

NEIMAN MARCUS GROUP INC  
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REGISTRATION NO. 333-133184

**The Neiman Marcus Group, Inc.**

**9%<sup>19</sup>/<sub>34</sub>% Senior Notes due 2015**

**10<sup>3</sup>/<sub>8</sub>% Senior Subordinated Notes due 2015**

**The Senior Notes**

The 9%<sup>19</sup>/<sub>34</sub>% Senior Notes due 2015 (the senior notes ) will mature on October 15, 2015. We will pay interest on the senior notes on each January 15, April 15, July 15 and October 15, commencing on January 15, 2006. For any interest period through October 15, 2010, we may elect to pay interest on the senior notes in cash or by increasing the principal amount of the senior notes. Interest payable in cash will accrue at a rate of 9% per annum, and interest payable by increasing the principal amount of the senior notes will accrue at a rate of 9<sup>3</sup>/<sub>4</sub>% per annum. After October 15, 2010, we must pay all interest payments on the senior notes in cash. The senior notes will be treated as having been issued with original issue discount for U.S. federal income tax purposes. The senior notes will be our unsecured, senior obligations and will rank equally in right of payment with all of our existing and future senior indebtedness, senior to all of our existing and future subordinated indebtedness, including the senior subordinated notes, and effectively junior to all of our existing and future secured indebtedness, including our senior secured credit facilities and our 7.125% senior debentures due 2028 (the 2028 debentures ).

**The Senior Subordinated Notes**

The 10<sup>3</sup>/<sub>8</sub>% Senior Subordinated Notes due 2015 (the senior subordinated notes and together with the senior notes, the notes ) will mature on October 15, 2015. We will pay interest on the senior subordinated notes on each April 15 and October 15, commencing on April 15, 2006. The senior subordinated notes will be our unsecured, senior subordinated obligations and will rank junior in right of payment to all of our existing and future senior indebtedness, including our senior secured credit facilities, our 2028 debentures and the senior notes.

Neiman Marcus, Inc., our parent company, and each of our wholly-owned domestic subsidiaries that has guaranteed our senior secured credit facilities, unconditionally guarantees the senior notes with guarantees that will rank equal in right of payment to all of the senior indebtedness of such guarantor, and unconditionally guarantees the senior subordinated notes with guarantees that will be subordinated in right of payment to all existing and future senior indebtedness of such guarantor.

Prior to October 15, 2010, we may redeem some or all of the notes at a redemption price equal to the make whole amount for notes of the relevant series set forth in this prospectus. On or after October 15, 2010, we may redeem some or all of the notes at the redemption prices for notes of the relevant series set forth in this prospectus. Prior to October 15, 2008, we may redeem up to 35% of each series of the notes from the net cash proceeds of certain equity offerings at the applicable redemption price set forth in this prospectus.

**You should consider carefully the Risk Factors beginning on page 6 of this prospectus.**

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.

This prospectus will be used by Credit Suisse Securities (USA) LLC in connection with offers and sales in market-making transactions at negotiated prices related to prevailing market prices. There is currently no public market for the securities. We do not intend to list the securities on any securities exchange. Credit Suisse Securities (USA) LLC has advised us that it is currently making a market in the securities; however, it is not obligated to do so and may stop at any time. Credit Suisse Securities (USA) LLC may act as principal or agent in any such transaction. We will not receive the proceeds of the sale of the securities but will bear the expenses of registration. See Plan of Distribution.

**Credit Suisse**

The date of this prospectus is November 3, 2006.

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TABLE OF CONTENTS

	<b>Page</b>
<u>Where You Can Find More Information</u>	i
<u>Forward-Looking Statements</u>	ii
<u>About This Prospectus</u>	iv
<u>Summary</u>	1
<u>Risk Factors</u>	6
<u>Use of Proceeds</u>	13
<u>Recent Developments</u>	13
<u>Description of Senior Notes</u>	14
<u>Description of Senior Subordinated Notes</u>	67
<u>Book-Entry, Delivery and Form</u>	122
<u>Certain U.S. Federal Income Tax Considerations</u>	125
<u>Plan of Distribution</u>	129
<u>Legal Matters</u>	130
<u>Experts</u>	130
<u>Incorporation of Certain Information by Reference</u>	130

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**WHERE YOU CAN FIND MORE INFORMATION**

We, our parent guarantor and our guarantor subsidiaries have filed with the Securities and Exchange Commission, or the SEC, a registration statement on Form S-1 under the Securities Act with respect to the notes. This prospectus, which forms a part of the registration statement, does not contain all of the information set forth in the registration statement. For further information with respect to us and the notes, reference is made to the registration statement. Statements contained in this prospectus as to the contents of any contract or other document are not necessarily complete. In addition, we incorporate by reference important information into this prospectus. See [Incorporation of Certain Information by Reference](#).

We file reports and other information with the SEC. The registration statement, such reports and other information can be read and copied at the Public Reference Room of the SEC located at 100 F Street, N.E., Washington D.C. 20549. Copies of such materials, including copies of all or any portion of the registration statement, can be obtained from the Public Reference Room of the SEC at prescribed rates. You can call the SEC at 1-800-SEC-0330 to obtain information on the operation of the Public Reference Room. Such materials may also be accessed electronically by means of the SEC's home page on the Internet (<http://www.sec.gov>).

We have agreed under the terms of the notes that, even if we are not required under the Securities Exchange Act of 1934 (the [Exchange Act](#)) to furnish reports to the SEC, we will nonetheless continue to furnish information that would be required to be furnished by us on Forms 10-Q, 10-K and 8-K if we were subject to Sections 13 or 15(d) of the Exchange Act. So long as our parent is a guarantor, this requirement in respect of the notes may be satisfied by the filing of such reports by our parent, provided that specified consolidating information is provided. See [Description of Senior Notes](#) and [Description of Senior Subordinated Notes](#).

## FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements based on estimates and assumptions. Forward-looking statements give our current expectations or forecasts of future events. Forward-looking statements generally can be identified by the use of forward-looking terminology such as may, plan, predict, expect, estimate, intend, would, could, should, anticipate, believe, project or continue or similar words. Any or all of our forward-looking statements in this prospectus may turn out to be incorrect, possibly to a material degree. Such statements can be affected by inaccurate assumptions we might make or by known or unknown risks or uncertainties. Consequently, no forward-looking statement can be guaranteed. Actual results may vary materially from our forward-looking statements. Investors are cautioned not to place undue reliance on any forward-looking statements.

Investors should also understand that it is not possible to predict or identify all the risks and uncertainties that could affect future events and should not consider the following list to be a complete statement of all potential risks and uncertainties. Important factors that could cause actual results to differ materially from the forward-looking statements include, but are not limited to:

### *Political and General Economic Conditions*

- current political and general economic conditions or changes in such conditions including relationships between the United States and the countries from which we source our merchandise;
- terrorist activities in the United States and elsewhere;
- political, social, economic, or other events resulting in the short- or long-term disruption in business at our stores, distribution centers or offices;

### *Customer Demographic Issues*

- changes in the demographic or retail environment;
- changes in consumer confidence resulting in a reduction of discretionary spending on goods;
- changes in consumer preferences or fashion trends;
- changes in our relationships with key customers;
- changes in our proprietary credit card arrangement that adversely impact the ability to provide credit to our customers;

### *Merchandise Procurement and Supply Chain Considerations*

- changes in our relationships with designers, vendors and other sources of merchandise, including adverse changes in their financial viability;
- delays in receipt of merchandise ordered due to work stoppages or other causes of delay in connection with either the manufacture or shipment of such merchandise;
- changes in foreign currency exchange or inflation rates;
- significant increases in paper, printing and postage costs;

### *Industry and Competitive Factors*

- competitive responses to our loyalty programs, marketing, merchandising and promotional efforts or inventory liquidations by vendors or other retailers;
- seasonality of the retail business;

ii

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- adverse weather conditions or natural disasters, particularly during peak selling seasons;
- delays in anticipated store openings and renovations;
- our success in enforcing our intellectual property rights;

*Employee Considerations*

- changes in key management personnel and our ability to retain key management personnel;
- changes in our relationships with certain of our key sales associates and our ability to retain our key sales associates;

*Legal and Regulatory Issues*

- changes in government or regulatory requirements increasing our costs of operations;
- litigation that may have an adverse effect on our financial results or reputation;

*Leverage Considerations*

- the effects of incurring a substantial amount of indebtedness under our senior secured credit facilities and our senior notes and senior subordinated notes;
- the effects upon us of complying with the covenants contained in our senior secured credit facilities and the indentures governing our senior notes and senior subordinated notes; and
- restrictions the terms and conditions of the indebtedness under our senior secured credit facilities may place on our ability to respond to changes in our business or to take certain actions.

*Other Factors*

- impact of funding requirements related to our noncontributory defined benefit pension plan;
- the design and implementation of new information systems as well as enhancements of existing systems; and
- other risks, uncertainties and factors set forth in this prospectus, including under Risk Factors, and in our parent's Annual Report on Form 10-K incorporated by reference herein.

The foregoing factors are not exhaustive, and new factors may emerge or changes to the foregoing factors may occur that could impact our business. Except to the extent required by law, we undertake no obligation to update or revise (publicly or otherwise) any forward-looking statements to reflect subsequent events, new information or future circumstances.

You should review carefully the section captioned Risk Factors in this prospectus for a more complete discussion of the risks of an investment in the notes.

