AMERICAN EQUITY INVESTMENT LIFE HOLDING CO
Form PRE 14A
April 17, 2006

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of
the Securities Exchange Act of 1934 (Amendment No.)

Filed by the Registrant x
Filed by a Party other than the Registrant o
Check the appropriate box:

x	Preliminary Proxy Statement
o	**Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
o	Definitive Proxy Statement
o	Definitive Additional Materials
o	Soliciting Material Pursuant to §240.14a-12

AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY
(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

x	No fee required.	
o	Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.	
	(1)	Title of each class of securities to which transaction applies:
	(2)	Aggregate number of securities to which transaction applies:
	(3)	Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):
	(4)	Proposed maximum aggregate value of transaction:
	(5)	Total fee paid:
o	Fee paid previously with preliminary materials.	
o	Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.	
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	(2)	Form, Schedule or Registration Statement No.:
	(3)	Filing Party:
	(4)	Date Filed:

AMERICAN EQUITY
Investment Life Holding Company

5000 Westown Parkway, Suite 440
West Des Moines, Iowa 50266

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS
June 8, 2006

The Annual Meeting of Stockholders of American Equity Investment Life Holding Company will be held at the Company s executive offices, 5000 Westown Parkway, Suite 440, West Des Moines, Iowa 50266, on Thursday, June 8, 2006 at 3:30 p.m., local time, for the following purposes:

1. To elect a total of three (3) Directors to three-year terms.

2. To consider and vote upon a proposed Amendment to the Company s Articles of Incorporation to increase the number of authorized shares of the Company s Common Stock from 75,000,000 to 125,000,000.

3. To consider and vote upon the ratification of KPMG LLP as the Company s independent auditors for 2006.

4. To transact such other business that may properly come before the meeting.

Stockholders of record at the close of business on April 15, 2006, are entitled to notice of and vote at the meeting. It is important that your shares be represented and voted at the meeting. Whether or not you plan to attend the meeting, please vote in one of the following ways:

- By telephone, using the toll-free telephone number shown on the proxy card;
- Through the Internet by visiting the website noted on the proxy card; or
- By completing, signing and promptly returning the enclosed proxy card in the enclosed postage-paid envelope or by fax to the number shown on the proxy card.

By Order of the Board of Directors

Debra J. Richardson
Secretary

West Des Moines, Iowa
April 27, 2006

PROXY STATEMENT

AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY

Annual Meeting of Stockholders
June 8, 2006

TABLE OF CONTENTS

ANNUAL MEETING AND PROXY SOLICITATION INFORMATION

General Information

This Proxy Statement is furnished to the stockholders of American Equity Investment Life Holding Company, 5000 Westown Parkway, Suite 440, West Des Moines, Iowa 50266 (referred to in this Proxy Statement as the Company or as we, our or us), in connection with the solicitation of proxies by the Board of Directors for use at the Annual Meeting of Stockholders to be held on June 8, 2006, at the time and place shown in the Notice of Annual Meeting of Stockholders, and at any adjournment thereof.

We will bear all expenses in connection with this solicitation. Proxies may be solicited by the Board of Directors or management personally, by telephone or by facsimile.

This Proxy Statement is first being mailed on or about April 27, 2006.

Voting Rights

Only stockholders of record as of the close of business on April 15, 2006, will be entitled to the notice of and to vote at the meeting. We have a single class of voting common stock, $1 par value per share (Common Stock), of which 55,628,173 shares were outstanding and entitled to vote on such date. Each share is entitled to one vote.

Shares present in person or represented by proxy at the meeting will be tabulated for determination of whether or not a quorum is present. A quorum will be present if a majority of the votes entitled to be cast on a matter are represented for any purpose at the meeting. Votes withheld for any Director and abstentions represented at the meeting will be counted for quorum purposes, but will not be counted as votes cast with respect to any other matter to come before the meeting and will not affect the outcome of any other matter. Votes will be tabulated under the supervision of Computershare, Inc., which has been designated by the Board of Directors to act as inspector of the election.

If your shares of Common Stock are held in the name of a bank, broker or other holder of record, you will receive instructions from that holder of record that you must follow in order for your shares to be voted at the Annual Meeting. Contact your bank, broker or other holder of record directly if you have any questions.

If you plan to attend the meeting and vote in person, we will give you a ballot when you arrive. If your shares of Common Stock are not registered in your own name, and you plan to attend the Annual Meeting and vote your shares in person, you will need to contact the broker or agent in whose name your shares are registered to obtain a broker s proxy card and bring it with you to the Annual Meeting.

Voting

If you vote by proxy, the individuals named on the proxy card (your proxies) will vote your shares in the manner you indicate. If you sign, date and return the proxy card without indicating your instructions on how to vote your shares, the proxies will vote your shares as follows:

- **FOR** the election of the three nominees for Directors;
- **FOR** the amendment to our Articles of Incorporation to increase the number of authorized shares of Common Stock to 125,000,000; and
- **FOR** the ratification of the appointment of KPMG LLP as our independent auditors for 2006.

If any other matter is presented at the Annual Meeting, your proxies will vote in accordance with their best judgment. At the time this proxy statement went to press, we knew of no matters to be addressed at the Annual Meeting beyond those described in this proxy statement.

As an alternative to voting by using the enclosed proxy card, if you are a registered shareholder (that is, you own shares of Common Stock in your own name and not through a broker, nominee or in some other street name), you may vote by telephone or Internet. Please see the enclosed proxy card for instructions on how to access the telephone and Internet voting systems. If you hold your shares in street name, your broker or other nominee will advise you whether you may vote by telephone or through the Internet as an alternative to voting by using the enclosed proxy card.

When voting using any of these methods, as to the election of Directors, you may (a) vote for all of the Director nominees as a group, (b) vote for all of the Director nominees as a group, except those nominees whose names you specify or (c) withhold your vote from all nominees as group.

A proxy may be revoked at any time prior to its use. Such revocation may be made in person at the Annual Meeting, by a notice in writing delivered to the Corporate Secretary of the Company, by voting by telephone or over the Internet at a later date or by a proxy bearing a later date.

The Board of Directors urges you to exercise your right to vote by returning the enclosed proxy card, by using the telephone or through the Internet.

PROPOSALS TO BE VOTED UPON

Proposal 1

Election of Directors

The Board of Directors presently consists of ten members, each of whom have been appointed to one of three Classes with three-year terms expiring on a staggered basis. The terms of service of the three Directors presently serving as the Class II Directors expire at the annual meeting to be held on June 8, 2006. Each of the Class III Directors are nominated for re-election to a new term of three years expiring in 2009.

The Board of Directors anticipates that the nominees will be able to serve on the Board. In the event any nominee should be unable to do so, proxies will be voted for such substitute nominee as the Board of Directors in its discretion may recommend. Proxies will be voted for the election of the nominees unless the stockholder giving the proxy withholds such authority or votes against any such nominee.

The Board of Directors unanimously recommends that you vote FOR the nominees listed below.

Nominees for Class III Directors for Terms to Expire in 2009

The following individuals have been nominated by the Board as Class III Directors whose terms will expire at the annual meeting to be held in 2009:

David J. Noble has served as Chairman, Chief Executive Officer, President and Treasurer of the Company and as Chairman of American Equity Investment Life Insurance Company (American Equity Life) since their formation in 1995. Mr. Noble has also served as Chief Executive Officer of American Equity Life since March 2001, and he served as President of American Equity Life from 1995 until March 2001. Mr. Noble was Chief Executive Officer of The Statesman Group (Statesman) from 1982 through 1994 and was a Director of Statesman (from 1975) and its President (from 1979) until he left to form our company at the end of 1995. Mr. Noble has been active in the insurance industry for over 50 years. Mr. Noble is a director of Twenty Services, Inc.

Director since 1995. Age 74.
Member: Executive and Investment Committees

A. J. Strickland III has been a Professor at the University of Alabama School of Business since 1969. Dr. Strickland is a director of Twenty Services, Inc., and a former director of Statesman.

Director since 1996. Age 64.
Member: Audit and Compensation Committees

Harley A. Whitfield is an attorney who is of counsel to Whitfield & Eddy, P.L.C., Des Moines, Iowa. Mr. Whitfield was a partner with Whitfield & Eddy from 1956 through 1994. Mr. Whitfield served as general corporate counsel for Statesman for over 30 years.

Director since 1996. Age 75.
Member: Audit and Compensation Committees

Members of Our Board Not Standing for Election This Year

Set forth below is information about our directors who are not standing for election at the Annual Meeting.

Incumbent Class I Directors Whose Terms Expire at the 2007 Annual Meeting

John C. Anderson is a member of the Southbrooke Health Center, Pell City, Alabama, where he has practiced chiropractic medicine since 1990. He is on the staff at St. Clair Regional Hospital, and has served on the Physician Advisory Committee for Blue Cross/Blue Shield of Alabama. Dr. Anderson holds a certification in disability and impairment rating, and is a member of the Academy of MUA Physicians and the American Academy of Pain Management and is certified with the Diplomate American Board of Chiropractic Orthopedists.

Director since 1998. Age 42.
Member: Nominating and Corporate Governance Committees

Robert L. Hilton served as Executive Vice President of Government Relations and Marketing of Amtrust Financial Services Inc. from October 2000 to April 2001. Mr. Hilton served as Executive Vice President of Insurance Data Resources Statistical Services, Inc., Boca Raton, Florida from 1997 until December 1999. From 1992 to 1996 he served as President of TIDE Consulting Co., Destin, Florida. Mr. Hilton was retired from December 1999 until October 2000 and has been a self-employed insurance consultant since 2001. Mr. Hilton is a former Director of Statesman and served for over 40 years as Senior Vice President of the National Council of Compensation Insurance, Boca Raton, Florida.

Director since 1996. Age 77.
Member: Compensation and Nominating and Corporate Governance Committees

John M. Matovina has served as our Vice Chairman since June 2003. Prior to being appointed Vice Chairman, Mr. Matovina was a private investor since 1996 and a financial consultant to us from 1997 to 2000. From November 1983 through November 1996, he was a senior financial officer of Statesman and many of its subsidiaries, and, prior to Statesman s acquisition in September 1994, he served as Statesman s Chief Financial Officer, Treasurer and Secretary. Mr. Matovina is a certified public accountant and has more than 25 years experience in the accounting and insurance industries.

Director since 2000. Age 51.

Kevin R. Wingert was appointed President of American Equity Life in March 2001. He served as Vice President of Marketing of that subsidiary from November 1996 until his appointment as President. He served as Regional Vice President of Marketing for American Life, a subsidiary of Statesman, from 1988 to 1996. Mr. Wingert has been active in the insurance industry for over 20 years.

Director since 2002. Age 48.

Incumbent Class II Directors Whose Terms Expire at the 2008 Annual Meeting

James M. Gerlach has served as Executive Vice President of our company since 1997 and as a director, Executive Vice President and Chief Marketing Officer of American Equity Life since 1996. Prior to joining us, Mr. Gerlach served as Executive Vice President and Secretary of American Life and Casualty Insurance Company (American Life) and as Executive Vice President and Treasurer of Vulcan Life Insurance Company, a subsidiary of American Life. Mr. Gerlach has been active in the insurance industry for over 35 years.

Director since 1997. Age 63.
Member: Executive and Investment Committees

Robert L. Howe served the State of Iowa Insurance Division from 1964 to 2002 in various capacities. He was named Deputy Commissioner and Chief Examiner in 1985 and served in this position until his retirement in 2002. During this time, Mr. Howe was responsible for the financial oversight of 220 domestic insurance companies. Since his retirement, Mr. Howe has been a self-employed insurance consultant. Mr. Howe is a certified financial examiner, certified insurance examiner, certified government financial manager and accredited insurance receiver.

Director since 2005. Age 63.
Member: Audit Committee

David S. Mulcahy is an active investor in private companies, and, since 1987, he has been the Chairman of Monarch Manufacturing Company, Waukee, Iowa. Mr. Mulcahy is a certified public accountant who acted as a senior tax partner in the Des Moines office of Ernst & Young LLP, where he was employed from 1976 through 1994.

Director since 1996. Age 53.

6

Proposal 2

Amendment to the Articles of Incorporation
Increase the Number of Authorized Common Shares to 125,000,000

The Board of directors has unanimously approved and recommended that the stockholders approve an amendment to Article IV of our Articles of Incorporation (Articles) to increase the number of shares of our authorized Common Stock, par value $1 per share, from 75,000,000 shares to 125,000,000 shares. The text of the proposed amendment is attached hereto as Appendix A and the following summary is qualified in its entirety by reference to such text.

At April 15, 2006, we had 55,628,173 shares of Common Stock issued and outstanding, and an aggregate of 26,949,503 shares of Common Stock reserved for issuance in connection with certain outstanding plans and agreements, including:

(i) 942,370 shares potentially issuable upon the exercise of outstanding options under the 1996 Stock Option Plan;

(ii) Up to 1,800,000 shares issuable to employees in connection with the 2000 Employee Stock Option Plan (of which options representing 1,193,492 shares have been granted and are outstanding);

(iii) Up to 225,000 shares issuable to directors in connection with the 2000 Director Stock Option Plan (of which 15,000 shares have been granted and are outstanding);

(iv) 1,260,000 shares potentially issuable upon the exercise of outstanding options under other stock option agreements;

(v) 405,397 shares potentially issuable under deferred compensation agreements with certain officers, directors and consultants;

(vi) 1,516,293 shares potentially distributable under deferred compensation plans with the principals of certain national marketing organizations;

(vii) 2,807,363 shares issuable upon the conversion of the shares of the 8% Convertible Trust Preferred Securities issued by one of our subsidiary trusts; and

(viii) Up to 17,301,038 shares issuable upon the conversion of the 5.25% Contingent Convertible Senior Notes due 2024 (the Senior Notes); and

(ix) Up to 692,042 share issuable upon the conversion of the Series B 5.25% Contingent Convertible Senior Notes due 2024 (the Series B Senior Notes).

In respect to the shares issuable upon the conversion of the Senior Notes and Series B Senior Notes (referenced in items (viii) and (ix) above), the exact number of shares issuable upon conversion is dependant upon and varies with the differential between the market price of the Company s Common Stock at the time of conversion and the conversion price of $14.45 per common share. Before the maximum number of shares would become issuable, the market price of the Company s Common Stock would have to exceed $150.00 per share. If all of the Senior Notes and Series B Senior Notes were converted at the earliest time permitted under the terms of such Notes, approximately 3,000,000 shares would be issuable. If all of the Senior Notes and Series B Senior Notes converted when the market price of the stock exceeds the conversion price by two times, approximately 8,996,540 shares would be issuable.

The proposed increase in the authorized Common Stock has been recommended by the Board of Directors to assure that an adequate supply of authorized and unissued shares is available for general corporate needs, as well as for such purposes as raising additional capital for the operations of the Company, or the financing of the acquisition of other insurance business or companies. There are currently

no plans for issuing additional shares of Common Stock in connection with new capital transactions or acquisitions or for any other purposes. Such shares would be available for issuance without further action by the shareholders, unless required by applicable law.

The Board of Directors unanimously recommends that you vote FOR Proposal 2 to increase the number of authorized shares of Common Stock to 125,000,000.

Proposal 3

Ratification of Appointment of Independent Registered Public Accounting Firm

The Audit Committee has appointed KPMG LLP (KPMG) as our independent registered public accounting firm for the year 2006. The Board requests that the shareholders ratify the appointment of KPMG. If the appointment of KPMG is not ratified by our stockholders, our Audit Committee will investigate the reasons for the stockholder rejection and will consider approving another independent registered public accounting firm.

KPMG was first retained as our auditors on June 16, 2005, and performed the audit of the Company s consolidated financial statements for year ended 2005, as well as the review of the Company s quarterly consolidated financial statements for the quarter ended September 30, 2005. The audit for 2004 and review of quarterly consolidated financial statements for the quarters ending March 31, 2005 and June 30, 2005 were performed by Ernst & Young, LLP (Ernst & Young):

Fees paid to KPMG for its services during the last two fiscal years were:

	2005	2004
Audit fees	$ 1,048,960	$
Audit related fees	87,140	
Tax fees		
All other fees	123,834	
Total	$ 1,259,934	$

Fees paid to Ernst & Young for its services during the last two fiscal years were:

	2005	2004
Audit fees	$ 152,445	$ 1,126,309
Audit related fees	92,800	14,395
Tax fees		
All other fees		
Total	$ 245,245	$ 1,140,704

Fees for audit services include fees associated with the annual audit, audit of internal control over financial reporting, the reviews of our quarterly reports on Form 10-Q and statutory audits required by regulatory authorities. Audit-related services principally include accounting consultations and audits of our employee benefit plan. Fees for tax services include corporate tax advice and planning.

