6%) were owned by AMC. The membership units held by the founding members are exchangeable into NCM, Inc. common stock on a one-for-one basis.

Basis of Presentation

The Company has prepared its financial statements and related notes of NCM LLC in accordance with accounting principles generally accepted in the United States of America (GAAP) and the rules and regulations of the Securities and Exchange Commission (SEC).

The Company s business is seasonal and for this and other reasons operating results for interim periods may not be indicative of the Company s full year results or future performance. As a result of the various related-party agreements discussed in Note 5, the operating results as presented are not necessarily indicative of the results that might have occurred if all agreements were with non-related third parties.

Estimates The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Significant estimates include those related to the reserve for uncollectible accounts receivable and equity-based compensation. Actual results could differ from those estimates.

Reclassifications Certain reclassifications of previously reported interest income and other within the statements of income, share based compensation within the statement of members' equity (deficit), other accrued expenses within accrued expenses and within network, administrative and unallocated costs in segment reporting have been made to conform to the current year presentation.

Significant Accounting Policies

Accounting Period The Company operates on a 52-week fiscal year, with the fiscal year ending on the first Thursday after December 25, which, in certain years, results in a 53-week year.

Segment Reporting Advertising is the principal business activity of the Company and is the Company's reportable segment under the requirements of ASC 280, *Segment Reporting*. Fathom Consumer Events and Fathom Business Events are operating segments under ASC 280, but do not meet the quantitative thresholds for segment reporting. The Company does not evaluate its segments on a fully allocated cost basis, nor does the Company track segment assets separately. Therefore, the measure of segment operating income net of direct expenses presented

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herein is not prepared on the same basis as operating income in the statements of income and the results are not indicative of what segment results of operations would have been had it been operated on a fully allocated cost basis. The Company cautions that it would be inappropriate to assume that unallocated operating costs are incurred proportional to segment revenue or any directly identifiable segment expenses. Refer to Note 12.

Revenue Recognition Advertising revenue is recognized in the period in which an advertising contract is fulfilled against the contracted theatre attendees. Make-good provisions are made to defer contracted revenue to future periods when attendance is delivered and is included in accrued expenses. Deferred revenue refers to the unearned portion of advertising contracts. All deferred revenue is classified as a current liability. Fathom Events revenue is recognized in the period in which the event is held.

Barter Transactions The Company enters into barter transactions that exchange advertising program time for products and services used principally for selling and marketing activities. The Company records barter transactions at the estimated fair value of the advertising exchanged based on fair value received for similar advertising from cash paying customers. Revenues for advertising barter transactions are recognized when advertising is provided, and products and services received are charged to expense when used. The Company limits the use of such barter transactions to items and services for which it would otherwise have paid cash. Any timing differences between the delivery of the bartered revenue and the use of the bartered expense products and services are recorded through deferred revenue. Revenue and expense from barter transactions for the year ended December 29, 2011 were \$1.6 million and \$1.1 million, respectively, were \$1.5 million and \$1.1 million for the year ended December 30, 2010, respectively and were not material to the Company's statements of income for the year ended December 31, 2009.

Operating Costs Advertising related operating costs primarily include personnel and other costs related to advertising fulfillment, payments due to unaffiliated theatre circuits under the network affiliate agreements, and to a lesser extent, production costs of non-digital advertising.

Fathom Events operating costs include revenue share under the amended and restated ESAs to the founding members and revenue share to affiliate theatres under separate agreements, payments to event content producers and other direct costs of the meeting or event, including equipment rental, catering and movie tickets acquired primarily from the founding members.

Payment to the founding members of a theatre access fee is comprised of a payment per theatre attendee and a payment per digital screen, both of which escalate over time.

Network costs include personnel, satellite bandwidth, repairs, and other costs of maintaining and operating the digital network and preparing advertising and other content for transmission across the digital network. These costs are not specifically allocated between the advertising business and the Fathom Events business.

Leases The Company leases various office facilities under operating leases with terms ranging from five to 16 years. The Company calculates straight-line rent expense over the initial lease term and renewals that are reasonably assured.

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Advertising Costs Costs related to advertising and other promotional expenditures are expensed as incurred. Due to the nature of the business, the Company has an insignificant amount of advertising costs included in selling and marketing costs on the statements of income.

Cash and Cash Equivalents All highly liquid debt instruments and investments purchased with an original maturity of three months or less are classified as cash equivalents and are considered available-for-sale securities. There are cash balances in a bank in excess of the federally insured limits or in the form of a money market demand account with a major financial institution.