**ABOUT THIS PROSPECTUS**

Unless the context otherwise indicates or requires, as used in this prospectus:

- the terms we, us, our, Company or Neiman Marcus refer to The Neiman Marcus Group, Inc., and its consolidated subsidiaries, unless we expressly state otherwise or the context otherwise requires;
- references to the issuer are to The Neiman Marcus Group, Inc.;
- references to the parent are to Neiman Marcus, Inc. (formerly known as Newton Acquisition, Inc.);
- the term domestic refers to the United States;
- references to Kate Spade are to Kate Spade LLC, a Delaware limited liability company in which we currently own a 56% interest;
- references to the Transactions are to the transactions defined as the Transactions in our parent's Annual Report on Form 10-K for the fiscal year ended July 29, 2006, which is incorporated by reference in this prospectus;
- references to the Sponsors are to the investment funds affiliated with Texas Pacific Group and Warburg Pincus LLC that provided equity investments that funded a portion of the cash consideration paid as part of the merger;
- references to the Initial Purchasers are to Credit Suisse Securities (USA) LLC (formerly known as Credit Suisse First Boston LLC), Deutsche Bank Securities Inc., Banc of America Securities LLC, and Goldman, Sachs & Co, who were the initial purchasers of the notes on October 6, 2005;
- references to Sponsor Funds are to investment funds associated with or designated by a Sponsor, including certain other funds which invested directly through a Sponsor Fund to provide equity financing for the Transactions;
- references to the Co-Investors are to certain investors who agreed to co-invest with the Sponsor Funds or through a vehicle jointly controlled by the Sponsors to provide equity financing for the Transactions;
- references to the 2008 notes are to the 6.65% senior notes due 2008 issued by The Neiman Marcus Group, Inc. pursuant the indenture dated as of May 27, 1998, by and between The Neiman Marcus Group, Inc. and The Bank of New York, as trustee; and
- references to any fiscal year are to our fiscal year, which ends on the Saturday closest to July 31 (all references to fiscal year 2006 relate to the combined 52 weeks ended July 29, 2006, for which our results of operations were calculated by adding the earnings and cash flows for the predecessor company nine-week period ended October 1, 2005 and the successor company forty-three week period ended July 29, 2006).



**SUMMARY**

*The following summary contains selected information about us and about this offering. It likely does not contain all of the information that is important to you. Before you make an investment decision, you should review this prospectus in its entirety, including the documents incorporated herein by reference.*

**The Neiman Marcus Group, Inc.**

**Overview**

We are one of the nation's leading luxury retailers, offering distinctive merchandise and excellent customer service that cater to the needs of the affluent consumer. Since our founding in the early 1900s, we have established ourselves as a leading fashion authority among luxury consumers and have become a premier U.S. retail channel for many of the world's most exclusive designers. Currently, we operate 37 Neiman Marcus full-line stores at prime retail locations in major U.S. markets and two Bergdorf Goodman full-line stores on Fifth Avenue in New York City. We also operate catalogs and e-commerce websites under the brands Neiman Marcus®, Bergdorf Goodman® and Horchow® and own majority interests in Kate Spade, which designs and markets high-end accessories. During fiscal year 2006, we generated revenues of \$4,105.6 million and operating earnings of \$328.1 million.

**Corporate Information**

The Neiman Marcus Group, Inc. is incorporated in the state of Delaware. Our principal executive offices are located at One Marcus Square, 1618 Main Street, Dallas, Texas. Our telephone number is (214) 743-7600. Our website address is [www.neimanmarcusgroup.com](http://www.neimanmarcusgroup.com). The information on our website is not a part of this prospectus.

**Summary of Terms of the Notes**

Issuer	The Neiman Marcus Group, Inc.
Notes Offered	
Senior Notes	\$700,000,000 aggregate original principal amount of 9%/9 3/4% Senior Notes due 2015.
Senior Subordinated Notes	\$500,000,000 aggregate principal amount of 10 3/8% Senior Subordinated Notes due 2015.
	The senior notes and the senior subordinated notes are referred to herein as the notes.
Maturity Date	
Senior Notes	The senior notes will mature on October 15, 2015.
Senior Subordinated Notes	The senior subordinated notes will mature on October 15, 2015.
Interest Payment Dates	
Senior Notes	January 15, April 15, July 15 and October 15 of each year commencing January 15, 2006.
Senior Subordinated Notes	April 15 and October 15 of each year commencing April 15, 2006.
Form of Interest Payment	
Senior Notes	We will make the initial interest payment on the senior notes in cash. For any interest period thereafter through October 15, 2010, we may elect to pay interest on the senior notes, at our option:
	<ul style="list-style-type: none"> <li>entirely in cash ( cash interest ) or</li> </ul>



- entirely by increasing the principal amount of the senior notes ( PIK interest ).

Cash interest will accrue at a rate of 9% per annum, and PIK interest will accrue at a rate of 9 3/4% per annum. If we elect to pay PIK interest, we will increase the principal amount of the senior notes in an amount equal to the amount of PIK interest for the applicable interest payment period (rounded up to the nearest \$1,000 in the case of global notes) to holders of senior notes on the relevant record date. The senior notes will bear interest on the increased principal amount thereof from and after the applicable interest payment date on which a payment of PIK interest is made. We must elect the form of interest payment with respect to each interest period no later than the beginning of the applicable interest period. In the absence of such an election or proper notification of such election to the trustee, interest is payable entirely in cash. After October 15, 2010, we must pay all interest payments on the senior notes entirely in cash.

Senior Subordinated Notes

In cash.

Original Issue Discount

We have the option, until October 15, 2010, to pay interest on the senior notes in cash interest or PIK interest. For U.S. federal income tax purposes, the existence of this option means that none of the interest payments on the senior notes prior to October 15, 2010 are qualified stated interest even if we never exercise the option to pay interest in the form of PIK interest. Consequently, the senior notes are treated as issued at a discount and U.S. holders are required to include original issue discount in gross income for U.S. federal income tax purposes in advance of the receipt of cash payments on such notes. For more information, see Certain U.S. Federal Income Tax Considerations.

Optional Redemption  
Senior Notes

Prior to October 15, 2008, we may redeem up to 35% of the aggregate principal amount of the senior notes with the net proceeds of specified equity offerings. Prior to October 15, 2010, we may redeem some or all of the senior notes at a price equal to 100% of the principal amount thereof, plus the Applicable Premium set forth under Description of Senior Notes. On or after October 15, 2010, we may redeem some or all of the senior notes at the redemption prices listed under Description of Senior Notes Optional Redemption.

Senior Subordinated Notes

Prior to October 15, 2008, we may redeem up to 35% of the aggregate principal amount of the senior subordinated notes with the net proceeds of specified equity offerings. Prior to October 15, 2010, we may redeem some or all of the senior subordinated notes at a price equal to 100% of the principal amount thereof, plus the Applicable Premium set forth under Description of Senior Subordinated Notes. On or after October 15, 2010, we may redeem some or all of the senior subordinated notes at the redemption prices listed under Description of Senior Subordinated Notes Optional Redemption.

Change of Control

If a Change of Control occurs, we must give holders of the notes an opportunity to sell to us the applicable notes at a purchase price of 101% of the principal amount of the applicable notes, plus accrued and unpaid interest to the date of the purchase. The term Change of Control is defined under Description of Senior Notes Repurchase at the Option of Holders Change of Control and Description of Senior Subordinated Notes Repurchase at the Option of Holders Change of Control.



Guarantees  
Senior Notes

The senior notes are guaranteed, jointly and severally, on an unsecured, senior basis, by each of our wholly-owned domestic subsidiaries that guarantee our obligations under our senior secured credit facilities and by our Parent.

Senior Subordinated Notes

The senior subordinated notes are guaranteed, jointly and severally, on an unsecured, senior subordinated basis, by each of our wholly-owned domestic subsidiaries that guarantee our obligations under our senior secured credit facilities and by our Parent.

Ranking

The senior notes and the guarantees thereof are our and the guarantors' unsecured, senior obligations and rank:

- equal in the right of payment with all of our and the guarantors' existing and future senior indebtedness, including any borrowings under our senior secured credit facilities and the guarantees thereof and our 2028 debentures; and
- senior to all of our and our guarantors' existing and future subordinated indebtedness, including the senior subordinated notes and the guarantees thereof.

The senior notes also are effectively junior in priority to our and our guarantors' obligations under all secured indebtedness, including our senior secured credit facilities, our 2028 debentures, and any other secured obligations, in each case, to the extent of the value of the assets securing such obligations.

The senior subordinated notes and the guarantees thereof are our and the guarantors' unsecured, senior subordinated obligations and rank:

- junior to all of our and the guarantors' existing and future senior indebtedness, including the senior notes and any borrowings under our senior secured credit facilities, and the guarantees thereof and our 2028 debentures;
- equally with any of our and the guarantors' future senior subordinated indebtedness; and
- senior to any of our and the guarantors' future subordinated indebtedness.

In addition, all of the notes are structurally subordinated to all existing and future liabilities, including trade payables, of our subsidiaries that are not providing guarantees. See Description of Senior Notes Ranking Liabilities of Subsidiaries versus Senior Notes and Description of Senior Subordinated Notes Ranking Liabilities of Subsidiaries versus Senior Subordinated Notes.

As of July 29, 2006, we had outstanding on a consolidated basis:

- \$2,010.2 million principal amount of secured senior indebtedness, consisting of
- our 2028 debentures (in an aggregate principal amount of \$125.0 million);



- indebtedness under our senior secured term loan facility (in an aggregate principal amount of \$1,875.0 million);
- other indebtedness aggregating \$10.2 million, consisting primarily of \$2.4 million of borrowings under lines of credit by Kate Spade and \$7.8 million of capital lease obligations;
- \$700.0 million principal amount of unsecured senior indebtedness, consisting of the original principal amount of the senior notes; and
- \$500.0 million principal amount of unsecured senior subordinated indebtedness, consisting of the senior subordinated notes.

Although we had no borrowings outstanding under our \$600.0 million senior secured asset-based revolving credit facility as of July 29, 2006, we had \$570.9 million of unused borrowing capacity available under the facility as of such date based on a borrowing base of over \$600.0 million and after giving effect to \$29.1 million used for letters of credit.

Furthermore, as of July 29, 2006, our subsidiaries that will not be providing guarantees of the notes had an aggregate amount of approximately \$21.0 million of total liabilities, including trade payables.

#### Restrictive Covenants

The indentures governing the senior notes and the senior subordinated notes contain covenants that limit our ability and certain of our subsidiaries' ability to:

- incur additional indebtedness;
- pay dividends on our capital stock or redeem, repurchase or retire our capital stock or subordinated indebtedness;
- make investments;
- create restrictions on the payment of dividends or other amounts to us from our restricted subsidiaries that are not guarantors of the notes;
- engage in transactions with our affiliates;
- sell assets, including capital stock of our subsidiaries;
- consolidate or merge;
- create liens; and
- enter into sale and lease back transactions.

Kate Spade is not subject to the covenants contained in the indentures.

These covenants are subject to important exceptions and qualifications, which are described under "Description of Senior Notes - Certain Covenants" and "Description of Senior Subordinated Notes - Certain Covenants."

#### Risk Factors

Investing in the notes involves substantial risk. See **Risk Factors** for a discussion of certain factors that you should consider before investing in the notes.