Our policy is that all fees for services provided by our independent registered public accounting firm must be approved in advance by the Audit Committee. In addition, the Audit Committee reviews with KPMG whether the non-audit services to be provided are compatible with maintaining their independence. Permissible non-audit services are usually limited to fees for tax services, accounting assistance or audits in connection with acquisitions and other services specifically related to accounting or audit matters such as audits of employee benefit plans. These policies were adopted in compliance with the Sarbanes-Oxley Act of 2002 (SOX), and rules adopted by the Securities and Exchange Commission (SEC) thereunder.

The Audit Committee is responsible for the appointment, retention, compensation and oversight of the independent registered public accounting firm. The Audit Committee has adopted policies and procedures for pre-approving services (audit and non-audit) performed by the independent registered public accounting firm. In accordance with such policies and procedures, the Audit Committee is required to pre-approve the audit and non-audit services performed by the independent registered public accounting firm in order to assure that the provision of such services do not impair the auditors independence. These services may include audit services, audit-related services, tax services and other services. Unless a type of service to be provided by the independent registered public accounting firm has received general pre-approval, it will require specific pre-approval by the Audit Committee. The Audit Committee has delegated to the Chairman of the Audit Committee specific pre-approval authority provided that the estimated fee for any such engagement does not exceed $25,000. The Chairman of the Audit Committee must report, for information purposes only, any pre-approval decisions to the Audit Committee at its next scheduled meeting. Requests or applications to provide services that require separate approval by the Audit Committee will be submitted to the Audit Committee by both the independent registered public accounting firm and our Chief Financial Officer and must include a joint statement as to whether, in their view, the request or application is consistent with the SEC s rules on auditor independence.

The Company anticipates that representatives of KPMG will be present at the meeting and will be available to respond to questions concerning the 2005 audit.

Required Disclosures Pursuant to Item 304(a) of Regulation S-K
Regarding Change in Independent Registered Public Accounting Firm

As set forth above, KPMG was engaged as our independent registered public accounting firm on June 16, 2005, replacing Ernst & Young. In the Proxy Statement for the 2005 Annual Meeting of Stockholders we sent to stockholders on April 27, 2005, we reported that the Audit Committee was evaluating the audit and audit-related services for 2005 and no appointment of any firm had been made for that year. On May 13, 2005, Ernst & Young informed us that it was resigning as our independent registered public accounting firm no later than the completion of the quarterly review of the Company s fiscal quarter ending June 30, 2005. We accepted Ernst & Young s resignation, and then formalized our search for a new independent registered public accounting firm.

The reports of Ernst & Young on the financial statements of the Company for the past two fiscal years contained no adverse opinion or disclaimer of opinion and were not qualified or modified as to uncertainty, audit scope or accounting principle.

In connection with its audit for 2004 and through August 4, 2005, when it terminated its services, there were no disagreements with Ernst & Young on any matter of accounting principles or practices, financial statement disclosure or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of Ernst & Young, would have caused Ernst & Young to make reference thereto in their report on the financial statements for such years.

During the two most recent fiscal years and through August 4, 2005, there were no reportable events (as outlined in Regulation S-K Item 304(a)(1)(v)), other than as follows: In Item 9A of its Annual Report on Form 10-K/A for the year ended December 31, 2004, we reported a material weakness in internal controls with respect to deferred policy acquisition costs and deferred sales inducements and were not able to conclude that our internal control over financial reporting was effective as of the end of the period covered by our Annual Report on Form 10-K/A. This weakness in internal control over financial reporting did not result in any material misstatement of the Company s audited financial statements for 2004. Ernst & Young s report on internal control over financial reporting included in item 9A contained an adverse opinion on the effectiveness of internal control as of December 31, 2004.

10

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ttom">$[ ] $74,449 $[ ]

Common shares outstanding at year end

35,649 35,648 35,666 35,702 35,178 [ ] 35,327 [ ]

Newtek Business Services, Inc. stockholders equity per share

$1.57 $1.52 $1.56 $1.66 $1.96 $[ ] $2.11 $[ ]

(1) Includes the pro forma effects of the BDC Election.

The Reincorporation Transaction

The Reincorporation Transaction, Merger Agreement and BDC Election were approved and recommended for stockholder approval at a meeting of the Board of Directors held on [ ], 2014. The terms and conditions of the Reincorporation Transaction are set forth in the Merger Agreement attached to this Proxy Statement, and the summary provided herein is qualified by reference to the full text of the Merger Agreement. Upon consummation of the Reincorporation Transaction, the Maryland Corporation will survive under the name Newtek Business Services Corp., and the New York Corporation will cease to exist. The Reincorporation Transaction will change the legal domicile of the New York Corporation, but will not result in a change in the principal offices, business, management, capitalization, assets or liabilities of the New York Corporation. By operation of law, the Maryland Corporation will succeed to all of the assets and assume all of the liabilities of the New York Corporation. The officers and directors of the New York Corporation will be the officers and directors of the Maryland Corporation. Subject to approval of the NASDAQ Stock Market, the shares of the Maryland Corporation will continue to trade on the NASDAQ Capital Market under the ticker symbol NEWT.

The Reincorporation Transaction will become effective upon the filing of the Articles of Merger with the Maryland State Department of Assessments and Taxation and the Certificate of Merger with the Secretary of State of New York, or a later date as specified by the Company. These filings are anticipated to be made immediately prior to the BDC Election, but not later than the one year anniversary of the date of this Special Meeting. Upon the effectiveness of the Reincorporation Transaction, each outstanding Share will be automatically converted into one fully paid and non-assessable share of the Maryland Corporation.

After the Reincorporation Transaction, the rights of stockholders and the Company s corporate affairs will be governed by the MGCL and by Newtek BDC s Articles of Amendment and Restatement (the Maryland

Table of Contents

Articles) and Bylaws (the Maryland Bylaws, and together with the Maryland Articles, the Maryland Charter Documents) instead of the NYBCL and Newtek s Restated Certificate Of Incorporation, as amended (the New York Certificate) and Bylaws (the New York Bylaws, and together with the New York Certificate, the New York Charter Documents). Material differences are discussed below under Comparison of Stockholders Rights under Maryland and New York Corporate Law and Charter Documents. A copy of the Maryland Articles is included as Appendix B to this Proxy Statement and copy of the Maryland Bylaws is included as Appendix C to this Proxy Statement. The New York Charter Documents are available for inspection by stockholders of the New York Corporation at the offices of the Company at 212 West 35th Street, 2nd Floor, New York, New York 10001.

Each stock certificate representing issued and outstanding Shares will continue to represent the same number of BDC Shares, and such certificates will be deemed for all corporate purposes to evidence ownership of shares of Maryland common stock. The New York Corporation does not have any shares of preferred stock issued and outstanding, therefore no shares of preferred stock of the Maryland Corporation will be issued at the effective time of the Reincorporation.

IT IS NOT NECESSARY TO SEND IN ANY OF YOUR STOCK CERTIFICATES REPRESENTING SHARES OF THE NEW YORK CORPORATION S COMMON STOCK, AS IT WILL NOT BE NECESSARY FOR STOCKHOLDERS TO EXCHANGE THEIR EXISTING COMMON STOCK CERTIFICATES FOR MARYLAND CORPORATION COMMON STOCK CERTIFICATES.

If, however, a stockholder wishes to acquire a certificate reciting the name Newtek Business Services Corp. and referring to Maryland as its state of incorporation, after the effective date of the Reincorporation Transaction, the stockholder may do so by surrendering his certificate to the transfer agent for the Maryland Corporation with a request for a replacement certificate accompanied by the appropriate fee. The transfer agent for the New York Corporation and the Maryland Corporation is:

American Stock Transfer and Trust Company, LLC

6201 15th Ave., Brooklyn, New York 11219

Federal Income Tax Consequences of the Reincorporation Transaction

The following is a summary of certain U.S. federal income tax consequences relating to the Reincorporation Transaction as of the date of this Proxy Statement. Except where noted, this summary deals only with a stockholder who holds common stock as a capital asset.

For purposes of this summary, a U.S. holder means a beneficial owner of common stock who is any of the following for U.S. federal income tax purposes: (1) a citizen or resident of the United States, (2) a corporation (or any other entity or arrangement treated as a corporation for U.S. federal income tax purposes) organized in or under the laws of the United States, any state thereof, or the District of Columbia, (3) an estate the income of which is subject to U.S. federal income taxation regardless of its source or (4) a trust if (a) its administration is subject to the primary supervision of a court within the United States and one or more U.S. persons have the authority to control all of its substantial decisions or (b) it has a valid election in effect under applicable U.S. Treasury regulations to be treated as a U.S. person.

If a partnership (or other entity classified as a partnership for U.S. federal income tax purposes) is the beneficial owner of common stock, the U.S. federal income tax treatment of a partner in the partnership will generally depend on the status of the partner and the activities of the partnership. Partnerships that hold common stock, and partners in such partnerships, should consult their own tax advisors regarding the U.S. federal income tax consequences of the Reincorporation.

This summary is based upon provisions of the Code, and regulations, rulings and judicial decisions as of the date of this Proxy Statement. Subsequent developments in U.S. federal income tax law, including changes in law

Table of Contents

or differing interpretations, perhaps with retroactive effect, could result in U.S. federal income tax considerations different from those summarized below. This summary does not represent a detailed description of the U.S. federal income tax consequences to a stockholder in light of his, her or its particular circumstances. In addition, it does not represent a description of the U.S. federal income tax consequences to a stockholder who is subject to special treatment under the U.S. federal income tax laws and does not address the tax considerations applicable to stockholders who may be subject to special tax rules, such as: financial institutions; insurance companies; real estate investment trusts; regulated investment companies; grantor trusts; tax-exempt organizations; dealers or traders in securities or currencies; stockholders who hold common stock as part of a position in a straddle or as part of a hedging, conversion or integrated transaction for U.S. federal income tax purposes or U.S. holders that have a functional currency other than the U.S. dollar; stockholders who actually or constructively own 10% or more of our Company s voting stock; or a non-U.S. holder who is a U.S. expatriate, controlled foreign corporation or passive foreign investment company. Moreover, this description does not address the U.S. federal estate and gift tax, alternative minimum tax or other tax consequences of the Reincorporation Transaction.

The Company expects that the Reincorporation Transaction pursuant to the Merger Agreement will be a tax-free reorganization under Section 368(a) of the Code. Accordingly, a U.S. holder of common stock (a Holder) will not recognize gain or loss in respect of the Holder s Common Stock as a result of the Reincorporation Transaction. The Holder s basis in a BDC Share will be the same as Holder s basis in the corresponding Share held immediately prior to the Reincorporation Transaction. The Holder s holding period in a BDC Share will include the period during which the Holder held the corresponding Share prior to the Reincorporation Transaction, provided the Holder held the corresponding Share as a capital asset at the time of the Reincorporation Transaction. In addition, neither the New York Corporation nor the Maryland Corporation will recognize gain or loss as a result of the Reincorporation Transaction, and the Maryland Corporation will generally succeed, without adjustment, to the tax attributes of the New York Corporation.

The New York Corporation has not requested a ruling from the IRS or an opinion of counsel with respect to the federal income tax consequences of the Reincorporation under the Code. This summary is not binding on the IRS and there can be no assurance that the IRS (or a court, in the event of an IRS challenge) will agree with the conclusions stated herein. A successful IRS challenge to the reorganization status of the Reincorporation would result in a stockholder recognizing gain or loss with respect to each Share exchanged in the Reincorporation Transaction equal to the difference between the stockholder s basis in such Shares and the fair market value, as of the time of the Reincorporation Transaction, of the BDC Shares received in exchange therefor. In such event, a stockholder s aggregate basis in the BDC Shares received in the exchange would equal their fair market value on such date, and the stockholder s holding period for such shares would not include the period during which the stockholder held Shares prior to the Reincorporation Transaction.

State, local, or foreign income tax consequences to stockholders may vary from the federal tax consequences described above. Stockholders should consult their own tax advisors as to the effect of the Reincorporation Transaction under applicable federal, state, local, or foreign income tax laws.

Exchange of Shares

Shares of common stock of the New York Corporation, par value $0.02 per share, will automatically be converted on a one-for-one basis into BDC Shares of the Maryland Corporation, par value $0.02 per share (the Maryland common stock), at the effective time of the Merger without any action required by the stockholders.

Equity Compensation Plans

Unvested awards under the Company s equity compensation plans will become fully vested in connection with the Reincorporation Transaction. All issued and outstanding option awards that are not exercised before the consummation of the Reincorporation Transaction will be deemed exercised in full by means of a cashless exercise in exchange for common stock of the Company prior to the BDC Election.

Table of Contents

The Company expects to implement a new equity compensation plan to permit the Company to issue new incentive awards after it has effectuated the Reincorporation Transaction and BDC Election. See Proposal IV for a detailed discussion of our proposed equity compensation plan.

Accounting Treatment

The Reincorporation Transaction will involve entities under common control and is expected to be accounted for similar to the pooling of interests method. The management of the New York Corporation will be the management of the Maryland Corporation after the Reincorporation Transaction. Because the Reincorporation Transaction will not be accounted for as a business combination no goodwill is expected to be recorded in connection therewith. The costs associated with raising capital will be accounted for as a reduction of additional paid-in capital, while any costs associated with the conversion to a BDC will be expensed as incurred.

Special Dividend

In connection with the Reincorporation Transaction, and specifically the elections to be regulated as a BDC and treated as a RIC for tax purposes, the Company will declare and pay a special dividend to its stockholders (the Special Dividend). To qualify as a RIC, we must, among other things, distribute by the end of the first taxable year that we elect to be treated as a RIC all of our accumulated earnings and profits from all taxable years that we were taxed as a C corporation. The Special Dividend is expected to allow us to satisfy this requirement. Although the Company cannot determine the amount of its accumulated C corporation earnings and profits until after the end of its 2014 taxable year, the aggregate amount of the Special Dividend will equal the amount of such accumulated C corporation earnings and profits as of such date. Following the Reincorporation Transaction, the Company expects to make distributions in an amount approximately equal to its pre-tax income. The portions of any such distributions that exceed the Company s current earnings will have the effect of reducing the amount of the Special Dividend. The timing of the payment of the Special Dividend will be determined at the discretion of the Board, but in all events, the Special Dividend will be paid no later than December 31, 2015, which is our first taxable year that we anticipate that we will qualify as RIC. At the discretion of the Board, the Special Dividend may be paid in more than one installment. In addition, at the discretion of the Board, the Special Dividend may be payable in Shares or cash at the election of shareholders subject to an aggregate minimum amount of cash payable in the distribution. If the total cash to be distributed to all shareholders electing to receive their distribution in cash would exceed the aggregate limit on cash to be distributed, each shareholder electing to receive their distribution in cash will receive a pro rata share of the cash to be distributed and will receive the remainder of their distribution in Shares. The aggregate cash to be distributed in such a distribution must be at least 20% of the aggregate distribution. For more information on the tax consequences of the Special Dividend, see Material U.S. Federal Income Tax Considerations of a BDC Taxation of the Special Dividend.

Regulatory Approvals

The Reincorporation will not occur until the Company has received all required consents of governmental authorities, including the filing and acceptance of Articles of Merger with the Maryland State Department of Assessments and Taxation, and the filing and acceptance of a Certificate of Merger with the Secretary of State of New York, and satisfied applicable requirements of the NASDAQ Capital Market.

Securities Act Consequences

Pursuant to Rule 145(a)(2) under the Securities Act, a merger which has the sole purpose of changing an issuer s domicile within the United States does not involve a sale of securities for the purposes of the Securities Act.

Accordingly, separate Securities Act registration of the BDC Shares will not be required.

Description and Comparison of Capital Stock and Voting Rights

The New York Corporation s authorized capital stock consists of 54,000,000 Shares of common stock, $0.02 par value per Share, and 1,000,000 shares of preferred stock, $0.02 par value per share. On the Record

10

Table of Contents

Date, there were [35,380,888] Shares of the New York Corporation outstanding and entitled to vote, constituting the only class of stock outstanding and entitled to vote at the meeting. Each Share entitles the holder thereof to one vote. On the Record Date, there were no shares of preferred stock issued and outstanding.