Restricted Cash At December 29, 2011 and December 30, 2010, other non-current assets included restricted cash of \$0.3 million, which secures a letter of credit used as a lease deposit on NCM LLC's New York office.

Receivables Bad debts are provided for using the allowance for doubtful accounts method based on historical experience and management's evaluation of outstanding receivables at the end of the period. Receivables are written off when management determines amounts are uncollectible. Trade accounts receivable are uncollateralized and represent a large number of geographically dispersed debtors. At December 29, 2011, there was one advertising agency group through which the Company sources national advertising revenue representing approximately 15% of the Company's outstanding gross receivable balance; however, none of the individual contracts related to the advertising agency were more than 10% of advertising revenue. At December 30, 2010, there were two advertising agency groups through which the Company sources national advertising revenue representing

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approximately 21% and 17% of the Company's outstanding gross receivable balance; however, none of the individual contracts related to the advertising agencies were more than 10% of advertising revenue. The collectability risk is reduced by dealing with large, national advertising agencies who have strong reputations in the advertising industry and clients with stable financial positions.

Receivables consisted of the following, in millions:

add any
additional events
of default for the
benefit of
holders of the
debt securities of
all or any series,
or if applicable
to less than all
series of the debt
securities, stating
that such events
of default are
expressly
applicable only
to such series;

in the case of
subordinated
debt securities,
make any change
relating to
subordination
that would limit
or terminate the
benefits
available to any
holder of senior
indebtedness,
provided that
such change is
made in
accordance with
the provisions of

such senior debt securities;

add to, change or eliminate any of the provisions of the indenture to provide that bearer securities may be registrable as to principal, to change or eliminate any restrictions on the payment of principal (or premium, if any) on registered securities or of principal (or premium, if any) or any interest on bearer securities, to permit bearer securities to be issued in exchange for registered securities of other authorized denominations or to permit or facilitate the issuance of debt securities in uncertificated form, provided any such action shall not adversely affect the interests of the holders of debt securities of any series or any related coupons in any material respect;

make any addition, change or elimination that (a) will become effective only when there is no debt security outstanding of any series created prior to the execution of such supplemental indenture which is entitled to the benefit of such provisions or (b) will not apply to any such then-outstanding debt security;

comply with requirements of the Trust Indenture Act of 1939, as amended (the Trust Indenture Act);

comply with the rules of any applicable securities depository;

provide for the issuance of, and terms of, new debt securities of any series as permitted under the indenture;

evidence and
provide for the
acceptance of
appointment by a
successor or
additional
trustee;

cure any
ambiguity,
omission, defect
or inconsistency;

conform any
provision of the
indenture, any
supplemental
indenture, one or
more series of
debt securities or
any related
guarantees or
security
documents to the
description
thereof
contained in our
prospectus,
prospectus
supplement,
offering
memorandum or
similar
document with
respect to the
offering of the
securities of such
series to the
extent that such
description was
intended to be a
substantially
verbatim
recitation of a
provision in the
indenture, such
securities or any
related
guarantees or

security
documents; or

make any other
change that will
not adversely
affect the
interests of the
holders of the
debt securities of
any series or any
related coupons
in any material
respect.

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The consent of the holder of each affected debt security is required for any amendment or change to:

change the stated maturity of the principal or any installment of the principal of any debt security;

reduce the principal amount or premium payable upon redemption or repayment, if any, on any debt security;

reduce the rate or extend the time of payment of interest;

reduce any amount payable on redemption;

change the currency in which the principal, or interest or coupon is payable, or any premium payable upon redemption or repayment, if any;

impair the right to institute suit for the enforcement of any payment on any debt security when due;

reduce the percentage in principal amount of debt securities of any series outstanding whose consent is required for any modification of the indenture; or

modify such amendment provisions, subject to certain exceptions.

The holders of not less than a majority in aggregate principal amount of all of the debt securities of each applicable series outstanding affected thereby (treated as a single class), by written notice to the trustee, may on behalf of the holders of all debt securities waive compliance by us with certain restrictive provisions of the indenture with respect to such series. The holders of a majority in aggregate principal amount of all of the debt securities of each applicable series outstanding affected thereby (treated as a single class) may on behalf of the holders of all debt securities waive any past default under the indenture, except a default in the payment of principal, premium or interest and certain covenants and provisions of the indenture which cannot be amended without the consent of the holder of each outstanding debt security of each series affected.

