NEIMAN MARCUS GROUP INC
Form 424B3
October 06, 2008
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File Pursuant to Rule 424(b)(3)
Registration No. 333-136297

The Neiman Marcus Group, Inc
7.125% Senior Debentures due 2028

The 7.125% senior debentures due 2028 (the 2028 debentures) will mature on June 1, 2028. Interest on the 2028 debentures is payable on each June 1 and December 1. The 2028 debentures are our senior obligations and rank equal in right of payment with all of our existing and future senior indebtedness, senior to all of our existing and future subordinated indebtedness, and effectively junior to all of our existing and future indebtedness that is secured by collateral that does not also secure the 2028 debentures, to the extent of the value of such assets securing such other obligations.

The 2028 debentures were unsecured when originally issued, but were granted security pursuant to the requirements of the negative pledge covenant contained in the indenture governing the 2028 debentures, as a result of our incurrence of secured indebtedness in the Transactions (as defined below). The 2028 debentures are currently equally and ratably secured by a first lien security interest on specified collateral that also secures our senior secured credit facilities. Because the 2028 debentures security interest on the specified collateral has been granted only for purposes of compliance with the negative pledge covenant contained in the indenture governing the 2028 debentures, the 2028 debentures are secured only for so long as the senior secured credit facilities (or other secured indebtedness subject to the 2028 debentures negative pledge clause) and the liens thereunder remain in existence and the specified collateral is subject to release under the senior secured credit facilities without the consent of holders of the 2028 debentures.

Neiman Marcus, Inc. (formerly known as Newton Acquisition, Inc.), our parent company (Parent), has unconditionally guaranteed the 2028 debentures with a guarantee that ranks equal in right of payment to all of its senior indebtedness.

The 2028 debentures are redeemable, in whole or in part, at our option, at any time, at a redemption price equal to the greater of (a) 100% of the principal amount of such debentures and (b) the sum of the present values of the remaining scheduled payments, discounted on a semiannual basis at the treasury rate determined as described in this prospectus plus 20 basis points, plus accrued interest to the date of redemption.

The 2028 debentures are represented by global debentures registered in the name of The Depository Trust Company.

You should consider carefully the Risk Factors beginning on page 4 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 October 3, 2008.

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WHERE YOU CAN FIND MORE INFORMATION

We and our Parent 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 2028 debentures. 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 2028 debentures, 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 2028 debentures 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 2028 debentures may be satisfied by the filing of such reports by our Parent, provided that specified consolidating information is provided.

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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 t 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 Considerations

- 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 customers due to, among other things, 1) our failure to provide quality service and competitive loyalty programs, 2) our inability to provide credit pursuant to our proprietary credit card arrangement or 3) our failure to protect customer data or comply with regulations surrounding information security and privacy;

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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;
- 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;

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- 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 2028 debentures.

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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 the Transactions are to the transactions defined as the Acquisition in our Parent s Annual Report on Form 10-K for the fiscal year ended August 2, 2008, which is incorporated by reference in this prospectus;

- references to any fiscal year are to our fiscal year, which ends on the Saturday closest to July 31 (all references to fiscal year 2008 relate to the 53 weeks ended August 2, 2008, and all references to fiscal year 2007 relate to the 52 weeks ended July 28, 2007;

- references to the 2028 debenture indenture are to the Indenture dated May 27, 1998 between The Neiman Marcus Group, Inc. and The Bank of New York Trust Company, N.A., as the successor trustee, as amended and supplemented;

- references to the senior secured asset-based revolving credit facility are to our $600 million senior secured asset-based revolving credit facility, references to the senior secured term loan facility are to our $1,975.0 million senior secured term loan facility and references to the senior secured credit facilities are to both such facilities;

- references to the senior subordinated notes are to our 10 3/8% Senior Subordinated Notes due 2015, references to the senior notes are to our 9%/9 3/4% Senior Notes due 2015 and references to the notes are to both such series of notes;

- references to the subsidiary guarantors are to the Company s subsidiaries that have issued guaranties in respect of the senior secured facilities and the notes;