**Recent Developments**

*Recent Financial Developments.* On November 2, 2006, we announced preliminary total revenues and comparable revenues of approximately \$1,058 million and \$1,028 million, respectively, for the first quarter of fiscal year 2007, representing increases of 9.9% and 6.8%, respectively, compared to the first quarter of fiscal year 2006. For the first quarter of fiscal year 2007, Specialty Retail stores comparable revenues increased 5.4%, including a 4.6% increase at Neiman Marcus stores and a 10.3% increase at Bergdorf Goodman. Neiman Marcus Direct first quarter fiscal year 2007 revenues were 14.7% above the first quarter of fiscal year 2006.

All the financial data set forth above are preliminary and unaudited and subject to revision based upon our review and a review by our independent registered public accounting firm of our financial condition and results of operations for the thirteen weeks ended October 28, 2006. Once we and our independent registered public accounting firm have completed our respective reviews of our financial information for the first fiscal quarter of fiscal year 2007, we may report financial results that are materially different from those set forth above.



*Other Recent Developments.* In April 2005, the minority investor in Kate Spade exercised the put option described in Part I, Item 1 to our parent's Annual Report on Form 10-K for the fiscal year ended July 29, 2006 under the heading Investment in Kate Spade LLC, with respect to full amount of its stake in such company. We subsequently entered into a standstill agreement to postpone the put process while we engaged in discussions with the minority investor in Kate Spade regarding certain strategic alternatives, including the possible sale of such company. In October 2006, we entered into an agreement to settle the put option whereby we will purchase the interest held by the minority investor for approximately \$59 million. The purchase of the minority investor's interest in Kate Spade is currently anticipated to close no later than January 2007. We continue to pursue discussions regarding the possible sale of all or a portion of our investment in Kate Spade. Although such discussions are ongoing, no assurance can be given that they will ultimately lead to any transaction. In the event we were to dispose of all or a portion of our interests in Kate Spade prior to October 2007, we could be required to make additional payments to the minority investor.

## RISK FACTORS

You should carefully consider the risk factors set forth below and the risk factors included under Part I, Item 1A to our parent's Annual Report on Form 10-K for the fiscal year ended July 29, 2006, which is incorporated by reference in this prospectus, as well as the other information contained in this prospectus and in our parent's Annual Report on Form 10-K for the fiscal year ended July 29, 2006 before making an investment decision. The risks described below are not the only risks facing us. Additional risks and uncertainties not currently known to us or those we currently deem to be immaterial may also materially and adversely affect our business, financial condition or results of operations. Any of the following risks could materially adversely affect our business, financial condition or results of operations. In such a case, you may lose all or part of your original investment in the notes.

### Risks Related to the Notes

*We have a substantial amount of indebtedness, which may adversely affect our cash flow and our ability to operate our business, remain in compliance with debt covenants and make payments on our indebtedness, including the notes.*

As a result of the Transactions, we are highly leveraged. As of July 29, 2006, the principal amount of our total indebtedness was approximately \$3,210.2 million, which included the notes. Our unused borrowing availability under our \$600.0 million senior secured asset-based revolving credit facility at that date was approximately \$570.9 million, based on a borrowing base at that date of over \$600.0 million and after giving effect to \$29.1 million of letters of credit outstanding thereunder. Our substantial indebtedness, combined with our lease and other financial obligations and contractual commitments, could have other important consequences to you as a holder of notes. For example, it could:

- make it more difficult for us to satisfy our obligations with respect to our indebtedness, including the notes, and any failure to comply with the obligations of any of our debt instruments, including restrictive covenants and borrowing conditions, could result in an event of default under the indentures governing the notes and the agreements governing such other indebtedness;
- make us more vulnerable to adverse changes in general economic, industry and competitive conditions and adverse changes in government regulation;
- require us to dedicate a substantial portion of our cash flow from operations to payments on our indebtedness, thereby reducing the availability of our cash flows to fund working capital, capital expenditures, acquisitions and other general corporate purposes;
- limit our flexibility in planning for, or reacting to, changes in our business and the industry in which we operate;
- place us at a competitive disadvantage compared to our competitors that are less highly leveraged and therefore may be able to take advantage of opportunities that our leverage prevents us from exploiting; and
- limit our ability to borrow additional amounts for working capital, capital expenditures, acquisitions, debt service requirements, execution of our business strategy or other purposes.

Any of the above listed factors could materially adversely affect our business, financial condition and results of operations.

In addition, our interest expense could increase if interest rates increase because the entire amount of the indebtedness under our senior secured credit facilities will bear interest at floating rates. As of July 29, 2006, we had approximately \$1,875.0 million principal amount of floating rate debt, consisting of outstanding borrowings under the senior secured term loan facility. We also had at that date approximately \$570.9 million of unused floating rate debt borrowing capacity available under our senior secured asset-based revolving credit facility based on a borrowing base of over \$600.0 million at that date and after giving effect to \$29.1 million used for letters of credit. Effective December 6, 2005, we entered into floating to fixed interest rate swap agreements for an aggregate notional amount of \$1,000.0 million to limit our exposure to interest rate increases related to a portion of our floating rate indebtedness.



***Despite current indebtedness levels, we and our subsidiaries may still be able to incur substantially more debt. This could further exacerbate the risks associated with our substantial leverage.***

We and our subsidiaries may be able to incur substantial additional indebtedness in the future. Although the indentures governing the notes and the senior secured credit facilities contain restrictions on the incurrence of additional indebtedness, these restrictions are subject to a number of significant qualifications and exceptions, and any indebtedness incurred in compliance with these restrictions could be substantial. For example, we have the right under our senior secured asset-based revolving credit facility to request up to \$200 million of additional commitments under this facility, although the lenders under this facility are not under any obligation to provide any such additional commitments. Any increase in commitments under this facility is subject to customary conditions precedent, and our ability to borrow under this facility as so increased would remain limited by the amount of the borrowing base. Our senior secured term loan facilities and the indentures for the notes allow us to incur this additional indebtedness under our senior secured asset-based revolving credit facility without any restriction. In addition, our senior secured credit facilities and the notes allow us to incur a significant amount of indebtedness in connection with acquisitions (including, in the case of our senior secured term loan facility and the notes, an unlimited amount of debt bearing certain characteristics described in the descriptions of the notes included herein) and a significant amount of purchase money debt. If new debt is added to our and our subsidiaries' current debt levels, the related risks that we and they face would be increased.

***To service our indebtedness, we will require a significant amount of cash. Our ability to generate cash depends on many factors beyond our control, and any failure to meet our debt service obligations could harm our business, financial condition and results of operations.***

Our ability to pay interest on and principal of the notes and to satisfy our other debt obligations will primarily depend upon our future operating performance. As a result, prevailing economic conditions and financial, business and other factors, many of which are beyond our control, will affect our ability to make these payments.

If we do not generate sufficient cash flow from operations to satisfy our debt service obligations, including payments on the notes, we may have to undertake alternative financing plans, such as refinancing or restructuring our indebtedness, selling assets, reducing or delaying capital investments or seeking to raise additional capital. Our ability to restructure or refinance our debt will depend on the condition of the capital markets and our financial condition at such time. Any refinancing of our debt could be at higher interest rates and may require us to comply with more onerous covenants, which could further restrict our business operations. The terms of existing or future debt instruments and the indentures governing the notes may restrict us from adopting some of these alternatives. In addition, any failure to make payments of interest and principal on our outstanding indebtedness on a timely basis would likely result in a reduction of our credit rating, which could harm our ability to incur additional indebtedness on acceptable terms.

Contractual limitations on our ability to execute any necessary alternative financing plans could exacerbate the effects of any failure to generate sufficient cash flow to satisfy our debt service obligations. Our senior secured asset-based revolving credit facility permits us to borrow up to \$600.0 million; however, our ability to borrow thereunder is limited by a borrowing base, which at any time will equal the lesser of 80% of eligible inventory valued at the lower of cost or market value and 85% of the net orderly liquidation value of the eligible inventory, less certain reserves. In addition, our ability to borrow under this facility is limited by a minimum liquidity condition, providing that, if less than \$60.0 million is available at any time, we are not permitted to borrow any additional amounts under the senior secured asset-based revolving credit facility unless our pro forma ratio of consolidated EBITDA to consolidated Fixed Charges (as such terms are defined in the credit agreement for our senior secured asset-based revolving credit facility) is at least 1.1 to 1.0. Our ability to meet this financial ratio may be affected by events beyond our control, and we cannot assure you that we will meet this ratio.

Our inability to generate sufficient cash flow to satisfy our debt service obligations, or to refinance our obligations at all or on commercially reasonable terms, would have an adverse effect, which could be material, on our business, financial condition and results of operations, as well as on our ability to satisfy our obligations in respect of the notes.

***Repayment of our debt, including the notes, is dependent on cash flow generated by our subsidiaries.***

Our subsidiaries own a significant portion of our assets and conduct a significant portion of our operations. Accordingly, repayment of our indebtedness, including the notes, is dependent, to a significant extent, on the generation of cash flow by our subsidiaries and their ability to make such cash available to us, by dividend, debt repayment or otherwise. Unless they are guarantors of the notes, our subsidiaries do not have any obligation to pay amounts due on the notes or to make funds available for that purpose. Our subsidiaries may not be able to, or may not be permitted to, make distributions to



enable us to make payments in respect of our indebtedness, including the notes. Each subsidiary is a distinct legal entity and, under certain circumstances, legal and contractual restrictions may limit our ability to obtain cash from our subsidiaries. While the indentures governing the notes limit the ability of our subsidiaries to incur consensual restrictions on their ability to pay dividends or make other intercompany payments to us, these limitations are subject to certain qualifications and exceptions. In the event that we do not receive distributions from our subsidiaries, we may be unable to make required principal and interest payments on our indebtedness, including the notes.

***The notes are effectively subordinated to all liabilities of our non-guarantor subsidiaries and structurally subordinated to claims of creditors of our current and future non-guarantor subsidiaries.***

The notes are structurally subordinated to indebtedness and other liabilities of our subsidiaries that are not guarantors of the notes. In the event of a bankruptcy, liquidation or reorganization of any of our non-guarantor subsidiaries, these non-guarantor subsidiaries will pay the holders of their debts, holders of preferred equity interests and their trade creditors before they will be able to distribute any of their assets to us.