With respect to any series of debt securities, the consent or waiver, as the case may be, of holders of debt securities of such series required or permitted under the indenture, as the case may be, if we so determine, may also be obtained from the holders of a majority in principal amount of the debt securities of that series.

The indenture will provide that in determining whether the holders of the requisite principal amount of the outstanding debt securities of any or all series have given any request, demand, authorization, direction, notice, consent, waiver or other action under the indenture as of any date, certain debt securities, including those for whose payment or redemption money has been deposited or set aside in trust for the holders and those that have been fully defeased pursuant to the indenture, which is described below in Discharge, Defeasance and Covenant Defeasance, will not be deemed to be outstanding.

We may set a record date for purposes of determining the identity of holders of the debt securities of any series entitled to vote or consent to any action by vote or consent authorized or permitted by the indenture. Such record date will be the later of 30 days prior to the first solicitation of such consent or the date of the most recent list of holders of such debt securities furnished to the trustee pursuant to the indenture prior to such solicitation. If a record date is set for any action to be taken by holders, such action may be taken only by persons who are holders of outstanding debt securities of any series on the record date.

Discharge, Defeasance and Covenant Defeasance

The indenture will provide that we may elect either:

to defease and be discharged from any and all obligations with respect to all or any series of debt securities with certain limited exceptions described below (referred to as legal defeasance); or

to be released from our obligations with respect to all or any series of debt securities under the restrictive covenants in the indenture and any related Events of Default (referred to as covenant defeasance).

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In order to accomplish legal defeasance or covenant defeasance: (i) we must deposit with the trustee, in trust, cash in U.S. dollars and/or U.S. government obligations, in an amount sufficient to pay any installment of principal, premium, if any, and interest on the debt securities of such series on the applicable stated maturity or redemption date of the payments; (ii) we must deliver to the trustee an opinion of counsel (in the case of legal defeasance with respect to any series of debt securities, based on a ruling of the Internal Revenue Service or a change in applicable federal income tax law occurring after the date of the indenture) to the effect that the beneficial owners of the debt securities will not recognize income, gain or loss for federal income tax purposes as a result of such legal defeasance or covenant defeasance, as the case may be, and that such beneficial owners will be subject to United States federal income tax on the same amounts, in the same manner and at the same times as would have been the case if the legal defeasance or covenant defeasance, as the case may be, with respect to such series of debt securities had not occurred; (iii) no default or Event of Default with respect to the debt securities of the applicable series will have happened or be continuing on the date of the deposit; and (iv) if certain other conditions are satisfied.

Obligations not discharged in a legal defeasance include those relating to (i) the rights of holders of the debt securities of such series to receive payments in respect of the principal of, premium, if any, and interest on such debt securities when such payments are due from the trust referred to above; (ii) our obligations with respect to the debt securities of such series concerning mutilated, destroyed, lost or stolen debt securities and the maintenance of an office or agency for payment and money for security payments held in trust; and (iii) the rights, powers, trusts, duties and immunities of the trustee, and our obligations in connection therewith.

In addition, subject to certain limitations and exceptions, we may satisfy and discharge our obligations under the indenture with respect to any series of debt securities by (i) delivering to the trustee for cancellation all of the debt securities of any series outstanding under the indenture, or (ii) depositing with the trustee, in trust, no earlier than one year before the debt securities of such series become due and payable, whether at stated maturity, or any redemption date, or otherwise, cash and/or U.S. government obligations sufficient to pay all of the outstanding debt securities of that series and paying all other sums payable under the indenture by us.

Issuance of Additional Notes

There is no limit on the aggregate principal amount of debt securities that we may issue under the indenture. The indenture provides that we may, without the consent of the holders of the applicable series of debt securities, increase the principal amount of debt securities of that series by issuing additional debt securities in the future on the same terms and conditions, except for any differences in the issue date, price to the public, interest accrued prior to the issue date of such additional debt securities, and the initial interest payment date, so that such additional debt securities shall be consolidated with the original debt securities, including for purposes of voting and redemptions. However, if the original debt securities and such additional debt securities are not fungible for U.S. federal income tax purposes, such additional debt securities will have a different CUSIP number than the original debt securities. The original debt securities and any additional debt securities would rank equally and ratably and would be treated as a single class for all purposes under the indenture. No additional debt securities may be issued if any event of default has occurred and is continuing with respect to such series of debt securities.