- references to the intercreditor agreement are to the Pledge and Security and Intercreditor Agreement dated as of October 6, 2005 (as amended, the intercreditor agreement), among Neiman Marcus, Inc., The Neiman Marcus Group, Inc., the Subsidiaries party thereto and Credit Suisse, as administrative agent and collateral agent, as amended and supplemented;

- references to the collateral agent are to the collateral agent designated under the intercreditor agreement (initially, Credit Suisse); and

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- references to the closing date are to October 6, 2005, the date of the closing of the acquisition of The Neiman Marcus Group, Inc. by Neiman Marcus, Inc. through the merger of Newton Acquisition Merger Sub, Inc. with and into The Neiman Marcus Group, Inc. pursuant to the Agreement and Plan of Merger dated as of May 1, 2005.

All financial data in this prospectus reflect Kate Spade LLC as discontinued operations for all periods presented.

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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 40 Neiman Marcus full-line stores at prime retail locations in major U.S. markets and two Bergdorf Goodman 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®. During fiscal year 2008, we generated revenues of $ 4,600.5 million and operating earnings of $466.4 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. The information on our website is not a part of this prospectus.

Summary of Terms of the 2028 Debentures

Issuer	The Neiman Marcus Group, Inc.
Securities Offered	$125,000,000 aggregate principal amount of 7.125% Debentures due 2028.
Maturity Date	The 2028 debentures will mature on June 1, 2028.
Interest Payment Dates	June 1 and December 1 of each year.
Optional Redemption	At any time, we may redeem some or all of the 2028 debentures, at a redemption price equal to the greater of (a) 100% of the principal amount of the 2028 debentures to be redeemed and (b) the sum of the present values of the Remaining Scheduled Payments (as defined herein) discounted to the redemption date on a semiannual basis (assuming a 360-day year

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	consisting of twelve 30-day months) at the Treasury Rate plus 20 basis, plus accrued interest on the principal amount being redeemed to the date of redemption. See Description of the 2028 Debentures Optional Redemption.
Guarantees	The 2028 debentures are guaranteed on an unsecured, senior basis by our Parent.
Ranking	The 2028 debentures are our senior obligations and rank: • equal in right of payment with all of our existing and future senior indebtedness, including any borrowings under our senior secured credit facilities and the senior notes; and • senior to all of our existing and future subordinated indebtedness, including the senior subordinated notes. The 2028 debentures are structurally subordinated to indebtedness and other liabilities of our subsidiaries (except to the extent of any security interest in the assets of any subsidiaries that may secure the 2028 debentures), including trade payables and subsidiary guarantees of our senior secured credit facilities and the notes. The 2028 debentures effectively rank junior to all of our existing and future indebtedness, including our senior secured credit facilities, that is secured by collateral that does not also secure the 2028 debentures, to the extent of the value of such assets securing such other obligations.
Collateral	The 2028 debentures were unsecured when originally issued, but were granted security pursuant to the requirements of the negative pledge covenant contained in the 2028 debenture indenture as a result of our incurrence of secured indebtedness in the Transactions. The 2028 debentures are

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	currently equally and ratably secured by a first lien security interest on the 2028 Debenture Collateral (as defined under Description of the 2028 Debentures Collateral), which also secures our senior secured credit facilities. Because the 2028 debentures security interest on the 2028 Debenture Collateral has been granted only for purposes of compliance with the negative pledge covenant contained in the 2028 debenture indenture, the 2028 debentures are secured only for so long as the senior secured credit facilities (or other secured indebtedness subject to the 2028 debentures negative pledge clause) and the liens thereunder remain in existence and the 2028 Debenture Collateral is subject to release under the senior secured credit facilities without the consent of holders of the 2028 debentures. See Description of the 2028 Debentures Collateral.
Restrictive Covenants	The 2028 debenture indenture contains covenants limiting pledges and sale/leaseback transactions as described under Description of the 2028 Debentures Certain Covenants. Many of the covenants found in our senior secured credit facilities and the indentures governing our notes, however, are not found in the 2028 debenture indenture. The 2028 debenture indenture does not contain limitations on our or our subsidiaries 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; or sell assets, including capital stock of our subsidiaries.