***Investors cannot rely on the earnings and assets of Kate Spade to support payments due under the notes.***

We hold a majority interest in Kate Spade. Accordingly, our historical consolidated financial statements reflect Kate Spade's financial, including all of its revenue and operating earnings, even though we own less than 100% of the equity of Kate Spade and do not solely control the distribution of its income. There are significant limitations on the ability of Kate Spade to distribute earnings to us, in the form of dividends or otherwise. Accordingly, investors in the notes will not be able to rely upon income from or the assets of Kate Spade to support the payment of interest, principal or other amounts owing in respect of the notes. Kate Spade had revenues of \$75.5 million and operating losses of \$0.2 million during fiscal year 2006.

***The terms of our senior secured credit facilities and the indentures governing the notes and our 2028 debentures may restrict our current and future operations, particularly our ability to respond to changes in our business or to take certain actions.***

The credit agreements governing our senior secured credit facilities and the indentures governing the notes and our 2028 debentures contain, and any future indebtedness of ours would likely contain, a number of restrictive covenants that impose significant operating and financial restrictions, including restrictions on our ability to engage in acts that may be in our best long-term interests. The indentures governing the notes and the credit agreements governing our senior secured credit facilities include covenants that, among other things, restrict our ability to:

- incur additional indebtedness;
- pay dividends on our capital stock or redeem, repurchase or retire our capital stock or indebtedness;
- make investments;
- create restrictions on the payment of dividends or other amounts to us from our restricted subsidiaries;
- engage in transactions with our affiliates;
- sell assets, including capital stock of our subsidiaries;
- consolidate or merge;
- create liens; and
- enter into sale and lease back transactions.

In addition, our ability to borrow under our senior secured asset-based revolving credit facility is limited by a borrowing base and a minimum liquidity condition, as described above under . To service our indebtedness, we will require a significant amount of cash. Our ability to generate cash depends on many factors beyond our control, and any failure to meet our debt service obligations could harm our business, financial condition and results of operations.



Moreover, our senior secured asset-based revolving credit facility provides discretion to the agent bank acting on behalf of the lenders to impose additional availability restrictions and other reserves, which could materially impair the amount of borrowings that would otherwise be available to us. There can be no assurance that the agent bank will not impose such reserves or, were it to do so, that the resulting impact of this action would not materially and adversely impair our liquidity.

A breach of any of the restrictive covenants would result in a default under our senior secured credit facilities. If any such default occurs, the lenders under our senior secured credit facilities may elect to declare all outstanding borrowings under such facilities, together with accrued interest and other fees, to be immediately due and payable, which would result in an event of default under the notes and our 2028 debentures. The lenders will also have the right in these circumstances to terminate any commitments they have to provide further borrowings.

The operating and financial restrictions and covenants in these debt agreements and any future financing agreements may adversely affect our ability to finance future operations or capital needs or to engage in other business activities.

***The senior notes and the senior subordinated notes are not secured by our assets and the lenders under our senior secured credit facilities and our 2028 debentures are entitled to remedies available to a secured lender, which gives them priority over holders of senior notes and senior subordinated notes.***

The senior notes and the senior subordinated notes (in the case of the senior subordinated notes, in addition to being contractually subordinated to all existing and future senior indebtedness) are effectively subordinated in right of payment to all of our secured indebtedness to the extent of the value of the assets securing such indebtedness. Loans under our senior secured credit facilities are secured by security interests in substantially all of our and the guarantors' assets, our capital stock and in certain of the capital stock held by us (subject to certain significant exceptions). Our 2028 debentures are secured by a portion of our and the guarantors' assets and in certain of the capital stock held by us, subject to certain significant exceptions. As of July 29, 2006, the principal amount of our total indebtedness was approximately \$3,210.2 million, with approximately \$570.9 million of additional borrowing capacity available under our senior secured asset-based revolving credit facility (based on a borrowing base of over \$600.0 million on such date and after giving effect to \$29.1 million of outstanding letters of credit). If we become insolvent or are liquidated, or if payment under the senior secured credit facilities or of any other secured indebtedness is accelerated, the lenders under our senior secured credit facilities and holders of other secured indebtedness (or an agent on their behalf) are entitled to exercise the remedies available to a secured lender under applicable law (in addition to any remedies that may be available under documents pertaining to our senior secured credit facilities or other senior debt). For example, the secured lenders and noteholders could foreclose and sell those of our assets in which they have been granted a security interest to the exclusion of the holders of the senior notes and the senior subordinated notes, even if an event of default exists under the indentures governing those notes at that time. As a result, upon the occurrence of any of these events, there may not be sufficient funds to pay amounts due on the senior notes and the senior subordinated notes.

***The right of holders of the senior subordinated notes to receive payments on the senior subordinated notes and the guarantees thereof are junior to the rights of the lenders under our senior secured credit facilities, the senior notes, our 2028 debentures, and to all of our and the guarantors' other senior indebtedness, including any of our or the guarantors' future senior debt.***

The senior subordinated notes and the guarantees thereof rank junior in right of payment to all of our and the guarantors' existing senior indebtedness, including borrowings under our senior secured credit facilities, the senior notes and our 2028 debentures and rank junior in right of payment to all of our and the guarantors' future borrowings and except for any future indebtedness that expressly provides that it ranks equal or junior in right of payment to the senior subordinated notes and the guarantees thereof. See Description of the Senior Subordinated Notes Subordination.

As of July 29, 2006, the principal amount of our total indebtedness was approximately \$3,210.2 million, consisting of:

- \$2,010.2 million of secured senior indebtedness, consisting of: our 2028 debentures (in an aggregate principal amount of \$125.0 million), indebtedness under our senior secured term loan facility (in an aggregate principal amount of \$1,875.0 million); and other indebtedness aggregating \$10.2 million, consisting primarily of \$2.4 million of borrowings by Kate Spade under lines of credit and \$7.8 million of capital lease obligations;
- \$700.0 million of unsecured senior indebtedness, consisting of the original principal amount of the senior notes;





- \$500.0 million of unsecured senior subordinated indebtedness, consisting of the original principal amount of the senior subordinated notes.

As of July 29, 2006, we also had \$570.9 million in borrowing capacity outstanding under our senior secured asset-based revolving credit facility (based on a borrowing base of over \$600.0 million on such date and after giving effect to \$29.1 million of outstanding letters of credit). Furthermore, as of July 29, 2006, our subsidiaries that will not be providing guarantees of the notes had an aggregate amount of approximately \$21.0 million of total liabilities, including trade payables. We will also be permitted to incur substantial additional indebtedness, including senior indebtedness, in the future. See Despite current indebtedness levels, we and our subsidiaries may still be able to incur substantially more debt. This could further exacerbate the risks associated with our substantial leverage.

We and the guarantors may not be permitted to pay principal, premium, if any, interest or other amounts on account of the senior subordinated notes or the guarantees thereof in the event of a payment default or certain other defaults in respect of certain of our senior indebtedness, including debt under our senior secured credit facilities and the senior notes, unless such senior indebtedness has been paid in full or the default has been cured or waived. In addition, in the event of certain other defaults with respect to such senior indebtedness, we or the guarantors may not be permitted to pay any amount on account of the senior subordinated notes or the guarantees thereof for a designated period of time. See Description of Senior Subordinated Notes Ranking Payment of Notes.

Because of the subordination provisions in the senior subordinated notes and the guarantees thereof, in the event of a bankruptcy, liquidation, reorganization or similar proceeding relating to us or a guarantor, our or the guarantor's assets are not available to pay obligations under the senior subordinated notes or the applicable guarantee until we or the guarantor has made all payments in cash on our or its senior indebtedness. Sufficient assets may not remain after all these payments of principal or interest when due. In addition, in the event of a bankruptcy, liquidation or reorganization or similar proceeding relating to us or the guarantors, holders of the senior subordinated notes will participate with trade creditors and all other holders of our and the guarantors' senior subordinated indebtedness, as the case may be, in the assets (if any) remaining after we and the guarantors have paid all of the senior indebtedness. However, because the indenture governing the senior subordinated notes requires that amounts otherwise payable to holders of the senior subordinated notes in a bankruptcy or similar proceeding be paid to holders of senior indebtedness instead, holders of senior subordinated notes may receive less, ratably, than holders of trade payables or other unsecured, unsubordinated creditors in any such proceeding. In any of these cases, we and the guarantors may not have sufficient funds to pay all creditors, and holders of the senior subordinated notes may receive less, ratably, than the holders of senior indebtedness. See Description of Senior Subordinated Notes Ranking.

***Federal and state statutes may allow courts, under specific circumstances, to void the notes and the guarantees thereof, subordinate claims in respect of the notes and the guarantees thereof and require note holders to return payments received.***

The proceeds of the sales of the notes upon the closing of the Transactions were applied to pay the merger consideration payable to the former stockholders of Neiman Marcus and to repay the 2008 notes. Certain of our existing domestic subsidiaries have guaranteed, and certain of our future domestic subsidiaries may guarantee, the notes. Our issuance of the notes, the issuance of the guarantees thereof by the guarantors, as well as other components of the Transactions, including, without limitation, the granting of liens by us and the guarantors, in favor of the lenders under our senior secured credit facilities and our 2028 debentures, may be subject to review under state and federal laws if a bankruptcy, liquidation or reorganization case or a lawsuit, including in circumstances in which bankruptcy is not involved, were commenced at some future date by us, by the guarantors or on behalf of our unpaid creditors or the unpaid creditors of a guarantor. Under the Federal bankruptcy laws and comparable provisions of state fraudulent transfer and fraudulent conveyance laws, a court may void or otherwise decline to enforce the notes and a guarantor's guarantee thereof, or a court may subordinate the notes and such guarantee to our or the applicable guarantor's existing and future indebtedness.

While the relevant laws may vary from state to state, a court might void or otherwise decline to enforce the notes if it found that when we issued the notes, when the applicable guarantor entered into its guarantee thereof or, in some states, when payments became due under the notes or such guarantee, we or the applicable guarantor received less than reasonably equivalent value or fair consideration and either:

- we were, or the applicable guarantor was, insolvent, or rendered insolvent by reason of such incurrence; or

- we were, or the applicable guarantor was, engaged in a business or transaction for which our or the applicable guarantor's remaining assets constituted unreasonably small capital; or
- we or the applicable guarantor intended to incur, or believed or reasonably should have believed that we or the applicable guarantor would incur, debts beyond our or such guarantor's ability to pay such debts as they mature; or
- we were, or the applicable guarantor was, a defendant in an action for money damages, or had a judgment for money damages docketed against us or such guarantor if, in either case, after final judgment, the judgment is unsatisfied.