No Additional Amounts

We will not pay any additional amounts on the debt securities to compensate any beneficial owner for any United States tax withheld from payments on such debt securities.

Notices

Unless otherwise specified in the applicable prospectus supplement, any notices required to be given to the holders of the debt securities in global form will be given to the depositary.

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Governing Law

The indenture and the debt securities will be governed by, and construed in accordance with, the law of the State of New York.

Information Concerning the Trustee

U.S. Bank National Association is initially serving as the trustee, security registrar and paying agent under the indenture. As of the date of this prospectus, the corporate trust office of the trustee is located at 60 Livingston Avenue, EP-MN-WS3C, Saint Paul, Minnesota 55107. The trustee and any agents under the indenture may resign or be removed and a successor may be appointed.

The trustee and its affiliates have engaged, currently engage, and may in the future engage in transactions, including commercial banking and other transactions, with us and our subsidiaries from time to time, subject to the Trust Indenture Act. An affiliate of the trustee may act as underwriter with respect to one or more series of our debt securities. Consequently, if an actual or potential event of default occurs with respect to any of our debt securities, the trustee may be considered to have a conflicting interest for purposes of the Trust Indenture Act. In that case, the trustee may be required to resign and we would be required to appoint a successor trustee. If the trustee resigns following a default or for any other reason, it may be difficult to identify and appoint a qualified successor trustee.

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DESCRIPTION OF WARRANTS

We may issue warrants to purchase our debt or equity securities or securities of third parties or other rights, including rights to receive payment in cash or securities based on the value, rate or price of one or more specified commodities, currencies, securities or indices, or any combination of the foregoing. Warrants may be issued independently or together with any other securities and may be attached to, or separate from, such securities. Each series of warrants will be issued under a separate warrant agreement to be entered into between us and a warrant agent. The terms of any warrants to be issued and a description of the material provisions of the applicable warrant agreement will be set forth in the applicable prospectus supplement.

The applicable prospectus supplement will describe, among other things, the following terms of any warrants in respect of which this prospectus is being delivered:

the title of such warrants;

the aggregate number of such warrants;

the price or prices at which such warrants will be issued;

the currency or currencies in which the price of such warrants will be payable;

the securities or other rights, including rights to receive payment in cash or securities based on the value, rate or price of one or more specified commodities, currencies, securities or indices, or any combination of the foregoing, purchasable upon exercise of such warrants;

the price at which and the currency or currencies in which the securities or other rights purchasable upon exercise of such warrants may be purchased;

the date on which the right to exercise such warrants shall commence and the date on which such right shall expire;

if applicable, the minimum or maximum amount of such warrants which may be exercised at any one time;

if applicable, the designation and terms of the securities with which such warrants are issued and the number of such warrants issued with each such security;

if applicable, the date on and after which such warrants and the related securities will be separately transferable;

information with respect to book-entry procedures, if any;

if applicable, a discussion of any material United States federal income tax considerations; and

any other terms of such warrants, including terms, procedures and limitations relating to the exchange and exercise of such warrants.

Until any warrants are exercised, the holder of such warrants will not have any of the rights of holders of the securities that can be purchased upon exercise.

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DESCRIPTION OF PURCHASE CONTRACTS

We may issue purchase contracts for the purchase or sale of:

debt or equity securities issued by us or securities of third parties, a basket of such securities, an index or indices or such securities or any combination of the above as specified in the applicable prospectus supplement;

currencies; or

commodities.

Each purchase contract will entitle the holder thereof to purchase or sell, and obligate us to sell or purchase, on specified dates, such securities, currencies or commodities at a specified purchase price, which may be based on a formula, all as set forth in the applicable prospectus supplement. We may, however, satisfy our obligations, if any, with respect to any purchase contract by delivering the cash value of such purchase contract or the cash value of the property otherwise deliverable or, in the case of purchase contracts on underlying currencies, by delivering the underlying currencies, as set forth in the applicable prospectus supplement. The applicable prospectus supplement will also specify the methods by which the holders may purchase or sell such securities, currencies or commodities and any acceleration, cancellation or termination provisions or other provisions relating to the settlement of a purchase contract.