Risk Factors

Investing in the 2028 debentures involves substantial risk. See Risk Factors for a discussion of certain factors that you should consider before investing in the 2028 debentures.

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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 August 2, 2008, 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 August 2, 2008 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 2028 debentures.

Risks Related to the 2028 Debentures

We have a substantial amount of indebtedness, which may adversely affect our cash flow and our ability to operate our business, to comply with debt covenants and make payments on our indebtedness, including the 2028 debentures.

As a result of the Transactions, we are highly leveraged. As of August 2, 2008, the principal amount of our total indebtedness was approximately $2,951.9 million, which included the 2028 debentures. Our unused borrowing availability under our $600 million senior secured asset-based revolving credit facility at that date was approximately $576.0 million, based on a borrowing base at that date of over $600.0 million and after giving effect to $24.0 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 the 2028 debentures. For example, it could:

- make it more difficult for us to satisfy our obligations with respect to our indebtedness, including the 2028 debentures, 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 and agreements governing our 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

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- 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 August 2, 2008, we had approximately $1,625.0 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 $576.0 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 and after giving effect to $24.0 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 2028 debentures 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 2028 debentures, 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 indentures 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, which may prevent us from meeting 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 2028 debentures.

Repayment of our debt, including the 2028 debentures, 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 2028 debentures, 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. Our subsidiaries do not have any obligation to pay amounts due on the 2028 debentures 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 2028 debentures. 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. The 2028 debenture indenture does not limit the ability of our subsidiaries to incur consensual

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restrictions on their ability to pay dividends or make other intercompany payments to us. 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 2028 debentures.

The 2028 debentures are structurally subordinated to all liabilities of our subsidiaries and to claims of creditors of our current and future subsidiaries.

The 2028 debentures are structurally subordinated to indebtedness and other liabilities of our subsidiaries (except to the extent of any security interest in the assets of any such subsidiaries that may secure the 2028 debentures), including subsidiary guarantees of our senior secured credit facilities and the notes. In the event of a bankruptcy, liquidation or reorganization of any of our subsidiaries, these 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 (except to the extent of any security interest in the assets of any such subsidiaries that may secure the 2028 debentures).

The terms of our senior secured credit facilities and the indentures governing the notes 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 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.

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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 the 2028 debentures. The lenders would 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 2028 debentures are secured only for so long as the senior secured credit facilities and the liens thereunder remain in existence and the 2028 Debenture Collateral is subject to release by the senior secured credit facilities without the consent of holders of the 2028 debentures.

The 2028 debentures were unsecured when originally issued, but were granted security pursuant to the requirements of the negative pledge covenant contained in the 2028 debenture indenture as a result of our incurrence of secured indebtedness in the Transactions. The 2028 debentures are currently equally and ratably secured by a first lien security interest on the 2028 Debenture Collateral, which also secures our senior secured credit facilities. Because the 2028 debentures security interest on the 2028 Debenture Collateral has been granted only for purposes of compliance with the negative pledge covenant contained in the 2028 debenture indenture, the 2028 debentures are secured only for so long as the senior secured credit facilities (or other secured indebtedness subject to the 2028 debentures negative pledge clause) and the liens thereunder remain in existence and the 2028 Debenture Collateral is subject to release under the senior secured credit facilities without the consent of holders of the 2028 debentures. See Description of the 2028 Debentures Collateral.

The senior secured credit facilities are scheduled to mature prior to the stated maturity of the 2028 debentures and the 2028 debentures will be unsecured after the senior secured credit facilities mature unless we have other secured indebtedness subject to the 2028 debentures negative pledge clause at that time.

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The 2028 Debenture Collateral will exclude stock with value equal to or greater than 20% of the aggregate principal amount of the 2028 debentures or other secured public debt obligations.