The court might also void the notes or a guarantee thereof without regard to the above factors, if the court found that we issued the notes or the applicable guarantor entered into its guarantee thereof with actual intent to hinder, delay or defraud our or its creditors.

A court would likely find that we or a guarantor of the notes did not receive reasonably equivalent value or fair consideration for the notes or such guarantee if we or such guarantor did not substantially benefit directly or indirectly from the issuance of the notes or the applicable guarantee. As a general matter, value is given for a note or guarantee if, in exchange for the note or guarantee, property is transferred or an antecedent debt is satisfied. A debtor will generally not be considered to have received value in connection with a debt offering if the debtor uses the proceeds of that offering to make a dividend payment or otherwise retire or redeem equity securities issued by the debtor. For example, in a leveraged transaction, such as the Transactions, there is increased risk of a determination that the issuer incurred debt obligations for less than reasonably equivalent value or fair consideration as a court may find that the benefit of the transaction went to the former stockholders of Neiman Marcus, while neither we nor the guarantors benefited substantially or directly from the notes or the guarantees.

The measures of insolvency applied by courts will vary depending upon the particular fraudulent transfer law applied in any proceeding to determine whether a fraudulent transfer has occurred. Generally, however, an entity would be considered insolvent if:

- the sum of its debts, including subordinated and contingent liabilities, was greater than the fair saleable value of its assets; or
- if the present fair saleable value of its assets were less than the amount that would be required to pay the probable liability on its existing debts, including subordinated and contingent liabilities, as they become absolute and mature; or
- it cannot pay its debts as they become due.

In the event of a finding that a fraudulent conveyance or transfer has occurred, the court may void, or hold unenforceable, the notes or any of the guarantees thereof, which could mean that you may not receive any payments on the notes and the court may direct you to repay any amounts that you have already received from us or any guarantor to us, such guarantor or a fund for the benefit of our or such guarantor's creditors. Furthermore, the holders of voided notes would cease to have any direct claim against us or the applicable guarantor. Consequently, our or the applicable guarantor's assets would be applied first to satisfy our or the applicable guarantor's other liabilities, before any portion of its assets could be applied to the payment of the notes. Sufficient funds to repay the notes may not be available from other sources, including the remaining guarantors, if any. Moreover, the voidance of the notes or a guarantee thereof could result in an event of default with respect to our and our guarantors' other debt that could result in acceleration of such debt (if not otherwise accelerated due to our or our guarantors' insolvency or other proceeding).

Although each guarantee of the notes contains a provision intended to limit that guarantor's liability to the maximum amount that it could incur without causing the incurrence of obligations under its guarantee to be a fraudulent transfer, this provision may not be effective to protect those guarantees from being voided under fraudulent transfer law, or may reduce that guarantor's obligation to an amount that effectively makes its guarantee worthless.

***Because each guarantor's liability under its guarantees may be reduced to zero, avoided or released under certain circumstances, you may not receive any payments from some or all of the guarantors.***

As a holder of the notes, you have the benefit of the guarantees of the guarantors. However, the guarantees by the guarantors are limited to the maximum amount that the guarantors are permitted to guarantee under applicable law. As a result, a guarantor's liability under its guarantee could be reduced to zero, depending upon the amount of other obligations of such guarantor. Further, under the circumstances discussed more fully above, a court under Federal or state fraudulent conveyance and transfer statutes could void the obligations under a guarantee or further subordinate it to all other obligations of the guarantor. In addition, you will lose the benefit of a particular guarantee if it is released under certain circumstances described under [Description of the Senior Notes Guarantees](#) and [Description of the Senior Subordinated Notes Guarantees](#).

***We may not be able to repurchase the notes upon a change of control.***

Upon the occurrence of certain change of control events, we will be required to offer to repurchase all notes and amounts under our senior secured term loan facility that are outstanding at 101% of the principal amount thereof, plus any accrued and unpaid interest, and additional interest, if any. Our senior secured asset-based revolving credit facility provides that certain change of control events (including a change of control as defined in the indentures governing the notes and in our senior secured term loan facility) constitute a default. Any future credit agreement or other agreements relating to our indebtedness to which we become a party would likely contain similar provisions. If we experience a change of control that triggers a default under our senior secured asset-based revolving credit facility, we could seek a waiver of such default or seek to refinance our senior secured asset-based revolving credit facility. In the event we do not obtain such a waiver or refinance our senior secured asset-based revolving credit facility, such default could result in amounts outstanding under our senior secured asset-based revolving credit facility being declared due and payable. In the event we experience a change of control that results in our having to repurchase your notes, we may not have sufficient financial resources to satisfy all of our obligations under our senior secured credit facilities and the notes. A failure to make the applicable change of control offer or to pay the applicable change of control purchase price when due would result in a default under the indentures.

In addition, the change of control covenant in the indentures governing the notes does not cover all corporate reorganizations, mergers or similar transactions and may not provide you with protection in a highly leveraged transaction.

***We cannot assure you that an active trading market for the notes will develop.***

We do not intend to have the notes listed on a national securities exchange or included in any automated quotation system. We cannot assure you as to the liquidity of markets that exists or may develop for the notes, your ability to sell the notes or the price at which you would be able to sell the notes. The liquidity of any market for the notes will depend upon the number of holders of the notes, our performance, the market for similar securities, the interest of securities dealers in making a market in the notes and other factors. If an active market is not maintained, the price and liquidity of the notes may be adversely affected. Even if an active market were available, the notes could trade at prices lower than their principal amount or purchase price depending on many factors, including prevailing interest rates and the markets for similar securities. Credit Suisse Securities (USA), LLC has informed us that it intends to make a market in the notes, but it is not obligated to do so. Credit Suisse Securities (USA), LLC may discontinue any market making in the notes at any time, in its sole discretion. As a result, any trading market for the notes may not be liquid. You may not be able to sell your notes at a particular time or at favorable prices or at all.

Historically, the market for non-investment grade debt has been subject to disruptions that have caused substantial volatility in the prices of securities similar to the notes. We cannot assure holders of the notes that the market, if any, for the notes will be free from similar disruptions or that any such disruptions may not adversely affect the prices at which the holders of the notes may sell their notes.

## USE OF PROCEEDS

This prospectus is being delivered in connection with the sale of notes by Credit Suisse Securities (USA) LLC in market-making transactions. We will not receive any proceeds from such transactions.

## RECENT DEVELOPMENTS

*Recent Financial Developments.* On November 2, 2006, we announced preliminary total revenues and comparable revenues of approximately \$1,058 million and \$1,028 million, respectively, for the first quarter of fiscal year 2007, representing increases of 9.9% and 6.8%, respectively, compared to the first quarter of fiscal year 2006. For the first quarter of fiscal year 2007, Specialty Retail stores comparable revenues increased 5.4%, including a 4.6% increase at Neiman Marcus stores and a 10.3% increase at Bergdorf Goodman. Neiman Marcus Direct first quarter fiscal year 2007 revenues were 14.7% above the first quarter of fiscal year 2006.

All the financial data set forth above are preliminary and unaudited and subject to revision based upon our review and a review by our independent registered public accounting firm of our financial condition and results of operations for the thirteen weeks ended October 28, 2006. Once we and our independent registered public accounting firm have completed our respective reviews of our financial information for the first fiscal quarter of fiscal year 2007, we may report financial results that are materially different from those set forth above.

*Other Recent Developments.* In April 2005, the minority investor in Kate Spade exercised the put option described in Part I, Item 1 to our parent's Annual Report on Form 10-K for the fiscal year ended July 29, 2006 under the heading "Investment in Kate Spade LLC," with respect to full amount of its stake in such company. We subsequently entered into a standstill agreement to postpone the put process while we engaged in discussions with the minority investor in Kate Spade regarding certain strategic alternatives, including the possible sale of such company. In October 2006, we entered into an agreement to settle the put option whereby we will purchase the interest held by the minority investor for approximately \$59 million. The purchase of the minority investor's interest in Kate Spade is currently anticipated to close no later than January 2007. We continue to pursue discussions regarding the possible sale of all or a portion of our investment in Kate Spade. Although such discussions are ongoing, no assurance can be given that they will ultimately lead to any transaction. In the event we were to dispose of all or a portion of our interests in Kate Spade prior to October 2007, we could be required to make additional payments to the minority investor.

## DESCRIPTION OF SENIOR NOTES

### General

The outstanding senior notes were issued under a Senior Indenture among Newton Acquisition Merger Sub, Inc., Wells Fargo Bank, National Association, as trustee, Holdings and the Subsidiary Guarantors. Immediately following the closing of the offering and as part of the Transactions, Newton Acquisition Merger Sub, Inc. merged with and into The Neiman Marcus Group, Inc., with The Neiman Marcus Group, Inc. continuing as the surviving corporation and assuming all the obligations of Newton Acquisition Merger Sub, Inc. under the Senior Indenture. The Senior Indenture has been qualified under and is subject to and governed by the Trust Indenture Act of 1939. The terms of the senior notes include those stated in the Senior Indenture and those made part of the Senior Indenture by reference to the Trust Indenture Act.

You can find the definitions of certain capitalized terms used in this description under the subheading "Certain Definitions". In this description, the "Company" refers to The Neiman Marcus Group, Inc., and not to any of its subsidiaries.

The following description is only a summary of the material provisions of the senior notes and the Senior Indenture. We urge you to read the Senior Indenture because it, and not this description, defines your rights as a Holder of senior notes. Copies of the Senior Indenture have been filed with the SEC and are incorporated by reference into the registration statement of which this prospectus forms a part.

### Brief Description of the Senior Notes and the Guarantees

The senior notes:

- are unsecured, senior obligations of the Company;
- rank pari passu in right of payment with all existing and future Senior Indebtedness of the Company, including Indebtedness under our Senior Credit Facilities and our Existing 2028 Debentures;
- are effectively subordinated to all Secured Indebtedness of the Company, including Indebtedness under our Senior Credit Facilities and our Existing 2028 Debentures, to the extent of the collateral securing such Indebtedness;
- are structurally subordinated to all existing and future Indebtedness and claims of holders of Preferred Stock of Subsidiaries of the Company that do not guarantee the senior notes;
- rank senior in right of payment to all existing and future Subordinated Indebtedness of the Company, including the Senior Subordinated Notes; and
- are guaranteed on a senior unsecured basis by Holdings and the Subsidiary Guarantors that guarantee our Senior Credit Facilities.