The Maryland Articles provide that the authorized capital stock of the Maryland Corporation consists of 200,000,000 BDC Shares, par value of $0.02 per BDC Share, any portion of which may reclassified by the Maryland Corporation s Board of Directors into preferred stock.

The Merger Agreement provides that each outstanding Share of the New York Corporation s common stock will be exchanged for one BDC Share. Accordingly, the interests of the stockholders relative to one another will not be affected by the Merger.

Abandonment of the Reincorporation Transaction

The Board of Directors will have the right to abandon the Merger Agreement and thus the Reincorporation Transaction and take no further action towards reincorporating the Company in Maryland at any time before the effective date, even after stockholder approval, if for any reason the Board of Directors determines that it is not advisable to proceed with the Reincorporation Transaction. Such a determination may be made for reasons such as, but not limited to, a change in the Company s strategical direction or altered conditions in the overall business environment. We will only complete the Reincorporation Transaction in the event that we expect to make the BDC election promptly thereafter.

Comparison of Stockholder Rights Under Maryland and New York Corporate Law and Charter Documents

Subject to stockholder approval prior to the effective time of the Reincorporation Transaction as set forth in the Merger Agreement (the Effective Time), the New York Corporation will change its jurisdiction of incorporation from New York to Maryland and will thereafter be governed by the MGCL and by the Maryland Charter Documents. Upon the filing with and acceptance by the Maryland State Department of Assessments and Taxation of the Articles of Merger in Maryland and the filing with and acceptance by the Secretary of State of New York of the Certificate of Merger in New York, the New York Corporation will be merged with and into the Maryland Corporation, and the outstanding Shares of the New York Corporation will be deemed for all purposes to evidence ownership of, and to represent, BDC Shares of the Maryland Corporation.

At the Effective Time, the Maryland Charter Documents will effectively replace the New York Charter Documents. Certain actions not permitted or contemplated under the NYBCL are allowed and/or provided for under the MGCL, as indicated below. All changes to the Maryland Charter Documents reflecting such discrepancies were made as a result of differing state law. All other changes were made to better align the Company s governing documents with those of other BDCs organized in Maryland. In addition, at the Effective Time, holders of common stock of the New York Corporation will become holders of common stock of the Maryland Corporation, which will result in their rights as stockholders being governed by the laws of the State of Maryland, including the MGCL.

It is not practical to describe all of the differences between the Maryland Charter Documents and the New York Charter Documents or all of the differences between the laws of the states of Maryland and New York. The following is a summary of the significant rights of the stockholders under New York and Maryland law and under the New York and Maryland Charter Documents. This summary is qualified in its entirety by reference to the full text of such documents and laws, and stockholders should refer to the New York Charter Documents and the Maryland Charter Documents and the relevant provisions of Maryland law and New York law directly for a more thorough comparison.

Amendment of Certificate of Incorporation

Under the NYBCL, except for certain ministerial changes to the certificate of incorporation that may be implemented by a corporation s board of directors without stockholder action, and except to the extent that a

11

certificate of incorporation requires the vote of a higher proportion of votes than is required under the NYBCL, a certificate of incorporation may be amended only if authorized by the board of directors and by the vote of the holders of a majority of the shares of stock entitled to vote on such amendment. The NYBCL requires that if a particular class or series of stock is adversely affected by certain types of amendments, then such class or series also must authorize, by voting separately as a class or series, such amendment in order for it to become effective. The NYBCL allows a corporation to require a higher proportion of votes in order to authorize amendments to a certificate of incorporation, if so provided in the certificate.

Under the MGCL, a Maryland corporation generally cannot amend its charter unless the action is advised by its board of directors and approved by the affirmative vote of stockholders entitled to cast at least two-thirds of the votes entitled to be cast on the matter, unless a lesser percentage (but not less than a majority of all of the votes entitled to be cast on the matter) is specified in the corporation s charter. The Maryland Articles provide that most amendments to our charter require approval by a majority of all of the votes entitled to be cast on the matter.

A Maryland corporation may also provide in its charter that the board of directors, with the approval of a majority of the entire board, and without action by the stockholders, may approve amendments to the charter to increase or decrease the aggregate number of shares of stock that the corporation is authorized to issue or reclassify the number of shares of stock of any class or series that the corporation is authorized to issue. As stated above, the Maryland Articles provide the board of directors with such power, while the New York Certificate does not.

Amendment of Bylaws

Under the NYBCL, a corporation s bylaws may be amended by the vote of the holders of a majority of the votes cast with respect to such amendment (rather than a majority of the shares outstanding) or, if permitted under the corporation s certificate of incorporation or a bylaw adopted by the stockholders, by the board of directors. The New York Certificate provides that the stockholders or the board of directors may amend the New York Bylaws. The New York Bylaws provide that they may be amended at any annual or special meeting of the stockholders by a majority of the total votes of the stockholders or when stockholders are required to vote by class by a majority of the appropriate class, present in person or represented by proxy and entitled to vote on such action.

Under the MGCL, the power to adopt, alter, and repeal the bylaws of a corporation is vested in the stockholders except to the extent that the charter or bylaws vest it in the board of directors. A provision conferring upon the directors, rather than the stockholders, the power to adopt, amend or repeal the bylaws may be included in the charter or bylaws of a corporation. The Maryland Articles and Bylaws provide that the board of directors has the exclusive power, at any time, to adopt, alter or repeal any provision of the bylaws or make new bylaws.

Who May Call Special Meetings of Stockholders

Under the NYBCL, the board of directors or anyone authorized in the certificate of incorporation or bylaws may call a special meeting of stockholders. Currently, the New York Bylaws provide that special meetings of stockholders may be called at any time by the Board of Directors, the Chairman of the Board of Directors or the President.

Under the MGCL, the board of directors, the president or any other person authorized in the corporation s charter or bylaws may call a special meeting of stockholders. Unlike the DGCL, the MGCL specifically empowers stockholders to call a special meeting. The secretary of a Maryland corporation is required to call a special meeting of stockholders upon the written request of holders of at least 25% of the voting stock of the corporation. Such percentage may be adjusted in the bylaws or charter of a corporation, but may not exceed a majority of the voting stock of the corporation. The MGCL also permits a Maryland corporation that has a class of equity securities registered under the

Exchange Act and has at least three independent directors (such as the Maryland corporation), by action of its board of directors and without stockholder approval, and notwithstanding any contrary provision of the charter or bylaws, to elect to increase the percentage to a majority by resolution of the board of directors.

The Maryland Bylaws provide that special meetings of stockholders may be called by either the Chairman of the Board, the chief executive officer, the president or the board of directors. In addition, a special meeting of

Table of Contents

stockholders must be called by the secretary of the corporation at the request in writing of stockholders entitled to cast not less than a majority of all the votes entitled to be cast on a matter that may be property considered at a meeting of stockholders at such meeting.

Action by Written Consent of Stockholders In Lieu of a Stockholder Meeting

Under the NYBCL, a consent to any action may be taken without a meeting upon the written consent of the holders of all of the outstanding shares entitled to vote on such matter. Additionally, the certificate of incorporation of a corporation may permit actions taken upon the written consent of the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote were present and voted. Prompt notice must then be given to the stockholders that have not consented in writing.

The New York Certificate does not permit stockholder action by a written consent of less than all of the outstanding shares entitled to vote. The New York Bylaws permit stockholder action in lieu of a meeting only by unanimous written consent of those stockholders who would have been entitled to vote on a given action at a meeting.

Under the MGCL, a written consent of the holders of all outstanding shares entitled to vote on a matter may consent to any action in lieu of a stockholders meeting. Additionally, holders of any class of stock, other than common stock entitled to vote generally in the election of directors, may (unless the charter provides otherwise and provided that the corporation gives notice of such action to each holder of the class of stock within 10 days after the effective time of such action) consent to any action or take action by delivering a written consent of the stockholders entitled to cast not less than the minimum number of votes that would have been necessary to authorize or take the action at a stockholder meeting. If authorized by the charter of the corporation, the holders of common stock entitled to vote generally in the election of directors may consent to any action by delivering a written consent of the stockholders entitled to cast not less than the minimum number of votes that would have been necessary to authorize or take the action at a stockholder meeting, provided that the corporation gives notice of such action to each holder of the class of stock within 10 days after the effective time of such action.

The Maryland Charter Documents do not permit actions by the written consent of stockholders in lieu of a stockholder meeting.

Notice of Stockholder Business and Nominations

Under the NYCBL and MGCL, a corporation s charter or bylaws may require that a stockholder proposing a nominee for director, or any other matter that would be considered at a meeting of the stockholders, give advance notice to the corporation before a date or within a period of time specified in the charter or bylaws. If the advance notice requirement is not met, the proposal is not a proper subject of stockholder action at the meeting.

The New York Charter Documents do not include any provisions addressing stockholder nominations for directors or any other matter to be considered at a meeting of stockholders. Generally, the Maryland Bylaws allow stockholders to nominate directors and propose other business to be brought before the annual meeting of stockholders if timely written notice is given to the Secretary of the Company and such business is a proper subject for stockholder action. For notice to be timely under the Maryland Bylaws, written notice generally must be delivered to the secretary at the principal executive office of the Maryland Corporation not earlier than the 150^{th} day nor later than 5:00 p.m., Eastern Time, on the 120^{th} day prior to the first anniversary of the date of the proxy statement for the preceding year s annual meeting.

Right of Stockholders to Inspect Stockholder List

Under the NYBCL, a stockholder of record may inspect the list of record stockholders upon giving written demand to do so. The MGCL does not include stockholder lists among the types of corporate records generally available to stockholders. Generally, a statement of all stock and securities issued by a corporation during a specified period of not more than 12 months before the date of a request may also be inspected upon 20 days

Table of Contents

prior notice by any stockholder. Additionally, any stockholder of record for at least six months owning at least 5% of the corporation s outstanding shares may request a statement of the corporation s current assets and liabilities and may inspect and copy the corporation s stock ledger and accounting records.

Vote Required For Certain Transactions

Under the NYBCL, a New York corporation may provide in its certificate of incorporation that the holders of a majority, rather than two-thirds, of the outstanding stock entitled to vote may approve a merger, consolidation or sale or exchange of all or substantially all of its assets. The New York Corporation has not, however, adopted such a provision in the New York Certificate, so that the holders of at least two-thirds of the New York Corporation s outstanding stock entitled to vote must approve such transactions.

Under the MGCL, a Maryland corporation generally cannot merge or consolidate with another entity, sell all or substantially all of its assets or engage in a share exchange unless the action is advised by the board of directors and approved by the affirmative vote of stockholders entitled to cast at least two-thirds of the votes entitled to be cast on the matter, unless a lesser percentage (but not less than a majority of all of the votes entitled to be cast on the matter) is specified in the corporation s charter. The Maryland Articles provide that any merger, consolidation, share exchange or sale or exchange of all or substantially all of the assets of the Maryland Corporation that the MGCL requires to be approved by stockholders must be approved by the affirmative vote of the holders of shares entitled to cast at least a majority of the votes entitled to be cast on such matter.

Proxies

Unless the proxy provides for a longer period, a proxy under both the NYBCL and the MGCL can be voted or acted upon for eleven months after its date.

Number of Directors

Under both the NYBCL and the MGCL, corporations must have at least one director. Under the NYBCL, the exact number of directors is fixed either in the bylaws, by the stockholders, or, if authorized in a stockholder-adopted bylaw, by the board of directors. Under the MGCL, the exact number of directors is fixed in the charter and, subject to provisions governing the minimum number of directors, may be altered by the bylaws to a number of greater or lesser than that set in the charter unless the corporation has elected in its charter or bylaws or by resolution of its board of directors to be subject to Section 3-804(b) of the MGCL, in which case the number of directors will be fixed only by the vote of the board of directors regardless of any provisions to the contrary in the charter or the bylaws. Pursuant to the MGCL, a corporation s bylaws may also authorize a majority of the entire board of directors to alter the number of directors set by the charter or the bylaws within specified limits, but such action may not affect the tenure of the office of any director.

The New York Bylaws provide that the number of directors may be fixed from time to time by the vote of a majority of the entire board of directors and shall not be less than 3 or more than 11. The Maryland Bylaws provide that the number of directors may be fixed from time to time by the vote of a majority of the entire board of directors and shall not be less than 1 or more than 12.

Classified Board of Directors

Both the NYBCL and the MGCL permit classified boards of directors, which means the directors may have staggered terms that do not all expire at once. The NYBCL requires that classified boards of directors be authorized in the corporation s certificate of incorporation or in a stockholder-adopted bylaw. The NYBCL allows for as many as four different classes of directors, all as nearly equal in number as possible. The New York Charter Documents do not provide for a classified board.

The MGCL permits the board of directors to be classified. If the directors are divided into classes, the term of office may be provided in the bylaws or in the charter, except that the term of office of a director may not be longer

Table of Contents

than five years or, except in the case of an initial or substitute director, shorter than the period between annual meetings. The term of office of at least one class must expire each year. The MGCL also permits a Maryland corporation that has a class of equity securities registered under the Exchange Act and has at least three independent directors (such as the Maryland corporation), either in its charter or by action of its board of directors and without stockholder approval, and notwithstanding any contrary provision of the charter or bylaws, to elect to be subject to certain provisions of the MGCL, including a provision that requires that the board of directors be divided into classes.

The Maryland Articles provide for a classified board of directors consisting of three classes of directors. Messrs. Barry Sloane and Peter Downs will serve in class I, with terms expiring at the [ ] annual meeting of stockholders; Mr. Sam Kirschner will serve in class II, with a term expiring at the [ ] annual meeting of stockholders; and Messrs. David C. Beck and Salvatore F. Mulia will serve in class III, with terms expiring at the [ ] annual meeting of stockholders.

Removal of Directors by Stockholders

Under the NYBCL, directors may be removed for cause by stockholders owning a majority of the shares entitled to vote. In addition, if provided for in the certificate of incorporation, directors can be removed by the stockholders of a New York corporation without cause or by the board of directors for cause. The New York Charter does not provide for the removal of directors by the stockholders or by the board of directors.

The MGCL provides that the stockholders of a corporation may remove any director, with or without cause, by the affirmative vote of a majority of all votes entitled to be cast generally for the election of directors, unless the charter provides otherwise or the corporation elects to be subject to certain provisions of the MGCL. Additionally, unless the charter of a corporation provides otherwise, if directors have been divided into classes, directors cannot be removed without cause.

The Maryland Articles allow for the removal of any director, subject to the rights of the holders of preferred stock, at any time only for cause by the affirmative vote of at least two-thirds of votes entitled to vote for the election of directors. This provision, when coupled with the exclusive power of the board of directors to fill vacancies on the board of directors discussed below, precludes stockholders from (i) removing incumbent directors except upon the affirmative vote of at least two-thirds of votes entitled to vote for the election of directors and (ii) filling the vacancies created by such removal with their own nominees.

Board Vacancies

Under New York law, unless the certificate of incorporation or bylaws provide otherwise, any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors. However, (i) unless the certificate of incorporation or a provision of the bylaws adopted by the stockholders provides otherwise, a vacancy occurring by removal of a director for cause may be filled only by vote of the stockholders and (ii) unless the certificate of incorporation or bylaws provide otherwise, whenever a certain class of stockholders is allowed to elect one or more directors, any vacancy shall be filled by a majority of the directors elected by such class, or, if no such director is in office, then according to the same rules described above. A director elected to fill a vacancy, unless elected by the stockholders, shall hold office until the next meeting of stockholders at which the election of directors is in the regular order of business, and until his successor has been elected and qualified. The New York Bylaws provide that any vacancy occurring in the board of directors may be filled by a majority of directors remaining in office.

The MGCL allows a corporation to elect to be subject to a provision that states that, subject to the terms of any class or series of preferred stock, vacancies on a board of directors may be filled only by a majority of the remaining directors, even if the remaining directors do not constitute a quorum, and any director elected to fill a vacancy will hold office for the remainder of the full term of the directorship in which the vacancy occurred and until his or her successor is duly elected and qualifies. The Maryland Articles provide that, at such time as we are eligible to make such election (which we expect will be upon the closing of the Reincorporation Transaction), we elect to be subject to such MGCL provision.