Capital stock and other securities of a subsidiary of the Company that are owned by the Company or any subsidiary guarantor of the senior secured credit facilities does not constitute collateral under our senior secured credit facilities (and, as a result, does not constitute 2028 Debenture Collateral) to the extent that such securities cannot secure the 2028 debentures or other secured public debt obligations of the Company without requiring the preparation and filing of separate financial statements of such subsidiary in accordance with applicable SEC rules. As a result, the collateral under our senior secured credit facilities and the 2028 Debenture Collateral includes shares of capital stock or other securities of subsidiaries of the Company or any subsidiary guarantor only to the extent that the applicable value of such securities (on a subsidiary-by-subsidiary basis) is less than 20% of the aggregate principal amount of the 2028 debentures (or, currently, $25 million) or other secured public debt obligations of the Company. Accordingly, holders of the 2028 debentures should assume that the value of any 2028 Debenture Collateral consisting of capital stock or other securities of a subsidiary of the Company will not be material.

The pro rata share of the 2028 debentures in the 2028 Debenture Collateral may not be sufficient collateral to pay all or any of the 2028 debentures.

The 2028 debentures security interest in the 2028 Debenture Collateral is shared equally and ratably with the first lien security interest on that collateral of the lenders under our senior secured term loan facility and is senior to the second priority security interest on that collateral of the lenders under our senior secured asset based revolving credit facility (although if the lien of the lenders under our senior secured term loan facility were to be released, without replacement, while our senior secured asset based revolving credit facility remains outstanding, the lien of the lenders under our senior secured asset based revolving credit facility would become a first priority lien and the 2028 debentures security interest in the 2028 Debenture Collateral would then be shared equally and ratably with the lenders under our senior secured asset based revolving credit facility).

No appraisal of the fair market value of the 2028 Debenture Collateral has been prepared in connection with this offering, however we believe that the fair market value of the 2028 Debenture Collateral is substantially less than the principal amount of our new senior secured term loan facility and our existing 2028 debentures taken together. The actual value of the 2028 Debenture Collateral at any time will depend upon market and other economic conditions. By its nature, the 2028 Debenture Collateral generally will consist of illiquid assets that may have to be sold at a substantial discount in an insolvency situation and may have no readily ascertainable market value.

In the event of a foreclosure, liquidation, bankruptcy or similar proceeding, the proceeds from any sale or liquidation of the 2028 Debenture Collateral will likely be insufficient to pay our obligations under the 2028 debentures and our new senior secured term loan facility in full. Moreover, other indebtedness we may incur in the future may be secured on a first priority basis by all or a portion of the 2028 Debenture Collateral, further limiting the amount of 2028

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Debenture Collateral that would be available to pay obligations under the 2028 debentures. The 2028 Debenture Collateral also secures our new senior secured asset based revolving credit facility on a second priority basis (subject to permitted encumbrances).

The intercreditor agreement entered into in connection with collateral arrangements related to the Transactions provides that each holder of 2028 debentures, by accepting the agreement s benefits, is deemed to have:

- agreed that the collateral agent has no duty and owes no obligation or responsibility (fiduciary or otherwise) to the 2028 debenture trustee or such holders, other than the duty to perform its express obligations under the intercreditor agreement in accordance with its terms;

- waived any right it might have, under applicable law or otherwise, to compel the sale or other disposition of any 2028 Debenture Collateral, and any obligation the collateral agent might have, under applicable law or otherwise, to obtain any minimum price for any 2028 Debenture Collateral upon the sale thereof; and

- agreed that the sole right of the holders of the 2028 debentures shall be to receive their ratable share of any proceeds of 2028 Debenture Collateral in accordance with and subject to the provisions of the related documentation.

In the event of a default, including a bankruptcy involving the Company, we will not be able to control or direct the actions that our creditors under our senior secured credit facilities may take with respect to any 2028 Debenture Collateral or assure you that such actions will not be adverse to the interests of the holders of the 2028 debentures.

In the event of our bankruptcy, the ability of the holders of the 2028 debentures to realize upon the 2028 Debenture Collateral will be subject to certain bankruptcy law limitations.