The purchase contracts may require us to make periodic payments to the holders thereof or vice versa, which payments may be deferred to the extent set forth in the applicable prospectus supplement, and those payments may be unsecured or prefunded on some basis. The purchase contracts may require the holders thereof to secure their obligations in a specified manner to be described in the applicable prospectus supplement. Alternatively, purchase contracts may require holders to satisfy their obligations thereunder when the purchase contracts are issued. Our obligation to settle such pre-paid purchase contracts on the relevant settlement date may constitute indebtedness. Accordingly, pre-paid purchase contracts will be issued under the applicable indenture.

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DESCRIPTION OF DEPOSITARY SHARES

We may issue fractional shares of capital stock represented by depositary shares. If we exercise this option, we will issue receipts for depositary shares, and each of these depositary shares will represent a fraction (to be set forth in the prospectus supplement relating to such depositary shares) of a share of a particular class or series of capital stock.

The shares of any series of capital stock underlying the depositary shares will be deposited under a deposit agreement between us and a bank or trust company selected by us. We will indicate the name and address of this share depository in the applicable prospectus supplement. Subject to the terms of the deposit agreement, each owner of a depositary share will be entitled, in proportion to the applicable fraction of a share of capital stock underlying the depositary share, to all of the rights and preferences of the capital stock underlying that depositary share. Those rights may include dividend, voting, redemption, conversion and liquidation rights.

The depositary shares will be evidenced by depositary receipts issued under the deposit agreement. We will describe the material terms of the deposit agreement, the depositary shares and the depositary receipts in a prospectus supplement relating to the depositary shares. You should also refer to the forms of the deposit agreement and depositary receipts that will be filed with the SEC in connection with the offering of the specific depositary shares.

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DESCRIPTION OF UNITS

We may issue units comprising one or more of the other securities that may be offered under this prospectus, in any combination. We may evidence each series of units by unit certificates that we will issue under a separate agreement. We may enter into unit agreements with a unit agent. Each unit agent will be a bank or trust company that we select. We will indicate the name and address of the unit agent in the applicable prospectus supplement. The applicable prospectus supplement will describe, among other things, the following terms of any units in respect of which this prospectus is being delivered:

the title and series of the units;

the price or prices at which the units will be issued;

the terms of the units and of the securities comprising the units, including whether and under what circumstances the securities comprising the units may be traded separately;

if applicable, a discussion of any material United States federal income tax considerations;

a description of the terms of any unit agreement governing the units; and

a description of the provisions for the payment, settlement, transfer or exchange of the units or of the securities comprising the units.

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GLOBAL SECURITIES

Book-Entry, Delivery and Form

Unless we indicate differently in a prospectus supplement, the securities initially will be issued in book-entry form and represented by one or more global notes or global securities, or, collectively, global securities. The global securities will be deposited with, or on behalf of, The Depository Trust Company, New York, New York, as depository, or DTC, and registered in the name of Cede & Co., the nominee of DTC. Unless and until it is exchanged for individual certificates evidencing securities under the limited circumstances described below, a global security may not be transferred except as a whole by the depository to its nominee or by the nominee to the depository, or by the depository or its nominee to a successor depository or to a nominee of the successor depository.

DTC has advised us that it is:

a limited-purpose trust company organized under the New York Banking Law;

a banking organization within the meaning of the New York Banking Law;

a member of the Federal Reserve System;

a clearing corporation within the meaning of the New York Uniform Commercial Code; and

a clearing agency registered pursuant to the provisions of Section 17A of the Exchange Act.

DTC holds securities that its participants deposit with DTC. DTC also facilitates the settlement among its participants of securities transactions, such as transfers and pledges, in deposited securities through electronic computerized book-entry changes in participants' accounts, thereby eliminating the need for physical movement of securities certificates. Direct participants in DTC include securities brokers and dealers, including underwriters, banks, trust companies, clearing corporations and other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation, or DTCC. DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others, which we sometimes refer to as indirect participants, that clear through or maintain a custodial relationship with a direct participant, either directly or indirectly. The rules applicable to DTC and its participants are on file with the SEC.

Purchases of securities under the DTC system must be made by or through direct participants, which will receive a credit for the securities on DTC's records. The ownership interest of the actual purchaser of a security, which we sometimes refer to as a beneficial owner, is in turn recorded on the direct and indirect participants' records. Beneficial owners of securities will not receive written confirmation from DTC of their purchases. However, beneficial owners are expected to receive written confirmations providing details of their transactions, as well as periodic statements of their holdings, from the direct or indirect participants through which they purchased securities. Transfers of ownership interests in global securities are to be accomplished by entries made on the books of participants acting on behalf of beneficial owners. Beneficial owners will not receive certificates representing their ownership interests in the global

securities, except under the limited circumstances described below.