The Guarantee of each Guarantor:

- is a senior obligation of such Guarantor;
- ranks pari passu in right of payment with all existing and future Senior Indebtedness of such Guarantor, including its guarantee under our Senior Credit Facilities;
- is effectively subordinated to all Secured Indebtedness of such Guarantor, including its guarantee under our Senior Credit Facilities, to the extent of the collateral securing such Indebtedness;



- is structurally subordinated to all existing and future Indebtedness and claims of holders of Preferred Stock of Subsidiaries of such Guarantor that do not guarantee the senior notes; and
- ranks senior in right of payment to all existing and future Subordinated Indebtedness of such Guarantor, including its guarantee of our senior Subordinated Notes.

#### Principal, Maturity and Interest

The Company issued the senior notes initially with a maximum aggregate original principal amount of \$700.0 million (the senior notes). The Company may issue additional senior notes under the Senior Indenture from time to time after this offering subject to the covenant described below under Certain Covenants Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock (the Additional Senior Notes). In addition, in connection with the payment of PIK Interest (as defined in the next paragraph), the Company is entitled to, without the consent of the Holders, increase the outstanding principal amount of the senior notes or issue additional senior notes (the PIK Notes) under the Senior Indenture on the same terms and conditions as the senior notes (in each case, the PIK Payment). The senior notes, any Additional Senior Notes subsequently issued under the Senior Indenture and any PIK Notes will be treated as a single class for all purposes under the Senior Indenture, including waivers, amendments, redemptions and offers to purchase. Unless the context requires otherwise, references to senior notes for all purposes of the Senior Indenture and this Description of Senior Notes include any Additional Senior Notes, PIK Notes that are actually issued and any increase in the principal amount of the outstanding senior notes as a result of a PIK Payment and references to principal amount of the senior notes include any increase in the principal amount of the outstanding senior notes as a result of a PIK Payment.

For any interest payment period through October 15, 2010, the Company may, at its option, elect to pay interest on the senior notes:

- entirely in cash ( Cash Interest ) or
- entirely by increasing the principal amount of the outstanding senior notes or by issuing PIK Notes ( PIK Interest ).

The Company must elect the form of interest payment with respect to each interest period by delivering a notice to the Trustee prior to the beginning of each interest period. The Trustee shall promptly deliver a corresponding notice to the Holders. In the absence of such an election, interest on the senior notes will be payable entirely in cash. Interest for the first interest period commencing on the Issue Date shall be payable entirely in cash. After October 15, 2010, the Company will make all interest payments on the senior notes entirely in cash.

Cash Interest on the senior notes will accrue at the rate of 9% per annum and be payable in cash. PIK Interest on the senior notes will accrue at the rate of 9 3/4% per annum and be payable:

- with respect to senior notes represented by one or more global notes registered in the name of, or held by, the Depository Trust Company ( DTC ) or its nominee on the relevant record date, by increasing the principal amount of the outstanding global senior notes by an amount equal to the amount of PIK Interest for the applicable interest period (rounded up to the nearest \$1,000); and
- with respect to senior notes represented by certificated notes, by issuing PIK Notes in certificated form in an aggregate principal amount equal to the amount of PIK Interest for the applicable interest period (rounded up to the nearest whole dollar).

The Trustee will, at the request of the Company, authenticate and deliver such PIK Notes in certificated form for original issuance to the Holders on the relevant record date, as shown by the records of the Register.

Following an increase in the principal amount of the outstanding global senior notes as a result of a PIK Payment, the global senior notes will bear interest on such increased principal amount from and after the date of such PIK Payment. Any PIK Notes issued in certificated form will be dated as of the applicable interest payment date and will bear interest from and after such date. All senior notes issued pursuant to a PIK Payment will mature on October 15, 2015 and will be governed by, and subject to the terms, provisions and conditions of, the Senior Indenture and shall have the same rights and benefits as





the senior notes issued on the Issue Date. Any certificated PIK Notes will be issued with the description PIK on the face of such PIK Note.

Interest on the senior notes will be payable quarterly in arrears on each January 15, April 15, July 15 and October 15, commencing on January 15, 2006. The Company will make each interest payment to the Holders of record of the senior notes on the immediately preceding January 1, April 1, July 1 and October 1. Interest on the senior notes will accrue from the most recent date to which interest has been paid with respect to such notes, or if no interest has been paid with respect to such notes, from the date of original issuance thereof. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months. The senior notes will mature on October 15, 2015.

Cash payments of principal of, premium, if any, and interest on the senior notes will be payable at the office or agency of the Company maintained for such purpose within the City of Dallas, State of Texas or, at the option of the Company, cash payments of interest may be made by check mailed to the Holders at their respective addresses set forth in the register of Holders; provided that all payments of principal, premium, if any, and interest with respect to senior notes represented by one or more global notes registered in the name of or held by the Depository Trust Company or its nominee will be made by wire transfer of immediately available funds to the accounts specified by the Holder or Holders thereof. The senior notes will be issued in denominations of \$2,000 and any integral multiples of \$1,000 in excess of \$2,000, subject to the issuance of certificated PIK Notes as indicated above.

### Guarantees

Holdings and each direct and indirect Restricted Subsidiary of the Company that is a Domestic Subsidiary and that guarantees the obligations of the Company under the Company's senior Credit Facilities, as primary obligors and not merely as sureties, will jointly and severally irrevocably and unconditionally guarantee, on a senior unsecured basis, the performance and full and punctual payment when due, whether at maturity, by acceleration or otherwise, of all obligations of the Company under the Senior Indenture and the senior notes, whether for payment of principal of, or interest on or Additional Interest in respect of the senior notes, expenses, indemnification or otherwise, on the terms set forth in the Senior Indenture by executing the Senior Indenture. Each Guarantee will be a general unsecured senior obligation of the applicable Guarantor, will rank pari passu in right of payment with all existing and any future Senior Indebtedness of such Guarantor, will be effectively subordinated to all Secured Indebtedness of such Guarantor, and will rank senior in right of payment to all existing and any future Subordinated Indebtedness of such Guarantor. The senior notes will be structurally subordinated to Indebtedness of Subsidiaries of the Company that do not guarantee the senior notes.

Each Subsidiary Guarantee will contain a provision intended to limit the Subsidiary Guarantor's liability thereunder to the maximum amount that it could incur without causing the incurrence of obligations under its Subsidiary Guarantee to be a fraudulent transfer. This provision may not, however, be effective to protect a Subsidiary Guarantee from being voided under fraudulent transfer law, or may reduce the Subsidiary Guarantor's obligation to an amount that effectively makes its Subsidiary Guarantee worthless. See Risk Factors Federal and state statutes may allow courts, under specific circumstances, to void the notes, the guarantees and the security interests, subordinate claims in respect of the notes and the guarantees and require note holders to return payments received.

Each Subsidiary Guarantor may consolidate with or merge into or sell all or substantially all its assets to (A) the Company or another Subsidiary Guarantor without limitation or (B) any other Person upon the terms and conditions set forth in the Senior Indenture. The Senior Indenture will also impose limitations on the ability of Holdings to consolidate with or merge into or sell all or substantially all its assets to another Person. See Certain Covenants Merger, Consolidation or Sale of All or Substantially All Assets.

The Subsidiary Guarantee of a Subsidiary Guarantor will automatically and unconditionally be released and discharged upon:

(1) (a) the sale, disposition or other transfer (including through merger or consolidation) of all of the Capital Stock (or any sale, disposition or other transfer of Capital Stock following which such Subsidiary Guarantor is no longer a Restricted Subsidiary), or all or substantially all the assets, of such Subsidiary Guarantor (other than a sale, disposition or other transfer to a Restricted Subsidiary) if such sale, disposition or other transfer is made in compliance with the applicable provisions of the Senior Indenture;

(b) the designation by the Company of such Subsidiary Guarantor as an Unrestricted Subsidiary in accordance with the provisions of the Senior Indenture set forth under Certain Covenants Limitation on Restricted Payments and the definition of Unrestricted Subsidiary ;

(c) the release or discharge of such Subsidiary Guarantor from its guarantee of Indebtedness under the Senior Credit Facilities or the guarantee that resulted in the obligation of such Subsidiary Guarantor to guarantee the senior notes, in each case, if such Subsidiary Guarantor would not then otherwise be required to guarantee the senior notes pursuant to the covenant described under Certain Covenants Limitation on Guarantees of Indebtedness by Restricted Subsidiaries (treating any guarantees of such Subsidiary Guarantor that remain outstanding as incurred at least 30 days prior to such release), except, in each case, a release or discharge by, or as a result of, payment under such guarantee or payment in full of the Indebtedness under the Senior Credit Facilities; or

(d) the exercise by the Company of its legal defeasance option or its covenant defeasance option, as described under Legal Defeasance and Covenant Defeasance or if the Company's obligations under the Senior Indenture are discharged in accordance with the terms of the Senior Indenture; and

(2) in the case of clause (1) (a) above, the release of such Subsidiary Guarantor from its guarantee, if any, of and all pledges and security, if any, granted in connection with, the Senior Credit Facilities, the Senior Subordinated Notes and any other Indebtedness of the Company or any Restricted Subsidiary.

## Ranking

### *Senior Secured Indebtedness versus Senior Notes*

Payments of principal of, and premium, if any, and interest on the senior notes and the payment of any Guarantee will rank pari passu in right of payment to all Senior Indebtedness of the Company and the Guarantors, including the obligations of the Company and, to the extent applicable, the Guarantors, under the Senior Credit Facilities and the Existing 2028 Debentures. However, the senior notes will be effectively subordinated in right of payment to all of the Company's and the Guarantors' existing and future Secured Indebtedness to the extent of the value of the assets securing such Indebtedness.

As of July 29, 2006:

(1) the Company's Senior Indebtedness, including Indebtedness under the Senior Credit Facilities, the Senior Notes and the Existing 2028 Debentures, was approximately \$2,710.2 million (excluding unused commitments), of which \$2,010.2 million, consisting principally of Indebtedness under the Senior Credit Facilities and the Existing 2028 Debentures, was Secured Indebtedness and capital lease obligations; and

(2) the Guarantors' Senior Indebtedness, consisting principally of their respective guarantees of Senior Indebtedness of the Company under the Senior Credit Facilities and the Senior Notes, was approximately \$2,583.0 million in the aggregate (excluding unused commitments), of which \$1,883.0 million, consisting principally of their respective guarantees of Senior Indebtedness of the Company under the Senior Credit Facilities, was Secured Indebtedness and capital lease obligations.