Table of Contents

Limitation of Directors Liability

Under the NYBCL, the certificate of incorporation may contain a provision eliminating or limiting the personal liability of directors to the corporation or its stockholders for any breach of duty. However, no provision can eliminate or limit:

- the liability of any director if a judgment or other final adjudication adverse to the director establishes that the director acted in bad faith or engaged in intentional misconduct or a knowing violation of law, personally gained a financial profit to which the director was not legally entitled, or violated certain provisions of the NYBCL; or
- the liability of any director for any act or omission prior to the adoption of such provision in the certificate of incorporation or bylaws.

The New York Certificate contains a provision limiting the personal liability of directors.

The MGCL permits a Maryland corporation to include in its charter a provision limiting the liability of its directors and officers to the corporation and its stockholders for money damages except for liability resulting from actual receipt of an improper benefit or profit in money, property or services or active and deliberate dishonesty that is established by a final judgment and is material to the cause of action. The Maryland Articles contain a provision that eliminates the liability of our directors and officers to the maximum extent permitted by Maryland law.

The MGCL requires corporations (unless the Maryland Articles provide otherwise, which the Maryland Articles do not) to indemnify a director or officer who has been successful, on the merits or otherwise, in the defense of any proceeding to which he or she is made a party by reason of his or her service in that capacity. The MGCL permits a corporation to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made or threatened to be made a party by reason of their service in those or other capacities unless it is established that:

- the act or omission of the director or officer was material to the matter giving rise to the proceeding and (i) was committed in bad faith or (ii) was the result of active and deliberate dishonesty;
- the director or officer actually received an improper personal benefit in money, property or services; or
- in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful.

Under the MGCL, the Maryland Corporation may not indemnify a director or officer in a suit by or on behalf of the Maryland Corporation in which the director or officer was adjudged liable to the Maryland Corporation or in a suit in which the director or officer was adjudged liable on the basis that personal benefit was improperly received. A court may order indemnification if it determines that the director or officer is fairly and reasonably entitled to indemnification, even though the director or officer did not meet the prescribed standard of conduct or was adjudged liable on the basis that personal benefit was improperly received. However, indemnification for an adverse judgment in a suit by or on behalf of the Maryland Corporation, or for a judgment of liability on the basis that personal benefit was improperly received, is limited to expenses.

In addition, the MGCL permits the Maryland Corporation to advance reasonable expenses to a director or officer upon receipt of:

- a written affirmation by the director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification by the Maryland Corporation; and

- a written undertaking by the director or officer or on the director s or officer s behalf to repay the amount paid or reimbursed by the corporation if it is ultimately determined that the director or officer did not meet the standard of conduct.

Table of Contents

The Maryland Articles provide that the Maryland Corporation shall, to the maximum extent permitted by Maryland law in effect from time to time, indemnify and, to pay or reimburse reasonable expenses in advance of final disposition of a proceeding to:

- any present or former director or officer of the Maryland Corporation; or
- any individual who, while a director or officer of the Maryland Corporation and at the request of the Maryland Corporation, serves or has served as a director, officer, partner, or trustee of another corporation, real estate investment trust, partnership, joint venture, trust, employee benefit plan or any other enterprise.

The Maryland Articles also permit the Maryland Corporation to indemnify and advance expenses to any person who served a predecessor of the Maryland Corporation in any of the capacities described above and any employee or agent of the company or a predecessor of the Maryland Corporation.

Loans To, And Guarantees of Obligations Of, Directors

Under the NYBCL, a corporation may not lend money to, or guarantee the obligation of, a director unless the disinterested stockholders of such corporation approve the transaction. For purposes of the stockholder approval, the holders of a majority of the votes of the shares entitled to vote constitute a quorum, but shares held by directors who are benefited by the loan or guarantee are not included in the quorum.

Under the MGCL, a board of directors may authorize loans by the corporation to, and guarantees by the corporation of any obligations of, any director, officer or other employee of the corporation whenever, in the judgment of the board of directors, such loan or guarantee may reasonably be expected to benefit the corporation.

Notwithstanding the MGCL, the Company has not made and does not intend to make any personal loans to, or guarantees for the benefit of, any of its directors or officers in violation of Section 13(k) of the Exchange Act.

Transactions with Interested Directors

Under the NYBCL, a corporation may establish the validity of transactions between it and its interested directors through one of several methods, including the approval of a majority of the disinterested directors who are not involved in the transaction.

Under the MGCL, with respect to actions by directors of registered investment companies, Maryland adopts the definition of interested person that provides that a person is not interested solely because such person is a director, owner of securities or a family member of an owner of securities or a director. The MGCL provides that no transaction or contract will be void or voidable solely because of common directorship or interest, or because a director with a financial interest in a matter is present at a meeting during which the matter is ratified or votes for such matter at the meeting, if: (i) the material facts are known to stockholders and such matter is approved by a majority of votes of disinterested stockholders, (ii) the material facts are known to the other directors and such matter is approved by a majority of disinterested directors although less than a quorum, or (iii) such matter is fair and reasonable under Maryland law to the corporation.

Dividends; Redemption of Stock

Subject to its certificate of incorporation, under both the NYBCL and the MGCL a corporation may generally pay dividends, redeem shares of its stock or make other distributions to stockholders if the corporation is solvent and would not become insolvent because of the dividend, redemption or distribution.

Under the NYBCL, dividends may be paid or distributions made out of surplus, so that the net assets of the corporation remaining after such payment or distribution shall be at least equal to the amount of its stated capital. If there is no surplus, dividends may be declared and paid out of the corporation s net profits for the year in which the dividend is declared and/or the preceding fiscal year. The NYBCL defines surplus as the excess of net assets over stated capital and permits the board of directors to adjust stated capital.

Table of Contents

In general, with certain restrictions, the NYBCL permits a corporation to provide in its certificate of incorporation for redemption (at the option of the corporation or the stockholder or in certain other circumstances) of one or more classes or series of its shares. One such restriction provides that common stock may be issued or redeemed, with certain exceptions, only when the corporation has an outstanding class of common shares that is not subject to redemption.

The MGCL provides that dividends and other distributions may be declared and paid on the corporation s capital stock as authorized by the board and subject to any restrictions contained in the corporation s charter, provided that no dividends may be paid if, after giving effect to the dividend or other distribution: (i) the corporation would not be able to pay its debts as they become due in the usual course of business; or (ii) the corporation s total assets would be less than the sum of its total liabilities plus, unless the charter permits otherwise, any amount required to be paid to holders of preferred stock in the event of a liquidation of the corporation. Notwithstanding clause (ii) in the immediately preceding sentence, a corporation may make a dividend or other distribution from: (a) the net earnings of the corporation for the fiscal year in which the dividend or other distribution is made; (b) the net earnings of the corporation for the preceding fiscal year; or (c) the sum of the net earnings of the corporation for the preceding eight fiscal quarters.

In general, the MGCL permits a corporation to provide in its charter for redemption (at the option of the corporation or the stockholder or in certain other circumstances) of any specified class of its stock, including common stock.

Neither the New York Charter Documents nor the Maryland Charter Documents modify the respective provisions of the NYBCL or the MGCL concerning the payment of dividends. The New York Charter Documents grant the board of directors the ability to determine redemption rights with respect to preferred stock issued by the New York Corporation, while the Maryland Charter Documents grant the board of directors the ability to determine redemption rights with respect to any stock issued by the Maryland Corporation.

Appraisal Rights

The NYBCL generally provides that a dissenting stockholder has the right to receive the fair value of his shares if he complies with certain procedures and objects to (i) certain mergers and consolidations, (ii) certain dispositions of assets requiring stockholder approval, (iii) certain share exchanges, or (iv) certain amendments to the certificate of incorporation which adversely affect the rights of such stockholder. The MGCL generally provides that a stockholder has appraisal rights in the event of (i) a merger or consolidation, (ii) a share exchange, (iii) certain dispositions of assets requiring stockholder approval, (iv) a charter amendment altering contract rights of outstanding stock (unless the right to do so is reserved in the charter) or (v) certain business combinations.

The NYBCL provides that dissenting stockholders have no appraisal rights if their shares are listed on a national securities exchange or designated as a market system security on an interdealer quotation system by the Financial Industry Regulatory Authority, Inc. Appraisal rights may also be unavailable under the NYBCL in a merger between a parent corporation and its subsidiary where only one of them is a New York corporation, or in a merger between a parent and subsidiary where both are New York corporations, and the parent owns at least 90% of the subsidiary. Also, appraisal rights are available to stockholders who are not allowed to vote on a merger or consolidation and whose shares will be canceled or exchanged for cash or something else of value other than shares of the surviving corporation or another corporation. When appraisal rights are available, the stockholder may have to request the appraisal and follow certain required procedures as set forth in the NYBCL.

Similar to the NYBCL, the MGCL provides that stockholders have no appraisal rights if (i) the stock is listed on a national securities exchange (unless the transactions falls under certain conditions), (ii) the stock received is that of the successor in the merger, unless the merger alters the contract rights of the stock as expressly set forth in the charter and the charter does not reserve the right to do so, or the stock is to be changed or converted in whole or in part in the merger into something other than either stock in the successor, cash, scrip

Table of Contents

or other rights or interests out of provisions for the treatment of fractional shares of stock in the successor, (iii) the stock is not entitled to be voted on the transaction or the stockholder did not own the shares of stock on the record date for determining stockholders entitled to vote on the transaction or (iv) the charter provides that the holders of the stock are not entitled to exercise the rights of an objecting stockholder.

The Maryland Articles provide that stockholders will not be entitled to exercise appraisal rights unless a majority of the board of directors shall determine such rights apply.

Business Combinations with Interested Stockholders

Provisions in both the NYBCL and the MGCL may help to prevent or delay changes of corporate control. In particular, both the NYBCL and the MGCL restrict or prohibit an interested stockholder from entering into certain types of business combinations unless the board of directors approves the transaction in advance. The two laws define these two terms differently.

Under the NYBCL, an interested stockholder is generally prohibited from entering into certain types of business combinations with a New York corporation for a period of five years after becoming an interested stockholder, unless before such date the board of directors approves either the business combination or the acquisition of stock by the interested stockholder before the interested stockholder acquires his or her shares. An interested stockholder under the NYBCL is generally a beneficial owner of at least 20% of the corporation s outstanding voting stock. Business combinations under the NYBCL include mergers and consolidations between corporations or with an interested stockholder or its affiliate or associate; sales, leases, mortgages, pledges, transfers or other dispositions to or with an interested stockholder of assets with an aggregate market value which either equals 10% or more of the corporation s consolidated assets or outstanding stock, or represents 10% or more of the consolidated earning power or net income of the corporation; issues and transfers to an interested stockholder of stock from the corporation or any of its subsidiaries with an aggregate market value of at least 5% of the aggregate market value of the outstanding stock of the corporation; liquidation or dissolution of the corporation proposed by or in connection with an interested stockholder; reclassification or recapitalization of stock that would increase the proportionate stock ownership of an interested stockholder; and the receipt by an interested stockholder or any affiliate or associate of any benefit from loans, guarantees, advances, pledges or other financial assistance or tax benefits provided by the corporation.

After a five-year period, the NYBCL allows such business combination if it is approved by a majority of the voting stock not owned by the interested stockholder or by an affiliate or associate of the interested stockholder. Business combinations are also permitted when certain statutory fair price requirements are met and in certain other circumstances.

Under the MGCL, business combinations between a Maryland corporation and an interested stockholder or an affiliate of an interested stockholder are prohibited for five years after the most recent date on which the interested stockholder becomes an interested stockholder. Business combinations are defined as a merger, consolidation, share exchange or, in circumstances specified in the statute, an asset transfer or issuance or reclassification of equity securities. An interested stockholder is defined as:

- any person who beneficially owns 10% or more of the voting power of the corporation s outstanding voting stock; or an affiliate or associate of the corporation who, at any time within the two-year period prior to the date in question, was the beneficial owner of 10% or more of the voting power of the then outstanding voting stock of the corporation.

A person is not an interested stockholder under this statute if the board of directors approved in advance the transaction by which the stockholder otherwise would have become an interested stockholder. However, in approving a transaction, the board of directors may provide that its approval is subject to compliance, at or after the time of approval, with any terms and conditions determined by the board.

Table of Contents

After the five-year prohibition, any business combination between the Maryland corporation and an interested stockholder generally must be recommended by the board of directors of the corporation and approved by the affirmative vote of at least:

- 80% of the votes entitled to be cast by holders of outstanding shares of voting stock of the corporation; and
- two-thirds of the votes entitled to be cast by holders of voting stock of the corporation other than shares held by the interested stockholder with whom or with whose affiliate the business combination is to be effected or held by an affiliate or associate of the interested stockholder.

These super-majority vote requirements do not apply if the corporation s common stockholders receive a minimum price, as defined under the MGCL, for their shares in the form of cash or other consideration in the same form as previously paid by the interested stockholder for its shares.

The statute permits various exemptions from its provisions, including business combinations that are exempted by the board of directors before the time that the interested stockholder becomes an interested stockholder.

The Maryland Corporation will adopt a resolution that any business combination between it and any other person is exempted from the provisions of the MGCL, provided that the business combination is first approved by its board of directors, including a majority of the directors who are not interested persons as defined in the 1940 Act. This resolution may be altered or repealed in whole or in part at any time; however, the board of directors will adopt resolutions so as to make the Maryland Corporation subject to such provisions of the MGCL only if the board of directors determines that it would be in the Maryland Corporation s best interests and if the SEC staff does not object to the Maryland Corporation s determination that it being subject to such provisions of the MGCL does not conflict with the 1940 Act. If this resolution is repealed, or the board of directors does not otherwise approve a business combination, the statute may discourage others from trying to acquire control of the Maryland Corporation and increase the difficulty of consummating any offer.

Regulation as a Business Development Company

A BDC is a unique kind of investment company that primarily focuses on investing in or lending to private companies and making managerial assistance available to them. A BDC provides stockholders with the ability to retain the liquidity of a publicly-traded stock, while sharing in the possible benefits of investing in emerging-growth or expansion-stage privately-owned companies. The 1940 Act contains prohibitions and restrictions relating to transactions between BDCs and their directors and officers and principal underwriters and certain other related persons and requires that a majority of the directors be persons other than interested persons, as that term is defined in the 1940 Act. In addition, the 1940 Act provides that we may not change the nature of our business so as to cease to be, or to withdraw our election as, a BDC unless approved by a majority of our outstanding voting securities. A majority of the outstanding voting securities of a company is defined under the 1940 Act as the lesser of: (i) 67% or more of such company s shares present at a meeting if more than 50% of the outstanding shares of such company are present or represented by proxy, or (ii) more than 50% of the outstanding shares of such company. See Operating as a BDC.

Qualifying Assets

Under the 1940 Act, a BDC may not acquire any asset other than assets of the type listed in Section 55(a) of the 1940 Act, which are referred to as qualifying assets, unless, at the time the acquisition is made, qualifying assets represent at least 70% of the company s total assets. The principal categories of qualifying assets relevant to our proposed business are the following:

(1) Securities purchased in transactions not involving any public offering from the issuer of such securities, which issuer (subject to certain limited exceptions) is an eligible portfolio company, or from

20

any person who is, or has been during the preceding 13 months, an affiliated person of an eligible portfolio company, or from any other person, subject to such rules as may be prescribed by the SEC. An eligible portfolio company is defined in the 1940 Act as any issuer which:

(a) is organized under the laws of, and has its principal place of business in, the United States;

(b) is not an investment company (other than a small business investment company wholly owned by the business development company) or a company that would be an investment company but for certain exclusions under the 1940 Act; and

(c) does not have any class of securities listed on a national securities exchange; or if it has securities listed on a national securities exchange such company has a market capitalization of less than $250 million; is controlled by the business development company and has an affiliate of a business development company on its board of directors; or meets such other criteria as may be established by the SEC.

(2) Securities purchased in a private transaction from a U.S. issuer that is not an investment company or from an affiliated person of the issuer, or in transactions incident thereto, if the issuer is in bankruptcy and subject to reorganization or if the issuer, immediately prior to the purchase of its securities was unable to meet its obligations as they came due without material assistance other than conventional lending or financing arrangements.

(3) Securities of an eligible portfolio company purchased from any person in a private transaction if there is no ready market for such securities and we already own 60% of the outstanding equity of the eligible portfolio company.

(4) Securities received in exchange for or distributed on or with respect to securities described in (1) through (3) above, or pursuant to the exercise of warrants or rights relating to such securities.

(5) Cash, cash equivalents, U.S. Government securities or high-quality debt securities maturing in one year or less from the time of investment.

Control, as defined by the 1940 Act, is presumed to exist where a BDC beneficially owns more than 25% of the outstanding voting securities of the portfolio company.