To facilitate subsequent transfers, all global securities deposited by direct participants with DTC will be registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of securities with DTC and their registration in the name of Cede & Co. or such other nominee will not change the beneficial ownership of the securities. DTC has no knowledge of the actual beneficial owners of the securities. DTC's records reflect only the identity of the direct participants to whose accounts the securities are credited, which may or may not be the beneficial owners. The participants are responsible for keeping account of their holdings on behalf of their customers.

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So long as the securities are in book-entry form, you will receive payments and may transfer securities only through the facilities of the depository and its direct and indirect participants, in accordance with the rules and procedures applicable to the DTC system. We will maintain an office or agency in the location specified in the prospectus supplement for the applicable securities, where notices and demands in respect of the securities may be delivered to us and where certificated securities may be surrendered for payment, registration of transfer or exchange.

Conveyance of notices and other communications by DTC to direct participants, by direct participants to indirect participants and by direct participants and indirect participants to beneficial owners will be governed by arrangements among them, subject to any legal requirements in effect from time to time.

Redemption notices will be sent to DTC. If less than all of the securities of a particular series are being redeemed, we understand DTC's current practice is to determine by lot the amount of the interest of each direct participant in the securities of such series to be redeemed.

Neither DTC nor Cede & Co. (or such other DTC nominee) will consent or vote with respect to the securities. Under its usual procedures, DTC will mail an omnibus proxy to us as soon as possible after the record date. The omnibus proxy assigns the consenting or voting rights of Cede & Co. to those direct participants to whose accounts the securities of such series are credited on the record date, identified in a listing attached to the omnibus proxy.

So long as securities are in book-entry form, we will make payments on those securities to the depository or its nominee, as the registered owner of such securities, by wire transfer of immediately available funds. If securities are issued in definitive certificated form under the limited circumstances described below, we will have the option of making payments by check mailed to the addresses of the persons entitled to payment or by wire transfer to bank accounts in the United States designated in writing to the applicable trustee or other designated party at least 15 days before the applicable payment date by the persons entitled to payment, unless a shorter period is satisfactory to the applicable trustee or other designated party.

Redemption proceeds, distributions and dividend payments on the securities will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit direct participants' accounts upon DTC's receipt of funds and corresponding detail information from us on the payment date in accordance with their respective holdings shown on DTC records. Payments by participants to beneficial owners will be governed by standing instructions and customary practices, as is the case with securities held for the account of customers in bearer form or registered in street name. Those payments will be the responsibility of participants and not of DTC or us, subject to any statutory or regulatory requirements in effect from time to time. Payment of redemption proceeds, distributions and dividend payments to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC, is our responsibility, disbursement of payments to direct participants is the responsibility of DTC, and disbursement of payments to the beneficial owners is the responsibility of direct and indirect participants.

Unless otherwise provided in the applicable prospectus supplement, debt securities will trade in the same-day funds settlement system of DTC until maturity or until we issue the debt securities in certificated form. DTC will therefore require secondary market trading activity in the debt securities to settle in immediately available funds. We can give no assurance as to the effect, if any, of settlement in immediately available funds on trading activity in the debt securities.

Except under the limited circumstances described below, purchasers of securities will not be entitled to have securities registered in their names and will not receive physical delivery of securities. Accordingly, each beneficial owner must rely on the procedures of DTC and its participants to exercise any rights under the securities and the indenture.

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The laws of some jurisdictions may require that some purchasers of securities take physical delivery of securities in definitive form. Those laws may impair the ability to transfer or pledge beneficial interests in securities.

DTC may discontinue providing its services as securities depository with respect to the securities at any time. Under such circumstances, in the event that a successor depository is not obtained, securities certificates are required to be printed and delivered.

As noted above, beneficial owners of a particular series of securities generally will not receive certificates representing their ownership interests in those securities. However, if:

DTC notifies us that it is unwilling or unable to continue as a depository for the global security or securities representing such series of securities or if DTC ceases to be a clearing agency registered under the Exchange Act at a time when it is required to be registered and a successor depository is not appointed within 90 days of the notification to us or of our becoming aware of DTC's ceasing to be so registered, as the case may be;

we determine, in our sole discretion, not to have such securities represented by one or more global securities; or

an event of default has occurred and is continuing with respect to such series of securities, we will prepare and deliver certificates for such securities in exchange for beneficial interests in the global securities. Any beneficial interest in a global security that is exchangeable under the circumstances described in the preceding sentence will be exchangeable for securities in definitive certificated form registered in the names that the depository directs. It is expected that these directions will be based upon directions received by the depository from its participants with respect to ownership of beneficial interests in the global securities.