We also had at that date approximately \$570.9 million of unused borrowing capacity available under our senior secured asset-based credit facility based on a borrowing base of over \$600.0 million and after giving effect to \$29.1 million used for letters of credit.

Although the Indentures will contain limitations on the amount of additional Senior Indebtedness that the Company and its Restricted Subsidiaries may incur and the amount of additional Secured Indebtedness the Company and the Subsidiary Guarantors may incur, under certain circumstances the amount of such Senior Indebtedness and Secured Indebtedness could be substantial. The Indentures do not limit the amount of additional Indebtedness that Holdings may incur. See Certain Covenants Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock and Certain Covenants Liens .

*Liabilities of Subsidiaries versus Senior Notes*

The Company conducts a significant portion of its operations through its Subsidiaries. Some of the Company's Subsidiaries are not guaranteeing the senior notes, and Subsidiary Guarantees may be released under certain circumstances,

17

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as described under **Subsidiary Guarantees** . In addition, the Company's future Subsidiaries may not be required to guarantee the senior notes. Claims of creditors of such non-guarantor Subsidiaries, including trade creditors and creditors holding indebtedness or guarantees issued by such non-guarantor Subsidiaries, and claims of holders of Preferred Stock of such non-guarantor Subsidiaries generally will have priority with respect to the assets and earnings of such non-guarantor Subsidiaries over the claims of the Company's creditors, including Holders. Accordingly, the senior notes will be structurally subordinated to claims of creditors (including trade creditors) and holders of Preferred Stock, if any, of such non-guarantor Subsidiaries.

As of July 29, 2006, the Company's Subsidiaries (other than the Subsidiary Guarantors) had consolidated total liabilities (excluding intercompany liabilities of Subsidiaries that are not Subsidiary Guarantors) of approximately \$21.0 million, including trade payables, and consolidated total assets of \$143.3 million, which represented 2.2% of the consolidated total assets of the Company and its Subsidiaries. In addition, for the fiscal year ended July 29, 2006, the Company's Subsidiaries (other than the Subsidiary Guarantors) had consolidated total revenue of \$79.0 million, which represented 1.9% of the consolidated total revenue of the Company and its Subsidiaries. Although the Senior Indenture limits the incurrence of Indebtedness and Preferred Stock by Restricted Subsidiaries, such limitation is subject to a number of significant qualifications. Moreover, the Senior Indenture does not impose any limitation on the incurrence by Restricted Subsidiaries of liabilities that are not considered Indebtedness or Preferred Stock under the Senior Indenture, such as trade payables. See **Certain Covenants - Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock** .

**Mandatory Redemption; Offer to Purchase; Open Market Purchases**

The Company is not required to make any mandatory redemption or sinking fund payments with respect to the senior notes. However, under certain circumstances, the Company may be required to offer to purchase senior notes as described under **Repurchase at the Option of Holders** . The Company may from time to time acquire senior notes by means other than a redemption, whether by tender offer, in open market purchases, through negotiated transactions or otherwise, in accordance with applicable securities laws.

**Optional Redemption**

Except as described below, the senior notes are not redeemable at the Company's option prior to October 15, 2010. From and after October 15, 2010, the Company may redeem the senior notes, in whole or in part, upon not less than 30 nor more than 60 days' prior notice at the redemption prices (expressed as percentages of principal amount) set forth below, plus accrued and unpaid interest, and Additional Interest, if any, thereon to the applicable redemption date, subject to the right of Holders on the relevant record date to receive interest due on the relevant interest payment date, if redeemed during the twelve-month period beginning on October 15 of each of the years indicated below:

Year	Percentage	
2010	104.500	%
2011	103.000	%
2012	101.500	%
2013 and thereafter	100.000	%

Prior to October 15, 2008, the Company may, at its option, redeem up to 35% of the sum of the original aggregate principal amount of senior notes (and the original principal amount of any Additional Senior Notes) issued under the Senior Indenture at a redemption price equal to 109.000% of the aggregate principal amount thereof, plus accrued and unpaid interest, and Additional Interest, if any, thereon to the redemption date, subject to the right of Holders on the relevant record date to receive interest due on the relevant interest payment date, with the net cash proceeds of one or more Equity Offerings of the Company or any direct or indirect parent of the Company to the extent such net proceeds are contributed to the Company; provided that:

- at least 50% of the sum of the aggregate principal amount of senior notes originally issued under the Senior Indenture and any Additional Senior Notes issued under the Senior Indenture after the Issue Date remain outstanding immediately after the occurrence of each such redemption; and
- each such redemption occurs within 90 days of the date of closing of each such Equity Offering.



At any time prior to October 15, 2010, the Company may also redeem all or a part of the senior notes, upon not less than 30 nor more than 60 days prior notice, at a redemption price equal to 100% of the principal amount of senior notes redeemed plus the Applicable Premium as of, and accrued and unpaid interest and Additional Interest, if any, to the redemption date, subject to the rights of Holders on the relevant record date to receive interest due on the relevant interest payment date.

#### *Selection and Notice*

If the Company is redeeming less than all of the senior notes at any time, the Trustee will select the senior notes to be redeemed (a) if the senior notes are listed on any national securities exchange, in compliance with the requirements of the principal national securities exchange on which such senior notes are listed or (b) if such senior notes are not so listed, on a pro rata basis to the extent practicable; provided that no senior notes of \$2,000 or less shall be redeemed in part.

Notices of redemption shall be mailed by first-class mail, postage prepaid, at least 30 days but not more than 60 days before the redemption date to each Holder at such Holder's registered address, except that notices of redemption may be mailed more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the senior notes or a satisfaction and discharge of the Senior Indenture. If any senior note is to be redeemed in part only, any notice of redemption that relates to such senior note shall state the portion of the principal amount thereof to be redeemed.

A senior note in principal amount equal to the unredeemed portion of any senior note redeemed in part will be issued in the name of the Holder thereof upon cancellation of the original senior note. Senior notes called for redemption become due and payable on the date fixed for redemption. On and after the redemption date, unless the Company defaults in the redemption payment, interest shall cease to accrue on the senior note or portions thereof called for redemption.

#### **Repurchase at the Option of Holders**

#### *Change of Control*

If a Change of Control occurs, the Company will make an offer to purchase all of the senior notes pursuant to the offer described below (the Change of Control Offer) at a price in cash (the Change of Control Payment) equal to 101% of the aggregate principal amount thereof plus accrued and unpaid interest, and Additional Interest, if any, to the date of purchase, subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date. Within 30 days following any Change of Control, the Company will send notice of such Change of Control Offer by first class mail, with a copy to the Trustee, to each Holder to the address of such Holder appearing in the security register with a copy to the Trustee, with the following information:

- (1) a Change of Control Offer is being made pursuant to the covenant entitled Change of Control, and all senior notes properly tendered pursuant to such Change of Control Offer will be accepted for payment;
- (2) the purchase price and the purchase date, which will be no earlier than 30 days nor later than 60 days from the date such notice is mailed (the Change of Control Payment Date);
- (3) any senior note not properly tendered will remain outstanding and continue to accrue interest;
- (4) unless the Company defaults in the payment of the Change of Control Payment, all senior notes accepted for payment pursuant to the Change of Control Offer will cease to accrue interest on the Change of Control Payment Date;
- (5) Holders electing to have any senior notes purchased pursuant to a Change of Control Offer will be required to surrender the senior notes, with the form entitled Option of Holder to Elect Purchase on the reverse of the senior notes completed, to the paying agent specified in the notice at the address specified in the notice prior to the close of business on the third Business Day preceding the Change of Control Payment Date;
- (6) Holders will be entitled to withdraw their tendered senior notes and their election to require the Company to purchase such senior notes; provided that the paying agent receives, not later than the close of business

on the last day of the offer period, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of senior notes tendered for purchase, and a statement that such Holder is withdrawing its tendered senior notes and its election to have such senior notes purchased; and

19

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(7) Holders whose senior notes are being purchased only in part will be issued senior notes equal in principal amount to the unpurchased portion of the senior notes surrendered, which unpurchased portion must be equal to \$2,000 or an integral multiple of \$1,000 in excess of \$2,000.

While the senior notes are in global form and the Company makes an offer to purchase all of the senior notes pursuant to the Change of Control Offer, a Holder may exercise its option to elect for the purchase of the senior notes through the facilities of DTC, subject to its rules and regulations.

The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws or regulations are applicable in connection with the repurchase of the senior notes pursuant to a Change of Control Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of the Senior Indenture, the Company will comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations described in the Senior Indenture by virtue thereof.

On the Change of Control Payment Date, the Company will, to the extent permitted by law,

- (1) accept for payment all senior notes or portions thereof properly tendered pursuant to the Change of Control Offer,
- (2) deposit with the paying agent an amount equal to the aggregate Change of Control Payment in respect of all senior notes or portions thereof so tendered and
- (3) deliver, or cause to be delivered, to the Trustee for cancellation the senior notes so accepted together with an Officers Certificate stating that such senior notes or portions thereof have been tendered to and purchased by the Company.

The paying agent will promptly mail to each Holder the Change of Control Payment for such senior notes, and the Trustee will promptly authenticate and mail to each Holder a senior note equal in principal amount to any unpurchased portion of the senior notes surrendered, if any; provided that each such senior note will be in a principal amount of \$2,000 or an integral multiple of \$1,000 in excess of \$2,000. The Company will publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

The Revolving Credit Facility will (subject to limited exceptions), and future credit agreements or other agreements to which the Company becomes a party may, prohibit the Company from purchasing any senior notes as a result of a Change of Control. In the event a Change of Control occurs at a time when the Company is prohibited from purchasing the senior notes, the Company could seek the consent of their lenders and noteholders to permit the purchase of the senior notes or could attempt to refinance the borrowings and notes that contain such prohibition. If the Company does not obtain such consent or repay such borrowings or notes, the Company will remain prohibited from purchasing the senior notes. In such case, the Company's failure to purchase tendered senior notes would constitute an Event of Default under the Senior Indenture.