We do not intend to acquire securities issued by any investment company that exceed the limits imposed by the 1940 Act. Under these limits, we generally cannot acquire more than 3% of the voting stock of any investment company (as defined in the 1940 Act), invest more than 5% of the value of our total assets in the securities of one such investment company or invest more than 10% of the value of our total assets in the securities of such investment companies in the aggregate. With regard to that portion of our portfolio invested in securities issued by investment companies, it should be noted that such investments might subject our stockholders to additional expenses.

As a BDC, we may make investments that are not considered qualifying assets under section 55(a) of the 1940 Act in an amount up to 30% of our total assets, but do not expect such investments will comprise a material portion of our portfolio. Such investments may include, but are not limited to, investments in the debt or equity of securitization vehicles, in each case that have more attractive risk-adjusted returns than qualifying assets at that time. We intend to invest primarily in qualifying assets once we elect to become a BDC, although we may invest from time to time in non-qualifying assets on an opportunistic basis to the extent we believe doing so would be accretive to our shareholders.

Significant Managerial Assistance

A BDC must have been organized and have its principal place of business in the United States and must be operated for the purpose of making investments in the types of securities described above. However, in order to count portfolio securities as qualifying assets for the purpose of the 70% test, the BDC must either control the issuer of the securities or must offer to make available to the issuer of the securities (other than small and solvent companies described above) significant managerial assistance; except that, where the BDC purchases such securities in conjunction with one or more other persons acting together, one of the other persons in the group

may make available such managerial assistance. Making available significant managerial assistance means,

Table of Contents

among other things, any arrangement whereby the BDC, through its directors, officers or employees, offers to provide, and, if accepted, does so provide, significant guidance and counsel concerning the management, operations or business objectives and policies of a portfolio company through monitoring of portfolio company operations, selective participation in board and management meetings, consulting with and advising a portfolio company s officers or other organizational or financial guidance.

We have historically provided significant operating and managerial assistance to our controlled portfolio companies. This assistance typically involves, among other things, monitoring the operations and financial performance of such companies, participating in board and management meetings, consulting with and advising officers of portfolio companies and providing other organizational and financial assistance. For some portfolio companies we may participate as officers of those companies, assist with legal, financial, risk management, information technology and accounting matters, assist with marketing and advertising programs and coordinate benefit and personnel matters. The extent of our assistance varies depending on the needs of the portfolio company. Most of our portfolio investments are loans made through our small business finance platform. Each investment is assigned a staff member who monitors the performance of the company and the credit relationship. If the need arises, we may provide counseling on such matters as debt restructure or refinance, internal cost control and reduction and other aspects of business operations. All of this is provided by our senior management staff or others within our company or NSBF.

Temporary Investments

Pending investment in other types of qualifying assets, as described above, our investments as a BDC may consist of cash, cash equivalents, U.S. government securities or high quality debt securities maturing in one year or less from the time of investment, which we refer to, collectively, as temporary investments, so that 70% of our assets are qualifying assets. Typically, we will invest in U.S. treasury bills or in repurchase agreements, provided that such agreements are fully collateralized by cash or securities issued by the U.S. government or its agencies. A repurchase agreement involves the purchase by an investor, such as us, of a specified security and the simultaneous agreement by the seller to repurchase it at an agreed upon future date and at a price which is greater than the purchase price by an amount that reflects an agreed-upon interest rate. There is no percentage restriction on the proportion of our assets that may be invested in such repurchase agreements. However, if more than 25% of our total assets constitute repurchase agreements from a single counterparty, we would not meet the diversification tests imposed on us by the Code in order to qualify as a RIC for federal income tax purposes. Thus, we do not intend to enter into repurchase agreements with a single counterparty in excess of this limit. We will monitor the creditworthiness of the counterparties with which we enter into repurchase agreement transactions.

Warrants and Options

Under the 1940 Act, a BDC is subject to restrictions on the amount of warrants, options, restricted stock or rights to purchase shares of capital stock that it may have outstanding at any time. In particular, the amount of capital stock that would result from the conversion or exercise of all outstanding warrants, options or rights to purchase capital stock cannot exceed 25% of the BDC s total outstanding shares of capital stock. This amount is reduced to 20% of the BDC s total outstanding shares of capital stock if the amount of warrants, options or rights issued pursuant to an executive compensation plan would exceed 15% of the BDC s total outstanding shares of capital stock.

Senior Securities; Coverage Ratio

We will be permitted, under specified conditions, to issue multiple classes of indebtedness and one class of stock senior to our common stock if our asset coverage, as defined in the 1940 Act, is at least equal to 200% immediately after each such issuance. In addition, we may not be permitted to declare any cash dividend or other distribution on our outstanding common shares, or purchase any such shares, unless, at the time of such declaration or purchase, we have asset coverage of at least 200% after deducting the amount of such dividend, distribution, or purchase price. We may also borrow amounts up to 5% of the value of our total assets for temporary or emergency purposes.

Table of Contents

Code of Ethics

BDCs are required to adopt a code of ethics pursuant to Rule 17j-1 under the 1940 Act that establishes procedures for personal investments and restricts certain transactions by personnel. Our code of ethics will generally not permit investments by our employees in securities that may be purchased or held by us.

Compliance Policies and Procedures

We will adopt and implement written policies and procedures reasonably designed to detect and prevent violation of the federal securities laws and will be required to review these compliance policies and procedures annually for their adequacy and the effectiveness of their implementation and designate a chief compliance officer to be responsible for administering the policies and procedures.

Equity Compensation Plans

BDCs are generally prohibited from issuing equity compensation to their officers and directors absent regulatory and/or stockholder approval. See Proposal IV of this proxy statement for additional detail on the equity compensation plan that Newtek BDC seeks to adopt.

In connection with the BDC Election, we may file a request with the SEC for exemptive relief to allow us to take certain actions that would otherwise be prohibited by the 1940 Act, as applicable to BDCs. Specifically, although we cannot provide any assurance that we will receive any such exemptive relief, we intend to request that the SEC permit us to adopt a new equity compensation plan that provides for the issuance of (i) restricted stock awards to our officers, employees and directors pursuant to Section 23(a)(i) and (ii) stock options to our non-employee directors pursuant to Section 61(a)(3)(B)(i).

Other

As a BDC, we will be periodically examined by the SEC for compliance with the Exchange Act and the 1940 Act.

As a BDC, we will be required to provide and maintain a bond issued by a reputable fidelity insurance company to protect us against larceny and embezzlement. Furthermore, we will be prohibited from protecting any director or officer against any liability to our stockholders arising from willful misfeasance, bad faith, gross negligence or reckless disregard of the duties involved in the conduct of such person s office.

Material U.S. Federal Income Tax Considerations of a BDC

The following discussion is a general summary of the material U.S. federal income tax considerations applicable to BDCs and to an investment in BDC Shares. This summary does not purport to be a complete description of the income tax considerations applicable to such an investment. For example, we have not described tax consequences that may be relevant to certain types of holders subject to special treatment under U.S. federal income tax laws, including stockholders subject to the alternative minimum tax, tax-exempt organizations, insurance companies, dealers in securities, a trader in securities that elects to use a market-to-market method of accounting for its securities holdings, pension plans and trusts, and financial institutions. This summary assumes that investors hold Newtek BDC s common stock as capital assets (within the meaning of the Code). The discussion is based upon the Code, Treasury regulations, and administrative and judicial interpretations, each as of the date of this proxy statement and all of which are subject to change, possibly retroactively, which could affect the continuing validity of this discussion. We have not sought and will not seek any ruling from the IRS regarding the BDC Election and subsequent offering of BDC

Shares. This summary does not discuss any aspects of U.S. estate or gift tax or foreign, state or local tax. It does not discuss the special treatment under U.S. federal income tax laws that could result if we invested in tax-exempt securities or certain other investment assets.

Table of Contents

A U.S. stockholder generally will be a beneficial owner of BDC Shares who is for U.S. federal income tax purposes:

- A citizen or individual resident of the United States;
- A corporation or other entity treated as a corporation, for U.S. federal income tax purposes, created or organized in or under the laws of the United States or any political subdivision thereof;
- A trust if a court within the United States is asked to exercise primary supervision over the administration of the trust and one or more United States persons have the authority to control all substantive decisions of the trust; or
- An estate, the income of which is subject to U.S. federal income taxation regardless of its source.

A Non-U.S. stockholder generally will be a beneficial owner of BDC Shares who is not a U.S. stockholder. If a partnership (including an entity treated as a partnership for U.S. federal income tax purposes) holds BDC Shares, the tax treatment of a partner in the partnership will generally depend upon the status of the partner and the activities of the partnership. A prospective stockholder that is a partner of a partnership that will hold BDC Shares should consult his, her or its tax advisers with respect to the purchase, ownership and disposition of BDC Shares.

Tax matters are very complicated and the tax consequences to an investor of an investment in BDC Shares will depend on the facts of his, her or its particular situation. We encourage investors to consult their own tax advisers regarding the specific consequences of such an investment, including tax reporting requirements, the applicability of federal, state, local and foreign tax laws, eligibility for the benefits of any applicable tax treaty and the effect of any possible changes in the tax laws.

Taxation as C Corporation

Prior to the effective date of our election to be taxed as a RIC, which we currently anticipate will be January 1, 2015, we will continue to be taxable as an ordinary corporation under subchapter C of the Code (a C Corporation). While we are a C Corporation, we will be subject to U.S. federal income tax on all of our income at regular corporate rates (currently up to 35%). In addition, we will not be required to make any distributions to shareholders. Following the Reincorporation Transaction and during such time as we are taxed as a C corporation, we expect to make distributions in an amount approximately equal to our pre-tax income. We believe this will allow us to maintain a consistent distribution rate before and after electing to be treated as a RIC.

Taxation of U.S. Holders

To the extent that we make distributions at a time when we do not qualify as a RIC, U.S. Holders would be required to include such distributions their taxable income as dividends to the extent of our current and accumulated earnings and profits. Provided that certain holding periods and other requirements were met, any such distributions would generally qualify for treatment as qualified dividend income eligible for the 20% maximum rate applicable to non-corporate U.S. Holders. Subject to certain limitations under the Code, corporate distributees would be eligible for the dividends-received deduction. Distributions in excess of our current and accumulated earnings and profits would be treated first as a return of capital to the extent of the U.S. Holder s tax basis in our shares, and any remaining distributions would be treated as a capital gain.

If a U.S. Holder sells its shares, such U.S. Holder generally will recognize taxable gain or loss from such sale based on the amount realized on such sale and the U.S. Holder s adjusted basis in the shares sold. Any gain arising from such sale or disposition generally will be treated as long-term capital gain or loss if the U.S. Holder has held his, her or its shares for more than one year. Otherwise, it will be classified as short-term capital gain or loss. In general, individual U.S. Holders are currently subject to a maximum federal income tax rate of 20% on their net capital gain, i.e., the excess of realized net long-term capital gain over realized net short-term capital loss for a taxable year, including a long-term capital gain derived from an investment in our shares. Such rate is

Table of Contents

lower than the maximum rate on ordinary income currently payable by individuals. In addition, individuals with income in excess of $200,000 ($250,000 in the case of married individuals filing jointly) and certain estates and trusts are subject to an additional 3.8% tax on their net investment income, which generally includes net income from interest, dividends, annuities, royalties, and rents, and net capital gains (other than certain amounts earned from trades or businesses). Corporate U.S. Holders currently are subject to federal income tax on net capital gain at the maximum 35% rate also applied to ordinary income. Non-corporate U.S. Holders with net capital losses for a year (i.e., capital losses in excess of capital gains) generally may deduct up to $3,000 of such losses against their ordinary income each year; any net capital losses of a non-corporate stockholder in excess of $3,000 generally may be carried forward and used in subsequent years as provided in the Code. Corporate U.S. Holders generally may not deduct any net capital losses for a year, but may carry back such losses for three years or carry forward such losses for five years.

Taxation of Non-U.S. Holders

Whether an investment in our Shares is appropriate for a Non-U.S. Holder will depend upon that person s particular circumstances. An investment in our Shares by a Non-U.S. Holder may have adverse tax consequences. Non-U.S. Holders should consult their tax advisors before investing in our Shares.

Non-U.S. Holders generally will not be subject to U.S. federal income tax on our distributions unless such income is effectively connected with a U.S. trade or business of such Non-U.S. Holder (and if a treaty applies, attributable to a permanent establishment in the U.S.), but such distributions will be subject to U.S. federal withholding tax at a 30% rate (or lower rate provided by an applicable treaty) to the extent of our current and accumulated earnings and profits. If such a distribution is effectively connected to a U.S. trade or business conducted by the Non-U.S. Holder (and if a treaty applies, is attributable to a permanent establishment in the U.S.), such Non-U.S. Holder will generally be subject to U.S. federal income tax on such distribution as if such holder were a U.S. Holder. In such case, we (or the applicable withholding agent) will not be required to withhold federal tax if the Non-U.S. Holder complies with applicable certification and disclosure requirements. Special certification requirements apply to a Non-U.S. Holder that is a foreign partnership or a foreign trust, and such entities are urged to consult their own tax advisors.

Any gains realized by a Non-U.S. Holder upon the sale of our common stock, will not be subject to federal withholding tax and generally will not be subject to federal income tax unless the distributions or gains, as the case may be, are effectively connected with a U.S. trade or business of the Non-U.S. Holder and, if an income tax treaty applies, are attributable to a permanent establishment maintained by the Non-U.S. Holder in the United States. Any gains realized by a Non-U.S. Holder upon the sale of our common stock will be subject to U.S. federal income tax to the extent such gains are effectively connected to a U.S. trade or business conducted by the Non-U.S. Holder (and if a treaty applies, are attributable to a permanent establishment in the U.S.).

For a corporate Non-U.S. Holder, distributions (both actual and deemed), and gains realized upon the sale of our common stock that are effectively connected with a U.S. trade or business may, under certain circumstances, be subject to an additional branch profits tax at a 30% rate (or at a lower rate if provided for by an applicable treaty). Any capital gain realized by a nonresident alien who is physically present in the United States for 183 days or more in the taxable year may be subject to tax at a 30% rate.

A Non-U.S. Holder who is a non-resident alien individual, and who is otherwise subject to withholding of federal income tax, may be subject to information reporting and backup withholding of federal income tax on dividends unless the Non-U.S. Holder provides us or the dividend paying agent with an Internal Revenue Service Form W-8BEN (or an acceptable substitute form) or otherwise meets documentary evidence requirements for establishing that it is a Non-U.S. Holder or the Non-U.S. Holder otherwise establishes an exemption from backup withholding.

Legislation generally referred to as the Foreign Account Tax Compliance Act generally imposes a 30% withholding tax on payments of certain types of income to foreign financial institutions that fail to enter into an agreement with the U.S. Treasury to report certain required information with respect to accounts held by U.S.

Table of Contents

persons (or held by foreign entities that have U.S. persons as substantial owners). The types of income subject to the tax include U.S. source interest and dividends paid after June 30, 2014, and the gross proceeds from the sale of any property that could produce U.S.-source interest or dividends paid after December 31, 2016. The information required to be reported includes the identity and taxpayer identification number of each account holder that is a U.S. person and transaction activity within the holder s account. In addition, subject to certain exceptions, this legislation also imposes a 30% withholding on payments to foreign entities that are not financial institutions unless the foreign entity certifies that it does not have a greater than 10% U.S. owner or provides the withholding agent with identifying information on each greater than 10% U.S. owner. When these provisions become effective, depending on the status of a Non-U.S. Holder and the status of the intermediaries through which they hold their BDC Shares, Non-U.S. Holders could be subject to this 30% withholding tax with respect to distributions on their BDC Shares and proceeds from the sale of their BDC Shares. Under certain circumstances, a Non-U.S. Holder might be eligible for refunds or credits of such taxes.

Non-U.S. Holders should consult their own tax advisors with respect to the U.S. federal income tax and withholding tax, and state, local and foreign tax consequences of an investment in our Shares.