The above information with respect to DTC has been provided for informational purposes only and is not intended to serve as a representation, warranty or contract modification of any kind. We have obtained the information in this section and elsewhere in this prospectus concerning DTC and DTC's book-entry system from sources that are believed to be reliable, but we take no responsibility for the accuracy of this information. In addition, we have no control over the DTC system or its participants, and we take no responsibility for their activities. In addition, the rules and procedures applicable to DTC could change at any time.

Euroclear and Clearstream

If the depository for a global security is DTC, a beneficial owner may hold interests in the global security through Clearstream Banking, *société anonyme*, which we refer to as Clearstream, or Euroclear Bank SA/NV, as operator of the Euroclear System, which we refer to as Euroclear, in each case, as a participant in DTC. Euroclear and Clearstream will hold interests, in each case, on behalf of their participants through customers' securities accounts in the names of Euroclear and Clearstream on the books of their respective depositories, which in turn will hold such interests in customers' securities in the depositories' names on DTC's books.

Payments, deliveries, transfers, exchanges, notices and other matters relating to the debt securities made through Euroclear or Clearstream must comply with the rules and procedures of those systems. Those systems could change their rules and procedures at any time. We have no control over those systems or their participants, and we take no

responsibility for their activities. Transactions between participants in Euroclear or Clearstream, on one hand, and other participants in DTC, on the other hand, would also be subject to DTC's rules and procedures.

Investors will be able to make and receive through Euroclear and Clearstream payments, deliveries, transfers, exchanges, notices and other transactions involving any securities held through those systems only on days when those systems are open for business. Those systems may not be open for business on days when banks, brokers and other institutions are open for business in the United States.

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In addition, because of time-zone differences, U.S. investors who hold their interests in the debt securities through these systems and wish on a particular day, to transfer their interests, or to receive or make a payment or delivery or exercise any other right with respect to their interests, may find that the transaction will not be effected until the next business day in Luxembourg or Brussels, as applicable. Thus, investors who wish to exercise rights that expire on a particular day may need to act before the expiration date. In addition, investors who hold their interests through both DTC and Euroclear or Clearstream may need to make special arrangements to finance any purchase or sales of their interests between the U.S. and European clearing systems, and those transactions may settle later than transactions within one clearing system.

The above information with respect to Euroclear and Clearstream has been provided for informational purposes only and is not intended to serve as a representation, warranty or contract modification of any kind. We have obtained the information in this section and elsewhere in this prospectus concerning Euroclear and Clearstream from sources that are believed to be reliable, but we take no responsibility for the accuracy of this information.

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PLAN OF DISTRIBUTION

We may sell the securities offered under this prospectus through agents, underwriters, dealers or directly to one or more purchasers. We may sell the securities described in this prospectus from time to time in one or more transactions:

on the Nasdaq Global Select Market (including through at-the-market offerings);

in the over-the-counter market;

in privately negotiated transactions;

to purchasers directly;

to underwriters for public offering and sale by them;

in a block trade in which a broker/dealer will attempt to sell a block of securities as agent but may position and resell a portion of the block as principal to facilitate the transaction;

through agents;

through dealers; or

through a combination of any of the foregoing methods of sale.

We may sell the securities directly to institutional investors or others who may be deemed to be underwriters within the meaning of the Securities Act, with respect to any resale of the securities. To the extent required, a prospectus supplement will describe the terms of any sale of securities we are offering hereunder. Direct sales may be arranged by a securities broker-dealer or other financial intermediary.

To the extent required, the applicable prospectus supplement will name any underwriter involved in a sale of securities. Underwriters may offer and sell securities at a fixed price or prices, which may be changed, or from time to time at market prices prevailing at the time of sale, at prices related to market prices, by use of an electronic auction or at negotiated prices. Underwriters may be deemed to have received compensation from us from sales of securities in the form of underwriting discounts or commissions and may also receive commissions from purchasers of securities for whom they may act as agent. Underwriters may be involved in any at-the-market offering of securities by or on our behalf.