The Revolving Credit Facility will provide that certain change of control events with respect to the Company (including a Change of Control under the Senior Indenture) would constitute a default thereunder. If the Company experiences a change of control that triggers a default under the Revolving Credit Facility or cross-defaults under any other Indebtedness, the Company could seek a waiver of such defaults or seek to refinance the Indebtedness outstanding under the Revolving Credit Facility and such other Indebtedness. In the event the Company does not obtain such a waiver or refinance the Indebtedness outstanding under the Revolving Credit Facility and such other Indebtedness, such defaults could result in amounts outstanding under the Revolving Credit Facility and such other Indebtedness being declared due and payable. The Company's ability to pay cash to the Holders following the occurrence of a Change of Control may be limited by its then existing financial resources. Therefore, sufficient funds may not be available when necessary to make any required repurchases.

The Company will not be required to make a Change of Control Offer following a Change of Control if a third party makes the Change of Control Offer in the manner, at the time and otherwise in compliance with the requirements set forth in the Senior Indenture applicable to a Change of Control Offer made by the Company and purchases all senior notes validly tendered and not withdrawn under such Change of Control Offer. A Change of Control Offer may be made in advance of a Change of Control, conditional upon such Change of Control, if a definitive agreement is in place for the Change of Control at the time of making of the Change of Control Offer.



The Change of Control purchase feature of the senior notes may in certain circumstances make more difficult or discourage a sale or takeover of the Company and, thus, the removal of incumbent management. The Change of Control purchase feature is a result of negotiations between the Company and the Initial Purchasers. We have no present intention to engage in a transaction involving a Change of Control, although it is possible that we could decide to do so in the future. Subject to the limitations discussed below, we could, in the future, enter into certain transactions, including acquisitions, refinancings or other recapitalizations, that would not constitute a Change of Control under the Senior Indenture, but that could increase the amount of indebtedness outstanding at such time or otherwise affect our capital structure or credit ratings. Restrictions on our ability to incur additional Indebtedness are contained in the covenant described under *Certain Covenants Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*. Such restrictions can be waived with the consent of the holders of a majority in principal amount of the senior notes then outstanding. Except for the limitations contained in such covenant, however, the Senior Indenture will not contain any covenants or provisions that may afford Holders protection in the event of a highly leveraged transaction.

The definition of *Change of Control* includes a disposition of all or substantially all of the assets of the Company to any Person. Although there is a limited body of case law interpreting the phrase *substantially all*, there is no precise established definition of the phrase under applicable law. Accordingly, in certain circumstances there may be a degree of uncertainty as to whether a particular transaction would involve a disposition of all or substantially all of the assets of the Company. As a result, it may be unclear as to whether a Change of Control has occurred and whether a Holder may require the Company to make an offer to repurchase the senior notes as described above.

The provisions under the Senior Indenture relative to the Company's obligation to make an offer to repurchase the senior notes as a result of a Change of Control may be waived or modified with the written consent of the Holders of a majority in principal amount of the senior notes.

#### *Asset Sales*

The Senior Indenture provides that the Company will not, and will not permit any Restricted Subsidiary to, cause, make or suffer to exist an Asset Sale, unless:

- (1) the Company or such Restricted Subsidiary, as the case may be, receives consideration at the time of such Asset Sale at least equal to the fair market value (as determined in good faith by the Company) of the assets sold or otherwise disposed of; and
- (2) except in the case of a Permitted Asset Swap, at least 75% of the consideration therefor received by the Company or such Restricted Subsidiary, as the case may be, is in the form of cash or Cash Equivalents; provided that the amount of
  - (a) any liabilities (as shown on the Company's or such Restricted Subsidiary's most recent balance sheet or in the notes thereto) of the Company or such Restricted Subsidiary, other than liabilities that are by their terms subordinated to the senior notes, that are assumed by the transferee of any such assets (or a third party on behalf of the transferee) and for which the Company or such Restricted Subsidiary has been validly released by all creditors in writing,
  - (b) any securities, notes or other obligations or assets received by the Company or such Restricted Subsidiary from such transferee that are converted by the Company or such Restricted Subsidiary into cash (to the extent of the cash received) within 180 days following the closing of such Asset Sale and
  - (c) any Designated Noncash Consideration received by the Company or such Restricted Subsidiary in such Asset Sale having an aggregate fair market value, taken together with all other Designated Noncash Consideration received pursuant to this clause (c) that is at that time outstanding, not to exceed the greater of (x) \$125.0 million and (y) 1.75% of Total Assets at the time of the receipt of such Designated Noncash Consideration, with the fair market value of each item of Designated Noncash Consideration being measured at the time received and without giving effect to subsequent changes in value,

shall be deemed to be cash for purposes of this provision and for no other purpose.

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Within 450 days after any of the Company's or any Restricted Subsidiary's receipt of the Net Proceeds of any Asset Sale, the Company or such Restricted Subsidiary may, at its option, apply the Net Proceeds from such Asset Sale:

21

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(1) to permanently reduce

(x) Obligations under any Senior Indebtedness of the Company or any Subsidiary Guarantor and, in the case of Obligations under revolving credit facilities or other similar Indebtedness, to correspondingly permanently reduce commitments with respect thereto (other than Obligations owed to the Company or a Restricted Subsidiary); provided that if the Company or any Restricted Subsidiary shall so reduce Obligations under any Senior Indebtedness that is not Secured Indebtedness, the Company or such Subsidiary Guarantor will, equally and ratably, reduce Obligations under the senior notes by, at its option, (A) redeeming senior notes if the senior notes are then redeemable as provided under Optional Redemption (B) making an offer (in accordance with the procedures set forth below for an Asset Sale Offer) to all Holders to purchase their senior notes at 100% of the principal amount thereof, plus the amount of accrued and unpaid interest and Additional Interest, if any, on the principal amount of senior notes to be repurchased or (C) purchasing senior notes through open market purchases (to the extent such purchases are at a price equal to or higher than 100% of the principal amount thereof) in a manner that complies with the Senior Indenture and applicable securities law; or

(y) Indebtedness of a Restricted Subsidiary that is not a Subsidiary Guarantor, other than Indebtedness owed to the Company or another Restricted Subsidiary; or

(2) to an investment in (a) any one or more businesses; provided that such investment in any business is in the form of the acquisition of Capital Stock and results in the Company or any Restricted Subsidiary owning an amount of the Capital Stock of such business such that it constitutes a Restricted Subsidiary, (b) properties, (c) capital expenditures and (d) acquisitions of other assets, that in each of (a), (b), (c) and (d), are used or useful in a Similar Business or replace the businesses, properties and assets that are the subject of such Asset Sale.

Any Net Proceeds from the Asset Sale that are not invested or applied in accordance with the preceding paragraph within 450 days from the date of the receipt of such Net Proceeds will be deemed to constitute Excess Proceeds ; provided that if during such 450-day period the Company or a Restricted Subsidiary enters into a definitive binding agreement committing it to apply such Net Proceeds in accordance with the requirements of clause (2) of the immediately preceding paragraph after such 450th day, such 450-day period will be extended with respect to the amount of Net Proceeds so committed until such Net Proceeds are required to be applied in accordance with such agreement (but such extension will in no event be for a period longer than 180 days) (or, if earlier, the date of termination of such agreement). When the aggregate amount of Excess Proceeds exceeds \$45.0 million, the Company shall make an offer to all Holders and, if required by the terms of any Senior Indebtedness, to the holders of such Senior Indebtedness (other than with respect to Hedging Obligations) (an Asset Sale Offer ), to purchase the maximum aggregate principal amount of senior notes and such Senior Indebtedness that is an integral multiple of \$1,000 that may be purchased out of the Excess Proceeds at an offer price in cash in an amount equal to 100% of the principal amount thereof, plus accrued and unpaid interest and Additional Interest, if any, to the date fixed for the closing of such offer, in accordance with the procedures set forth in the Senior Indenture. The Company will commence an Asset Sale Offer with respect to Excess Proceeds within ten Business Days after the date that Excess Proceeds exceed \$45.0 million by mailing the notice required pursuant to the terms of the Senior Indenture, with a copy to the Trustee. The Company may satisfy the foregoing obligations with respect to any Net Proceeds from an Asset Sale by making an Asset Sale Offer with respect to such Net Proceeds prior to the expiration of the relevant 450 days or with respect to Excess Proceeds of \$45.0 million or less.

To the extent that the aggregate amount of senior notes and such Senior Indebtedness tendered pursuant to an Asset Sale Offer is less than the Excess Proceeds, the Company may use any remaining Excess Proceeds for general corporate purposes, subject to the other covenants contained in the Senior Indenture. If the aggregate principal amount of senior notes or the Senior Indebtedness surrendered by such holders thereof exceeds the amount of Excess Proceeds, the Company shall select or cause to be selected the senior notes and such Senior Indebtedness to be purchased on a pro rata basis based on the accreted value or principal amount of the senior notes or such Senior Indebtedness tendered. Upon completion of any such Asset Sale Offer, the amount of Excess Proceeds related to such Asset Sale Offer shall be reset at zero.

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Pending the final application of any Net Proceeds pursuant to this covenant, the Company or the applicable Restricted Subsidiary may apply such Net Proceeds temporarily to reduce Indebtedness outstanding under a revolving credit facility or otherwise invest such Net Proceeds in any manner not prohibited by the Senior Indenture.

The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws or regulations are applicable in connection with the repurchase of senior notes pursuant to an Asset Sale Offer. To the extent that the provisions of any securities laws or regulations conflict

22

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with the provisions of the Senior Indenture, the Company will comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations described in the Senior Indenture by virtue thereof.

The Senior Credit Facilities will limit (in each case, subject to limited exceptions), and future credit agreements or other agreements to which the Company becomes a party may limit or prohibit, the Company from purchasing any senior notes as a result of an Asset Sale Offer. In the event the Company is required to make an Asset Sale Offer at a time when the Company is prohibited from purchasing the senior notes, the Company could seek the consent of its lenders to permit the purchase of the senior notes or could attempt to refinance the borrowings that contain such prohibition. If the Company does not obtain such consent or repay such borrowings, the Company will remain prohibited from purchasing the senior notes. In such case, the Company's failure to purchase tendered senior notes would constitute an Event of Default under the Senior Indenture.

The provisions under the Senior Indenture relative to the Company's obligation to make an offer to repurchase the senior notes as a result of an Asset Sale may be waived or modified with the written consent of the Holders of a majority in principal amount of the senior notes.

#### **Certain Covenants**

Set forth below are summaries of certain covenants contained in the Senior Indenture.

#### ***Limitation on Restricted Payments***

The Company will not, and will not permit any Restricted Subsidiary to, directly or indirectly:

(1)