Election to be Taxed as a RIC

As a BDC, we intend to elect to be treated, and qualify annually thereafter, as a RIC under Subchapter M of the Code, beginning with our 2015 taxable year. As a RIC, we generally will not have to pay corporate-level U.S. federal income taxes on any income that we distribute to our stockholders as dividends. To qualify as a RIC, we must, among other things, meet certain source-of-income and asset diversification requirements (as described below). In addition, to qualify for RIC tax treatment we must distribute to our stockholders, for each taxable year, at least 90% of our investment company taxable income, which is generally our ordinary income plus the excess of our realized net short-term capital gains over our realized net long-term capital losses (the Annual Distribution Requirement). Although it is currently our intention to do so, at the present time, we cannot assure you whether we will elect to be treated as a RIC for our 2015 taxable year. If we opt not to do so or are unable to qualify, we will continue to be taxed as a C corporation under the Code for our 2015 taxable year. See Material U.S. Federal Income Tax Considerations of the Special Dividend.

Taxation as a RIC

For any taxable year in which we:

qualify as a RIC; and

satisfy the Annual Distribution Requirement,

we generally will not be subject to U.S. federal income tax on the portion of our income we distribute (or are deemed to distribute) to stockholders. We will be subject to U.S. federal income tax at the regular corporate rates on any income or capital gains not distributed (or deemed distributed) to our stockholders.

We will be subject to a 4% nondeductible U.S. federal excise tax on certain undistributed income unless we distribute in a timely manner an amount at least equal to the sum of (1) 98% of our net ordinary income for each calendar year, (2) 98.2% of our capital gain net income for the one-year period ending October 31 in that calendar year and (3) any income recognized, but not distributed, in preceding years and on which we paid no corporate-level income tax (the

Excise Tax Avoidance Requirement). We generally will endeavor in each taxable year to make sufficient distributions to our stockholders to avoid any U.S. federal excise tax on our earnings.

In order to qualify as a RIC for U.S. federal income tax purposes, we must, among other things:

- qualify as a BDC under the 1940 Act at all times during each taxable year;
- distribute all of our earnings and profits accumulated for all years prior to the first taxable year that we qualify as a RIC no later than the last day of such taxable year;

Table of Contents

- derive in each taxable year at least 90% of our gross income from dividends, interest, payments with respect to loans of certain securities, gains from the sale of stock or other securities, net income from certain qualified publicly traded partnerships, or other income derived with respect to our business of investing in such stock or securities (the 90% Income Test); and

- diversify our holdings so that at the end of each quarter of the taxable year:

  - at least 50% of the value of our assets consists of cash, cash equivalents, U.S. Government securities, securities of other RICs, and other securities if such other securities of any one issuer do not represent more than 5% of the value of our assets or more than 10% of the outstanding voting securities of the issuer; and

  - no more than 25% of the value of our assets is invested in the securities, other than U.S. government securities or securities of other RICs, of one issuer, of two or more issuers that are controlled, as determined under applicable Code rules, by us and that are engaged in the same or similar or related trades or businesses or of certain qualified publicly traded partnerships (the Diversification Tests).

Qualified earnings may exclude such income as management fees received in connection with our subsidiaries or other potential outside managed funds and certain other fees.

We may be required to recognize taxable income in circumstances in which we do not receive cash. For example, if we hold debt obligations that are treated under applicable tax rules as having original issue discount (such as debt instruments with payment in kind (PIK) interest or, in certain cases, increasing interest rates or issued with warrants), we must include in income each year a portion of the original issue discount that accrues over the life of the obligation, regardless of whether cash representing such income is received by us in the same taxable year. We may also have to include in income other amounts that we have not yet received in cash, such as PIK interest, deferred loan origination fees that are paid after origination of the loan or are paid in non-cash compensation such as warrants or stock, or certain income with respect to equity investments in foreign corporations. Because any original issue discount or other amounts accrued will be included in our investment company taxable income for the year of accrual, we may be required to make a distribution to our stockholders in order to satisfy the Annual Distribution Requirement, even though we will not have received any corresponding cash amount.

Although we do not presently expect to do so, we will be authorized to borrow funds and to sell assets in order to satisfy distribution requirements. However, under the 1940 Act, we will not be permitted to make distributions to our stockholders while our debt obligations and other senior securities are outstanding unless certain asset coverage tests are met. Moreover, our ability to dispose of assets to meet our distribution requirements may be limited by (1) the illiquid nature of our portfolio and/or (2) other requirements relating to our status as a RIC, including the Diversification Tests. If we dispose of assets in order to meet the Annual Distribution Requirement or the Excise Tax Avoidance Requirement, we may make such dispositions at times that, from an investment standpoint, are not advantageous. If we are prohibited from making distributions or are unable to obtain cash from other sources to make the distributions, we may fail to qualify as a RIC, which would result in us becoming subject to corporate-level federal income tax.

In addition, we will be partially dependent on our subsidiaries for cash distributions to enable us to meet the RIC distribution requirements. Some of our subsidiaries may be limited by the Small Business Investment Act of 1958, and SBA regulations, from making certain distributions to us that may be necessary to maintain our status as a RIC. We may have to request a waiver of the SBA s restrictions for our subsidiaries to make certain distributions to maintain our

RIC status. We cannot assure you that the SBA will grant such waiver. If our subsidiaries are unable to obtain a waiver, compliance with the SBA regulations may cause us to fail to qualify as a RIC, which would result in us becoming subject to corporate-level federal income tax.

The remainder of this discussion assumes that we qualify as a RIC and have satisfied the Annual Distribution Requirement.

Any transactions in options, futures contracts, constructive sales, hedging, straddle, conversion or similar transactions, and forward contracts will be subject to special tax rules, the effect of which may be to accelerate income to us, defer losses, cause adjustments to the holding periods of our investments, convert long-term capital gains into short-term capital gains, convert short-term capital losses into long-term capital losses or have other tax consequences. These rules could affect the amount, timing and character of distributions to stockholders. We do not currently intend to engage in these types of transactions.

A RIC is limited in its ability to deduct expenses in excess of its investment company taxable income (which is, generally, ordinary income plus net realized short-term capital gains in excess of net realized long-term capital losses). If our expenses in a given year exceed gross taxable income (e.g., as the result of large amounts of equity-based compensation), we would experience a net operating loss for that year. However, a RIC is not permitted to carry forward net operating losses to subsequent years. In addition, expenses can be used only to offset investment company taxable income, not net capital gain. Due to these limits on the deductibility of expenses, we may for tax purposes have aggregate taxable income for several years that we are required to distribute and that is taxable to our stockholders even if such income is greater than the aggregate net income we actually earned during those years. Such required distributions may be made from our cash assets or by liquidation of investments, if necessary. We may realize gains or losses from such liquidations. In the event we realize net capital gains from such transactions, you may receive a larger capital gain distribution than you would have received in the absence of such transactions.

Investment income received from sources within foreign countries, or capital gains earned by investing in securities of foreign issuers, may be subject to foreign income taxes withheld at the source. In this regard, withholding tax rates in countries with which the United States does not have a tax treaty are often as high as 35% or more. The United States has entered into tax treaties with many foreign countries that may entitle us to a reduced rate of tax or exemption from tax on this related income and gains. The effective rate of foreign tax cannot be determined at this time since the amount of our assets to be invested within various countries is not now known. We do not anticipate being eligible for the special election that allows a RIC to treat foreign income taxes paid by such RIC as paid by its stockholders.

If we acquire stock in certain foreign corporations that receive at least 75% of their annual gross income from passive sources (such as interest, dividends, rents, royalties or capital gain) or hold at least 50% of their total assets in investments producing such passive income (passive foreign investment companies), we could be subject to federal income tax and additional interest charges on excess distributions received from such companies or gain from the sale of stock in such companies, even if all income or gain actually received by us is timely distributed to our stockholders. We would not be able to pass through to our stockholders any credit or deduction for such a tax. Certain elections may, if available, ameliorate these adverse tax consequences, but any such election requires us to recognize taxable income or gain without the concurrent receipt of cash. We intend to limit and/or manage our holdings in passive foreign investment companies to minimize our tax liability.

Foreign exchange gains and losses realized by us in connection with certain transactions involving non-dollar debt securities, certain foreign currency futures contracts, foreign currency option contracts, foreign currency forward contracts, foreign currencies, or payables or receivables denominated in a foreign currency are subject to Code provisions that generally treat such gains and losses as ordinary income and losses and may affect the amount, timing and character of distributions to our stockholders. Any such transactions that are not directly related to our investment in securities (possibly including speculative currency positions or currency derivatives not used for hedging purposes) could, under future Treasury regulations, produce income not among the types of qualifying income from which a RIC must derive at least 90% of its annual gross income.

Built-In Gains Tax. We anticipate that certain of our assets will have built-in gain (i.e., assets whose fair market value exceeds our tax basis at the time we acquire them) as of the beginning of 2015, which is the beginning of first year that we expect to qualify as a RIC. To the extent such gain is recognized by us upon a sale or other disposition of such assets during the ten-year period (or shorter applicable period) following the

Table of Contents

beginning of such taxable year, we will be required to pay a corporate-level tax on the net amount of any such built-in gains. Alternatively, we may make a special election to cause the gain to be recognized as of the beginning of such taxable year. In that event, we would be required to recognize such built-in gain as such assets were sold as of the beginning of such taxable year. We do not anticipate making this election at this time. Any corporate-level built-in gains tax is payable at the time the built-in gains are recognized (which generally will be the years in which the built-in gain assets are sold in a taxable transaction). The amount of this tax will vary depending on the assets that are actually sold by us in this 10-year period (or shorter applicable period), the actual amount of net built-in gain or loss present in those assets as of the beginning of such taxable year and effective tax rates. The payment of any such corporate-level tax on built-in gains will be a company expense that will be borne by all stockholders and will reduce the amount available for distribution to stockholders. In addition, we will be required to distribute such gain (net of any corporate-level tax) to our stockholders in order to eliminate our liability for corporate-level U.S. federal income tax on such gain and possibly to maintain our qualification as a RIC.

Taxation of U.S. Stockholders

Distributions by us generally will be taxable to U.S. stockholders as ordinary income or capital gains. Distributions of our investment company taxable income (which will generally equal our net ordinary income plus realized net short-term capital gains in excess of realized net long-term capital losses) will be taxable as ordinary income to U.S. stockholders to the extent of our current or accumulated earnings and profits, whether paid in cash or reinvested in additional common stock. To the extent such distributions paid by us to non-corporate stockholders (including individuals) are attributable to dividends from U.S. corporations and certain qualified foreign corporations, such distributions (Qualifying Dividends) may be eligible for a maximum tax rate of 20%, provided holding period and other requirements are met at both the stockholder and company levels. Distributions of our net capital gains (which will generally equal our realized net long-term capital gains in excess of realized net short-term capital losses) properly reported by us as capital gain dividends in written statements furnished to our stockholders will be taxable to a U.S. stockholder as long-term capital gains that are currently taxable at a maximum rate of 20% in the case of individuals, trusts or estates, regardless of the U.S. stockholder s holding period for his, her or its common stock and regardless of whether paid in cash or reinvested in additional common stock. Distributions in excess of our earnings and profits first will reduce a U.S. stockholder s adjusted tax basis in such stockholder s common stock and, after the adjusted basis is reduced to zero, will constitute capital gains to such U.S. stockholder.

We may retain some or all of our realized net long-term capital gains in excess of realized net short-term capital losses, but designate the retained net capital gain as a deemed distribution. In that case, among other consequences, we will pay tax on the retained amount, each U.S. stockholder will be required to include his, her or its share of the deemed distribution in income as if it had been actually distributed to the U.S. stockholder, and the U.S. stockholder will be entitled to claim a credit equal to his, her or its allocable share of the tax paid thereon by us. Because we expect to pay tax on any retained capital gains at our regular corporate tax rate, and because that rate is in excess of the maximum rate currently payable by individuals on long-term capital gains, the amount of tax that individual U.S. stockholders will be treated as having paid will exceed the tax they owe on the capital gain distribution and such excess generally may be refunded or claimed as a credit against the U.S. stockholder s other U.S. federal income tax obligations or may be refunded to the extent it exceeds a stockholder s liability for federal income tax. A stockholder that is not subject to federal income tax or otherwise required to file a federal income tax return would be required to file a federal income tax return on the appropriate form in order to claim a refund for the taxes we paid. The amount of the deemed distribution net of such tax will be added to the U.S. stockholder s cost basis for his, her or its common stock. In order to utilize the deemed distribution approach, we must provide written notice to our stockholders prior to the expiration of 60 days after the close of the relevant taxable year. We cannot treat any of our investment company taxable income as a deemed distribution.

29

In accordance with certain applicable Treasury regulations and private letter rulings issued by the IRS, a RIC may treat a distribution of its own stock as fulfilling its RIC distribution requirements if each stockholder may elect to receive his or her entire distribution in either cash or stock of the RIC, subject to a limitation that the aggregate amount of cash to be distributed to all stockholders must be at least 20% of the aggregate declared distribution. If too many stockholders elect to receive cash, each stockholder electing to receive cash must receive a pro rata amount of cash (with the balance of the distribution paid in stock). In no event will any stockholder, electing to receive cash, receive less than 20% of his or her entire distribution in cash. If these and certain other requirements are met, for U.S. federal income tax purposes, the amount of the dividend paid in stock will be equal to the amount of cash that could have been received instead of stock. Other than in connection with the Special Dividend, we have no current intention of paying dividends in shares of our stock in connection with fulfilling RIC distribution requirements.

For purposes of determining (1) whether the Annual Distribution Requirement is satisfied for any year and (2) the amount of the deduction for ordinary income and capital gain dividends paid for that year, we may, under certain circumstances, elect to treat a dividend that is paid during the following taxable year as if it had been paid during the taxable year in question. If we make such an election, the U.S. stockholder will still be treated as receiving the dividend in the taxable year in which the distribution is made. However, any dividend declared by us in October, November or December of any calendar year, payable to stockholders of record on a specified date in such a month and actually paid during January of the following year, will be treated as if it had been received by our U.S. stockholders on December 31 of the year in which the dividend was declared.

If an investor purchases BDC Shares shortly before the record date of a distribution, the price of the BDC Shares will include the value of the distribution and the investor will be subject to tax on the distribution even though economically it may represent a return of his, her or its investment.

A U.S. stockholder generally will recognize taxable gain or loss if the U.S. stockholder sells or otherwise disposes of his, her or its BDC Shares. The amount of gain or loss will be measured by the difference between such U.S. stockholder s adjusted tax basis in the common stock sold and the amount of the proceeds received in exchange. Any gain arising from such sale or disposition generally will be treated as long-term capital gain or loss if the U.S. stockholder has held his, her or its shares for more than one year. Otherwise, it will be classified as short-term capital gain or loss. However, any capital loss arising from the sale or disposition of BDC Shares held for six months or less will be treated as long-term capital loss to the extent of the amount of capital gain dividends received, or undistributed capital gain deemed received, with respect to such shares. In addition, all or a portion of any loss recognized upon a disposition of BDC Shares may be disallowed if other BDC Shares are purchased (whether through reinvestment of distributions or otherwise) within 30 days before or after the disposition. In such a case, the basis of the newly purchased shares will be adjusted to reflect the disallowed loss.

In general, U.S. stockholders taxed at individual rates currently are subject to a maximum U.S. federal income tax rate of 20% on their net capital gain (i.e., the excess of realized net long-term capital gains over realized net short-term capital losses), including any long-term capital gain derived from an investment in BDC Shares. Such rate is lower than the maximum rate on ordinary income currently payable by such U.S. stockholders. In addition, individuals with income in excess of $200,000 ($250,000 in the case of married individuals filing jointly) and certain estates and trusts are subject to an additional 3.8% tax on their net investment income, which generally includes net income from interest, dividends, annuities, royalties, and rents, and net capital gains (other than certain amounts earned from trades or businesses). Corporate U.S. stockholders currently are subject to U.S. federal income tax on net capital gain at the maximum 35% rate also applied to ordinary income. Non-corporate U.S. stockholders with net capital losses for a year (i.e., capital losses in excess of capital gains) generally may deduct up to $3,000 of such losses against their ordinary income each year any net capital losses of a non-corporate U.S. stockholder in excess of $3,000 generally may be carried forward and used in subsequent years as provided in the Code. Corporate U.S. stockholders generally may not deduct any net capital losses for a year, but may carry back such losses for three years or carry forward such losses for five years.

30

Table of Contents

We (or the applicable withholding agent) will send to each of our U.S. stockholders, as promptly as possible after the end of each calendar year, a notice reporting, on a per share and per distribution basis, the amounts includible in such U.S. stockholder s taxable income for such year as ordinary income and as long-term capital gain. In addition, the federal tax status of each year s distributions generally will be reported to the IRS (including the amount of dividends, if any, eligible for the 20% maximum rate). Distributions may also be subject to additional state, local and foreign taxes depending on a U.S. stockholder s particular situation.