Underwriters may sell securities to or through dealers, and such dealers may receive compensation in the form of discounts, concessions or commissions from the underwriters and/or commissions (which may be changed from time to time) from the purchasers for whom they may act as agent.

Unless otherwise specified in the applicable prospectus supplement, the obligations of any underwriters to purchase securities will be subject to certain conditions precedent, and the underwriters will be obligated to purchase all the securities if any are purchased. We may have agreements with the underwriters, dealers and agents to indemnify them against certain civil liabilities, including liabilities under the Securities Act, or to contribute with respect to payments which the underwriters, dealers or agents may be required to make as a result of those certain civil liabilities.

To the extent required, the applicable prospectus supplement will set forth whether or not underwriters may over-allot or effect transactions that stabilize, maintain or otherwise affect the market price of the securities at levels above those that might otherwise prevail in the open market, including, for example, by entering stabilizing bids, effecting syndicate covering transactions or imposing penalty bids.

To the extent required, we will name any agent involved in a sale of securities, as well as any commissions payable by us to such agent, in the applicable prospectus supplement. Unless otherwise specified in the applicable prospectus supplement, any such agent will be acting on a best efforts basis for the period of its appointment.

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If we utilize a dealer in the sale of the securities being offered pursuant to this prospectus, we will sell the securities to the dealer, as principal. The dealer may then resell the securities to the public at varying prices to be determined by the dealer at the time of resale.

Underwriters, dealers and agents participating in a sale of the securities may be deemed to be underwriters as defined in the Securities Act, and any discounts and commissions received by them and any profit realized by them on resale of the securities may be deemed to be underwriting discounts and commissions, under the Securities Act. We may have agreements with underwriters, dealers and agents to indemnify them against certain civil liabilities, including liabilities under the Securities Act, and to reimburse them for certain expenses.

Underwriters, dealers, agents and their affiliates may be customers of, engage in transactions with or perform services for us or our affiliates in the ordinary course of business for which they receive compensation.

Any common stock will be listed on the Nasdaq Global Select Market, but any other securities may or may not be listed on any securities exchange. Some or all of the securities may be new issues of securities with no established trading market. Any underwriters that purchase the securities for public offering and sale may make a market in such securities, but such underwriters will not be obligated to do so and may discontinue any market making at any time without notice. We make no assurance as to the liquidity of or the trading markets for any securities.

To facilitate the offering of securities, certain persons participating in the offering may engage in transactions that stabilize, maintain or otherwise affect the price of the securities. This may include over-allotments or short sales of the securities, which involve the sale by persons participating in the offering of more securities than were sold to them. In these circumstances, these persons would cover such over-allotments or short positions by making purchases in the open market or by exercising their over-allotment option, if any. In addition, these persons may stabilize or maintain the price of the securities by bidding for or purchasing securities in the open market or by imposing penalty bids, whereby selling concessions allowed to dealers participating in the offering may be reclaimed if securities sold by them are repurchased in connection with stabilization transactions. The effect of these transactions may be to stabilize or maintain the market price of the securities at a level above that which might otherwise prevail in the open market. These transactions may be discontinued at any time.

We may enter into derivative transactions with third parties, or sell securities not covered by this prospectus to third parties in privately negotiated transactions. In connection with those derivatives, the third parties may sell securities covered by this prospectus and the applicable prospectus supplement, including in short sale transactions. If so, the third party may use securities pledged by us or borrowed from us or others to settle those sales or to close out any related open borrowings of stock, and may use securities received from us in settlement of those derivatives to close out any related open borrowings of stock. In addition, we may otherwise loan or pledge securities to a financial institution or other third party that in turn may sell the securities short using this prospectus and an applicable prospectus supplement. Such financial institution or other third party may transfer its economic short position to investors in our securities or in connection with a concurrent offering of other securities.

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EXPERTS

The consolidated financial statements and the related financial statement schedule incorporated in this prospectus by reference from the Company's Annual Report on Form 10-K for the year ended December 31, 2017, and the effectiveness of the Company's internal control over financial reporting have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their reports, which are incorporated herein by reference. Such financial statements and financial statement schedule have been so incorporated in reliance upon the reports of such firm given upon their authority as experts in accounting and auditing.

LEGAL MATTERS

The validity of the securities offered hereby will be passed upon for us by Faegre Baker Daniels LLP, Minneapolis, Minnesota. Any agents, underwriters or dealers will be represented by their own legal counsel.

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