In some taxable years, we may be subject to the alternative minimum tax (AMT). If we have tax items that are treated differently for AMT purposes than for regular tax purposes, we may apportion those items between us and our stockholders, and this may affect our stockholder s AMT liabilities. Although regulations explaining the precise method of apportionment have not yet been issued by the IRS, we may apportion these items in the same proportion that dividends paid to each stockholder bear to our taxable income (determined without regard to the dividends paid deduction), unless we determine that a different method for a particular item is warranted under the circumstances. You should consult your own tax advisor to determine how an investment in Newtek BDC s stock could affect your AMT liability.

We may be required to withhold U.S. federal income tax (backup withholding) from all distributions to any U.S. stockholder (other than a stockholder that otherwise qualifies for an exemption) (1) who fails to furnish us with a correct taxpayer identification number or a certificate that such stockholder is exempt from backup withholding or (2) with respect to whom the IRS notifies us that such stockholder has failed to properly report certain interest and dividend income to the IRS and to respond to notices to that effect. An individual s taxpayer identification number is his or her social security number. Any amount withheld under backup withholding is allowed as a credit against the U. S. stockholder s federal income tax liability, provided that proper information is provided to the IRS.

U.S. stockholders that hold their common stock through foreign accounts or intermediaries will be subject to U.S. withholding tax at a rate of 30% on dividends after June 30, 2014, and proceeds of sale of our common stock paid after December 31, 2016 if certain disclosure requirements related to U.S. accounts are not satisfied.

Dividend Reinvestment Plan. We intend to adopt a dividend reinvestment plan through which all dividend distributions are paid to our stockholders in the form of additional BDC Shares, unless a stockholder elects to receive cash in accordance with the terms of the plan. See Dividend Reinvestment Plan . Any distributions made to a U.S. stockholder that are reinvested under the plan will nevertheless remain taxable to the U.S. stockholder. The U.S. stockholder will have an adjusted tax basis in the additional BDC Shares purchased through the plan equal to the amount of the reinvested distribution. The additional BDC Shares will have a new holding period commencing on the day following the day on which the BDC Shares are credited to the U.S. stockholder s account.

Taxation of Non-U.S. Stockholders

Whether an investment in BDC Shares is appropriate for a Non-U.S. stockholder will depend upon that person s particular circumstances. An investment in the BDC Shares by a Non-U.S. stockholder may have adverse tax consequences. Non-U.S. stockholders should consult their tax advisers.

Distributions of our investment company taxable income to Non-U.S. stockholders (including interest income and realized net short-term capital gains in excess of realized long-term capital losses, which generally would be free of withholding if paid to Non-U.S. stockholders directly) will be subject to withholding of federal tax at a 30% rate (or lower rate provided by an applicable treaty) to the extent of our current and accumulated earnings and profits unless an applicable exception applies. If the distributions are effectively connected with a U.S. trade or business of the Non-U.S. stockholder, we will not be required to withhold federal tax if the Non-U.S. stockholder complies with applicable certification and disclosure requirements, although the distributions will be subject to U.S. federal income tax at the rates applicable to U.S. persons. (Special certification

Table of Contents

requirements apply to a Non-U.S. stockholder that is a foreign partnership or a foreign trust, and such entities are urged to consult their own tax advisers).

However, for taxable years beginning before January 1, 2014, no withholding is required with respect to certain distributions if (i) the distributions are properly reported to our stockholders as interest-related dividends or short-term capital gain dividends in written statements to our stockholders, (ii) the distributions are derived from sources specified in the Code for such dividends and (iii) certain other requirements are satisfied. Currently, we do not anticipate that any significant amount of our distributions would be reported as eligible for this exemption from withholding. No assurance can be provided that this exemption will be extended for tax years beginning after December 31, 2013.

Actual or deemed distributions of our net capital gains to a Non-U.S. stockholder, and gains realized by a Non-U.S. stockholder upon the sale of our common stock, will not be subject to federal withholding tax and generally will not be subject to federal income tax unless the distributions or gains, as the case may be, are effectively connected with a U.S. trade or business of the Non-U.S. stockholder.

The tax consequences to Non-U.S. stockholders entitled to claim the benefits of an applicable tax treaty or that are individuals that are present in the United States for 183 days or more during a taxable year may be different from those described herein. Non-U.S. stockholders are urged to consult their tax advisers with respect to the procedure for claiming the benefit of a lower treaty rate and the applicability of foreign taxes.

If we distribute our net capital gains in the form of deemed rather than actual distributions, a Non-U.S. stockholder will be entitled to a U.S. federal income tax credit or tax refund equal to the stockholder s allocable share of the tax we pay on the capital gains deemed to have been distributed. In order to obtain the refund, the Non-U.S. stockholder must obtain a U.S. taxpayer identification number and file a U.S. federal income tax return even if the Non-U.S. stockholder would not otherwise be required to obtain a U.S. taxpayer identification number or file a U.S. federal income tax return. For a corporate Non-U.S. stockholder, distributions (both actual and deemed), and gains realized upon the sale of our common stock that are effectively connected to a U.S. trade or business may, under certain circumstances, be subject to an additional branch profits tax at a 30% rate (or at a lower rate if provided for by an applicable treaty). Accordingly, investment in BDC Shares may not be appropriate for a Non-U.S. stockholder.

A Non-U.S. stockholder who is a non-resident alien individual, and who is otherwise subject to withholding of federal tax, may be subject to information reporting and backup withholding of U.S. federal income tax on dividends unless the Non-U.S. stockholder provides us or the dividend paying agent with an IRS Form W-8BEN (or an acceptable substitute form) or otherwise meets documentary evidence requirements for establishing that it is a Non-U.S. stockholder or otherwise establishes an exemption from backup withholding.

Legislation generally referred to as the Foreign Account Tax Compliance Act imposes a 30% withholding tax on payments of certain types of income to foreign financial institutions that fail to enter into an agreement with the U.S. Treasury to report certain required information with respect to accounts held by U.S. persons (or held by foreign entities that have U.S. persons as substantial owners). The types of income subject to the tax include U.S. source interest and dividends paid after June 30, 2014 and the gross proceeds from the sale of any property that could produce U.S.-source interest or dividends paid after December 31, 2016. The information required to be reported includes the identity and taxpayer identification number of each account holder that is a U.S. person and transaction activity within the holder s account. In addition, subject to certain exceptions, this legislation also imposes a 30% withholding on payments to foreign entities that are not financial institutions unless the foreign entity certifies that it does not have a greater than 10% U.S. owner or provides the withholding agent with identifying information on each greater than 10% U.S. owner. When these provisions become effective, depending on the status of a Non-U.S. Holder and the status of the intermediaries through which they hold their BDC Shares, Non-U.S. Holders could be subject to this 30% withholding tax with respect to distributions on their BDC Shares and proceeds from the sale of their BDC Shares. Under certain circumstances, a Non-U.S. Holder might be eligible for refunds or credits of such taxes.

Table of Contents

Non-U.S. persons should consult their own tax advisers with respect to the U.S. federal income tax and withholding tax, and state, local and foreign tax consequences of an investment in the shares.

Failure to Qualify as a RIC

If we fail to satisfy the 90% Income Test or the Diversification Tests for any taxable year, we may nevertheless qualify as a RIC for such year if certain relief provisions are applicable (which may, among other things, require us to pay certain corporate-level federal taxes or to dispose of certain assets).

If we were unable to qualify for treatment as a RIC and the foregoing relief provisions are not applicable, we would be subject to tax on all of our taxable income at regular corporate rates, regardless of whether we make any distributions to our stockholders. Distributions would not be required, and any distributions would be taxable to our stockholders as ordinary dividend income to the extent of our current and accumulated earnings and profits and, subject to certain limitations, may be eligible for the 20% maximum rate for noncorporate taxpayers provided certain holding period and other requirements were met. Subject to certain limitations under the Code, corporate distributees would be eligible for the dividends-received deduction. Distributions in excess of our current and accumulated earnings and profits would be treated first as a return of capital to the extent of the stockholder s tax basis, and any remaining distributions would be treated as a capital gain. To requalify as a RIC in a subsequent taxable year, we would be required to satisfy the RIC qualification requirements for that year and dispose of any earnings and profits from any year in which we failed to qualify as a RIC. Subject to a limited exception applicable to RICs that qualified as such under Subchapter M of the Code for at least one year prior to disqualification and that requalify as a RIC no later than the second year following the nonqualifying year, we could be subject to tax on any unrealized net built-in gains in the assets held by us during the period in which we failed to qualify as a RIC that are recognized within the subsequent 10 years (or shorter applicable period), unless we made a special election to pay corporate-level tax on such built-in gain at the time of our requalification as a RIC.

Taxation of the Special Dividend

Reasons for Special Dividend. As discussed above, if we undertake the Reincorporation Transaction and elect to qualify as a BDC, we also intend to elect to be treated as a RIC under subchapter M of the Code beginning with our 2015 taxable year. To qualify as a RIC, we must, among other things, distribute by the end of the first taxable year that we elect to be treated as a RIC all of our accumulated earnings and profits from all taxable years that we were taxed as a C corporation. We intend to satisfy this requirement through the payment of the Special Dividend. Although the Company cannot determine the amount of its accumulated C corporation earnings and profits until after the end of its 2014 taxable year, the aggregate amount of the Special Dividend will equal the amount of such accumulated C corporation earnings and profits as of such date. Following the Reincorporation Transaction, the Company expects to make distributions in an amount approximately equal to its pre-tax income. The portions of any such distributions that exceed the Company s current earnings will have the effect of reducing the amount of the Special Dividend. The timing of the payment of the Special Dividend will be determined at the discretion of the Board, but in all events, the Special Dividend will be paid no later than December 31, 2015, which is our first taxable year that we anticipate that we will qualify as RIC. At the discretion of the Board, the Special Dividend may be paid in more than one installment.

At the discretion of the Board, the Special Dividend may be payable in cash or BDC Shares at the election of stockholders. In accordance with certain applicable Treasury regulations and private letter rulings issued by the IRS, a RIC may treat a distribution of its own stock as fulfilling its RIC distribution requirements if each stockholder may elect to receive his or her entire distribution in either cash or stock of the RIC, subject to a limitation that the aggregate amount of cash to be distributed to all stockholders must be at least 20% of the aggregate declared distribution. If too many stockholders elect to receive cash, each stockholder electing to receive cash must receive a pro rata amount of cash (with the balance of the distribution paid in stock). In no event will any stockholder, electing to receive cash, receive less than 20% of his or her entire distribution in cash. If these and certain other requirements are met, for U.S. federal income tax purposes, the entire amount of the distribution, including the portion amount of the Special Dividend paid in stock, will be treated as a taxable distribution that will satisfy the requirement to distribute all of our earnings and profits accumulated in all taxable years prior to our qualification as a RIC.

Taxation of U.S. Stockholders. Each U.S. stockholder must include the sum of the value of the our stock and the amount of cash, if any, received pursuant to the Special Dividend in his, her, or its gross income as dividend income. The Treasury regulations and IRS private letter rulings noted above confirm that, for this purpose, the amount of the dividend paid in stock will be equal to the amount of cash that could have been received instead of the stock. A stockholder that receives our stock pursuant to the Special Dividend would have a tax basis in such stock equal to the amount of cash that could have been received instead of such stock as described above, and the holding period in such stock would begin on the day following the payment date for the dividend.

Subject to certain holding period and other requirements, the Special Dividend will be eligible for the reduced maximum tax rates applicable to qualified dividends for non-corporate stockholders. If the Special Dividend is paid prior to effective date of our election to be taxable as a RIC, which is expected to be January 1, 2015, such dividend generally will be eligible for the dividends received deduction available to U.S. stockholders that are domestic corporations but not S corporations. However, if the Special Dividend is paid after the effective date of our election to become a RIC, it is uncertain whether such distribution will be eligible for the dividends received deduction.

We may be required to withhold U.S. federal income tax (backup withholding) from all distributions to any U.S. stockholder (other than a stockholder that otherwise qualifies for an exemption) (1) who fails to furnish us with a correct taxpayer identification number or a certificate that such stockholder is exempt from backup withholding or (2) with respect to whom the IRS notifies us that such stockholder has failed to properly report certain interest and dividend income to the IRS and to respond to notices to that effect. An individual s taxpayer identification number is his or her social security number. Any amount withheld under backup withholding is allowed as a credit against the U. S. stockholder s federal income tax liability, provided that proper information is provided to the IRS.

U.S. stockholders are urged to consult their own tax advisors to determine the federal, state, and local income tax consequences of the Special Dividend in light of their unique circumstances.

Taxation of Non-U.S. Stockholders. For non-U.S. stockholders, the dividend will be subject to withholding of U.S. Federal withholding tax on a gross basis at a 30% rate (or such lower rate as may be specified by an applicable income tax treaty), unless it is treated as effectively connected with the conduct by the non-U.S. stockholder of a United States trade or business. Certain certification and disclosure requirements must be satisfied for the stockholder to be exempt from withholding under the effectively connected income exemption or to qualify for a reduced rate of withholding under an applicable treaty. If the dividend is effectively connected with a non-U.S. stockholder s U.S. trade or business, such non-U.S. stockholder will be subject to tax on the dividend on a net basis (that is, after allowance of deductions) at graduated rates and generally will not be subject to withholding. A non-U.S. stockholder that is a corporation may also be subject to an additional branch profits tax on the dividend at a 30% rate or such lower rate as may be specified by an applicable income tax treaty.

Generally, information reporting will apply to the payment of the dividend, and backup withholding may apply, unless the payee certifies that it is not a U.S. person or otherwise establishes an exemption.

Legislation referred to as the Foreign Account Tax Compliance Act generally imposes a 30% withholding tax on payments of certain types of income to foreign financial institutions that fail to enter into an agreement with the U.S. Treasury to report certain required information with respect to accounts held by U.S. persons (or held by foreign entities that have U.S. persons as substantial owners). The types of income subject to the tax include U.S. source dividends paid after June 30, 2014. The information required to be reported includes the

Table of Contents

identity and taxpayer identification number of each account holder that is a U.S. person and transaction activity within the holder s account. In addition, subject to certain exceptions, this legislation also imposes a 30% withholding on payments to foreign entities that are not financial institutions unless the foreign entity certifies that it does not have a greater than 10% U.S. owner or provides the withholding agent with identifying information on each greater than 10% U.S. owner.

Non-U.S. stockholders should consult their own tax advisers with respect to the U.S. federal income tax and withholding tax, and state, local and foreign tax consequences of the Special Dividend.

BDC Risk Factors

The Reincorporation Transaction and subsequent operation as a BDC involves many risks, including the following:

Throughout our 15 year history we have never operated as a BDC.

We will be dependent upon our senior lending team and our executive committee for our future success and if we are unable to hire and retain qualified personnel or if we lose any member of our senior lending team or our executive committee, our ability to achieve our investment objective could be significantly harmed.

We will operate in a highly competitive market for investment opportunities.

Our portfolio may lack company diversification, which may subject us to a risk of significant loss if one or more of these companies defaults on its obligations under any of its debt instruments.

Our portfolio may be concentrated in a limited number of industries, which may subject us to a risk of significant loss if there is a downturn in a particular industry in which a number of our investments are concentrated.

Our board of directors may change our investment objective, operating policies and strategies without prior notice or stockholder approval, the effects of which may be adverse.

Investing in small businesses involves a high degree of risk, and our financial results may be affected adversely if one or more of our significant portfolio investments defaults on its loans or fails to perform as we expect.

The lack of liquidity in our investments may adversely affect our business.

An extended disruption in the capital markets and the credit markets could impair our ability to raise capital and negatively affect our business.

We may borrow money, which would magnify the potential for loss on amounts invested and may increase the risk of investing in us.

The necessity of raising additional capital may expose us to risks, including the typical risks associated with leverage as well as the inability to raise such funds when needed.

There will be uncertainty as to the value of our portfolio investments.

We may experience fluctuations in our quarterly and annual results.

We will be subject to corporate-level income tax on all of our income if we are unable to qualify as a RIC under the Code, which would have a material adverse effect on our financial performance.

Regulations governing our operation as a BDC will affect our ability to raise additional capital and the way in which we do so.

The market price of BDC Shares may decline below our net asset value per share.

Our common stock price may be volatile and may decrease substantially.

Table of Contents

We may not be able to pay distributions, our distributions may not grow over time and a portion of our distributions may be a return of capital.

Sales of substantial amounts of our common stock in the public market may have an adverse effect on the market price of our common stock.

As a BDC, any failure to comply with the requirements imposed on us by the 1940 Act could cause the SEC to bring an enforcement action against us and/or expose us to claims of private litigants. In addition, upon approval of a majority of our stockholders, we may elect to withdraw our status as a BDC. If we decide to withdraw our election, or if we otherwise fail to qualify, or maintain our qualification, as a BDC, we may be subject to the substantially greater regulation under the 1940 Act as a closed-end investment company. Compliance with such regulations would significantly decrease our operating flexibility, and could significantly increase our costs of doing business.

Required Vote

The approval of the Reincorporation Transaction will require the affirmative vote of a majority of the outstanding Shares entitled to vote at the Special Meeting. Abstentions and Broker Non-Votes will have the effect of a vote against this proposal.

THE BOARD BELIEVES THAT A VOTE FOR PROPOSAL I TO APPROVE THE REINCORPORATION TRANSACTION AS DESCRIBED ABOVE IS IN THE BEST INTERESTS OF OUR STOCKHOLDERS AND RECOMMENDS A VOTE FOR PROPOSAL I.

PROPOSAL II APPROVAL OF REVERSE STOCK SPLIT

The Company intends to effectuate a reverse stock split of our Shares as described below, (the Reverse Stock Split).

Our Board of Directors has approved the Reverse Stock Split and believes that it is in our best interests to undertake the Reverse Stock Split in order to increase the trading price of our Shares on the NASDAQ Capital Market. Our Board of Directors believes that such an increased trading price will make our Shares more attractive to a wider array of investors, which will improve our ability to raise additional capital in connection with and subsequent to effectuating the BDC Election discussed in Proposal I. In addition, we expect our stockholders will also benefit from relatively lower trading costs for higher priced Shares**. We will not effectuate the Reverse Stock Split UNLESS stockholders approve this Proposal II and each of the other proposals set forth herein other than Proposal V.**

Approval of this Proposal II would permit (but not require) our Board of Directors to effectuate the Reverse Stock Split by a ratio of not less than 1-for-4 and not more than 1-for-6, with the exact ratio to be set within this range as determined by our Board of Directors in its sole discretion. The exact ratio of the Reverse Stock Split will be determined by the Board of Directors, publicly announced by the Company, prior to the effective time of the split. We believe that enabling our Board of Directors to set the ratio of the Reverse Stock Split within the stated range will provide us with the flexibility to implement the Reverse Stock Split in a manner designed to maximize the anticipated benefits for our stockholders. In determining a ratio of the Reverse Stock Split, if any, following the receipt of stockholder approval, our Board of Directors may consider, among other things, factors such as:

- the historical trading prices and trading volume of our Shares;
- the number of Shares outstanding;

Table of Contents

the then-prevailing trading price and trading volume of our Shares and the anticipated or actual impact of the Reverse Stock Split on the trading price and trading volume for our Shares;

the anticipated impact of a particular ratio on our ability to reduce administrative and transactional costs; and

prevailing general market and economic conditions.

Depending on the ratio for the Reverse Stock Split determined by our Board of Directors, no fewer than every four and no more than every six Shares, including Shares held in the Company s treasury, will be combined into one Share. The amendment to our Restated Certificate of Incorporation, as amended, to effectuate the Reverse Stock Split, will not change the authorized number of Shares or preferred stock of the Company, or the par value of the Company s common stock or preferred stock.

The Reverse Stock Split does not require the approval of any federal or state regulatory agency and our stockholders are not entitled to dissenter s rights in connection therewith. If Proposal II is approved at the Special Meeting, we will file a Certificate of Amendment to our Restated Certificate of Incorporation containing the following language:

Article Fourth is hereby amended by adding new subsection (c) to the thereof as follows:

(c) Upon this Certificate of Amendment to the Certificate of Incorporation of the Corporation becoming effective pursuant to the Business Corporation Law of the State of New York (the Effective Time), each share of the common stock, $0.02 par value per share (the Old Common Stock), issued and outstanding immediately prior to the Effective Time, will automatically be reclassified as and converted into a smaller number of shares such that each [*] shares of issued Old Common Stock immediately prior to the Effective Time is reclassified into one share of common stock, $0.02 par value per share (the New Common Stock). Notwithstanding the immediately preceding sentence, no fractional shares shall be issued and, in lieu thereof, upon surrender after the Effective Time of a certificate which formerly represented shares of Old Common Stock that were issued and outstanding immediately prior to the Effective Time, any person who would otherwise be entitled to a fractional share of New Common Stock as a result of the reclassification, following the Effective Time, shall be entitled to receive a cash payment equal to the fraction to which such holder would otherwise be entitled multiplied by the closing price of a share of Common Stock on the NASDAQ Capital Market immediately following the Effective Time. Each stock certificate that, immediately prior to the Effective Time, represented shares of Old Common Stock that were issued and outstanding immediately prior to the Effective Time shall, from and after the Effective Time, automatically and without the necessity of presenting the same for exchange, represent that number of whole shares of New Common Stock after the Effective Time into which the shares of Old Common Stock formerly represented by such certificate shall have been reclassified (as well as the right to receive cash in lieu of fractional shares of New Common Stock after the Effective Time).

*This number will equal no fewer than four and no more than six, with the exact number to be determined by our Board of Directors.

If Proposal II is approved at the Special Meeting, we anticipate that the Reverse Stock Split will be effected approximately 30 days prior to the date we expect to complete the Reincorporation Transaction and make the BDC Election. However, the exact timing of the effective date of the Reverse Stock Split will be determined by our Board of Directors based upon our Board of Directors evaluation as to when such action will be most advantageous to us and our stockholders. Our Board of Directors reserves the right to delay the effectiveness of the Reverse Stock Split for up to 12 months following the date of approval of this Proposal II. In addition, our Board of Directors reserves the right, notwithstanding stockholder approval and without further action by the stockholders, to determine not to proceed with the Reverse Stock Split if, at any time prior to the effectiveness of the Certificate of Amendment pursuant to the Business Corporation Law of the State of New York, our Board of

Table of Contents

Directors, in its sole discretion, determines that it is no longer in the best interests of our company and our stockholders to do so.

Background and Reasons for the Reverse Stock Split; Potential Consequences of the Reverse Stock Split

The primary reason for proposing the Reverse Stock Split is to increase the per share market price of our Shares. Our common stock is currently listed on the NASDAQ Capital Market under the symbol NEWT, which we believe helps support and maintain stock liquidity and Company recognition for our stockholders. The Board believes that the Reverse Stock Split will result in a higher per share trading price, which is intended to generate greater investor interest in the Company and improve the marketability of the common stock to a broader range of investors. We expect this will better position us to undertake the Proposed Offering after effectuating the Reincorporation Transaction and BDC Election. This Proxy Statement is not an offer to sell securities. Securities may not be offered or sold in the United States absent registration with the SEC or an applicable exemption from SEC registration requirements.

Although the Reverse Stock Split is intended, absent other factors, to increase the per share market price of our Shares, other factors, such as our financial results, market conditions and the market perception of our business may adversely affect the market price of our Shares. As a result, there can be no assurance that the Reverse Stock Split, if completed, will result in the intended benefits described above, that the market price of our Shares will increase following the Reverse Stock Split or that the market price of our Shares will not decrease in the future. Additionally, we cannot assure you that the market price per Share after a Reverse Stock Split will increase in proportion to the reduction in the number of Shares outstanding before the Reverse Stock Split. Accordingly, the total market capitalization of our common stock after the Reverse Stock Split may be lower than the total market capitalization before the Reverse Stock Split.

We will not effectuate the Reverse Stock Split if it would cause our Shares to be (i) held by less than 300 stockholders of record to the extent such Shares are held by greater than 300 stockholders of record prior to the Reverse Stock Split, or (ii) subject to delisting from the NASDAQ Capital Market.

How the Reverse Stock Split will be Effectuated

The Reverse Stock Split would become effective upon the filing of a Certificate of Amendment to our Restated Certificate of Incorporation, as amended, with the Secretary of State of the State of New York, or, in the event that the Certificate of Amendment specifies a later time of effectiveness, such later time. The exact timing of the filing of such a Certificate of Amendment will be determined by our Board of Directors, in its sole discretion. In addition, our Board of Directors reserves the right, notwithstanding stockholder approval of this Proposal II and without further action by the stockholders, to elect not to proceed with the Reverse Stock Split if, at any time prior to effectiveness of the Reverse Stock Split, our Board of Directors, in its sole discretion, determines that it is no longer in our best interests and the best interests of our stockholders to proceed with the Reverse Stock Split. If a Certificate of Amendment effecting the Reverse Stock Split has not been filed with the Secretary of State of the State of Delaware within one year after the Special Meeting, our Board of Directors will be deemed to have abandoned the Reverse Stock Split.

Depending on the ratio for the Reverse Stock Split determined by our Board of Directors, a minimum of every four and a maximum of every six Shares, including Shares held in the Company s treasury, will be combined into one new Share. Based on [ ] Shares issued and outstanding as of the Record Date, immediately following the Reverse Stock Split the Company would have approximately [ ] Shares issued and outstanding if the ratio for the Reverse Stock Split is 1-for-4, [ ] Shares issued and outstanding if the ratio for the Reverse Stock Split is 1-for-5, and [ ] Shares issued and outstanding if the ratio for the Reverse Stock Split is 1-for-6.

Table of Contents

The actual number of Shares issued and outstanding after giving effect to the Reverse Stock Split, if implemented, will depend on the ratio for the Reverse Stock Split that is ultimately determined by our Board of Directors.

The Reverse Stock Split will affect all holders of our Shares uniformly and will not affect any stockholder s percentage ownership interest in the Company, except that, as described below under Fractional Shares, record holders otherwise entitled to a fractional Share as a result of the Reverse Stock Split will receive cash in lieu of such fractional Share. In addition, the Reverse Stock Split will not affect any stockholder s proportionate voting power (subject to the treatment of fractional Shares).

Effect of the Reverse Split on the Number of Authorized Shares of Our Common Stock

The Reverse Stock Split does not change number of our authorized Shares, which will remain at 54,000,000 Shares. Because we are not changing the number of authorized Shares, the practical effect of the Reverse Stock Split will be to provide us with up to [ ] additional authorized but unissued Shares of our post-Reverse Stock Split common stock available for future issuance. However, if stockholders approve Proposal I and we complete the Reincorporation Transaction, the Maryland Articles will authorize the issuance of up to 200,000,000 BDC Shares.

Our Board of Directors also believes that it is prudent and advisable for us to retain a sufficient number of authorized but unissued Shares to better position ourselves with added flexibility to raise additional capital through a variety of possible financing transactions and/or consummate mergers, acquisitions, combinations and various other strategic alternatives, and in order to avoid delays that might otherwise arise if we were required to solicit stockholder approval for additional Shares at the time of a proposed transaction. Our authorized but unissued common stock may be issued at the direction of our Board of Directors at such times, in such amounts and upon such terms as our Board of Directors may determine, without further approval of our stockholders unless, in any instance, such approval is expressly required by law. The resulting increase in the number of authorized Shares as a result of the Reverse Stock Split may affect the rights of existing holders of Shares to the extent that future issuances of Shares reduce each existing stockholder s proportionate ownership and voting rights in our company. In addition, possible dilution caused by future issuances of Shares could be accompanied by a decline in the market price of our Shares, assuming a market for our Shares continues, of which there is no assurance.

The additional common stock that will be available for issuance following the Reverse Stock Split could have material anti-takeover consequences, including the ability of our Board of Directors to issue additional Shares without additional stockholder approval because unissued common stock could be issued by our Board of Directors in circumstances that may have the effect of delaying, deterring or preventing takeover bids. For example, without further stockholder approval, our Board of Directors could strategically sell Shares in a private transaction to purchasers who would oppose a takeover. In addition, because stockholders do not have preemptive rights under our Restated Articles of Incorporation or Bylaws, the rights of existing stockholders may (depending on the particular circumstances in which the additional Shares are issued) be diluted by any such issuance and increase the potential cost to acquire control of our Company. In proposing the Reverse Stock Split, our Board of Directors was not aware of any attempt to take control of the Company and was not motivated by the threat of any attempt to accumulate Shares or otherwise gain control of our Company. However, stockholders should nevertheless be aware that approval of Proposal II could facilitate our efforts to deter or prevent changes of control in the future.

Our Board of Directors does not intend to issue any additional Shares except on terms that it deems to be in the best interest of our Company and our stockholders. It is not anticipated that our financial condition, the percentage ownership of management, the number of stockholders, or any aspect of our business will materially change as a result of the Reverse Stock Split.

39

Table of Contents

Effect on Registered and Beneficial Stockholders

When effectuating the Reverse Stock Split, we intend to treat stockholders holding the Company s common stock in street name (that is, held through a broker, bank or other nominee) in the same manner as registered stockholders whose Shares are registered in their names. Brokers, banks or other nominees will be instructed to effect the Reverse Stock Split for their beneficial holders holding Shares in street name; however, these brokers, banks or other nominees may apply their own specific procedures for processing the Reverse Stock Split. If you hold your Shares with a broker, bank or other nominee, and have any questions in this regard, we encourage you to contact your nominee.

Effect on Registered Book-Entry Stockholders

The Company s registered stockholders may hold some or all of their Shares electronically in book-entry form. These stockholders will not have stock certificates evidencing their ownership of common stock. They are, however, provided with a statement reflecting the number of Shares registered in their accounts.

If you hold registered Shares in a book-entry form, you do not need to take any action to receive your post-Reverse Stock Split Shares in registered book-entry form or your cash payment in lieu of any fractional Shares, if applicable.

If you are entitled to post-Reverse Stock Split Shares, a transaction statement will automatically be sent to your address of record as soon as practicable after the effective date of the Reverse Stock Split indicating the number of Shares you hold.

If you are entitled to a payment in lieu of any fractional Shares, a check will be mailed to you at your registered address as soon as practicable after the effective date of the Reverse Stock Split. By signing and cashing this check, you will warrant that you owned the Shares for which you received a cash payment.

Effect on Registered Certificated Shares

Some registered stockholders hold their Shares in certificate form or a combination of certificate and book-entry form. If any of your Shares are held in certificate form, you will receive a transmittal letter from our transfer agent as soon as practicable after the effective date of the Reverse Stock Split, if any. The transmittal letter will be accompanied by instructions specifying how you can exchange your certificate representing the pre-Reverse Stock Split for a statement of holding, together with any payment of cash in lieu of fractional Shares to which you are entitled. When you submit your certificate representing the pre-Reverse Stock Split Shares, your post-Reverse Stock Split Shares will be held electronically in book-entry form. This means that, instead of receiving a new stock certificate, you will receive a statement of holding that indicates the number of post-Reverse Stock Split Shares you own in book-entry form.

Beginning on the effective date of the Reverse Stock Split, each certificate representing pre-Reverse Stock Split will be deemed for all corporate purposes to evidence ownership of post-Reverse Stock Split. If you are entitled to a payment in lieu of any fractional Shares, payment will be made as described below under Fractional Shares.

STOCKHOLDERS SHOULD NOT DESTROY ANY SHARE CERTIFICATE(S) AND SHOULD NOT SUBMIT ANY CERTIFICATE(S) UNTIL REQUESTED TO DO SO.

As applicable, new share certificates evidencing post-Reverse Stock Split Shares that are issued in exchange for pre-Reverse Stock Split Shares representing restricted Shares will contain the same restrictive legend as on the old certificates. For purposes of determining the term of the restrictive period applicable to the post-Reverse Stock Split Shares, the time period during which a stockholder has held their existing pre-Reverse Stock Split Shares will be included in the total holding period.

Table of Contents

Fractional Shares

Fractional Shares will not be issued in connection with the Reverse Stock Split. Stockholders of record and stockholders who hold their Shares through a bank, broker, custodian or other nominee who would otherwise hold fractional Shares as a result of the Reverse Stock Split will be entitled to receive cash (without interest and subject to applicable withholding taxes) in lieu of such fractional Shares. Each such stockholder will be entitled to receive an amount in cash equal to the fraction of one Share to which such stockholder would otherwise be entitled multiplied by the closing price of a Share on the NASDAQ Capital Market immediately following the Reverse Stock Split.

Stockholders should be aware that, under the escheat laws of the various jurisdictions where stockholders reside, where we are domiciled and where the funds will be deposited, sums due for fractional interests resulting from the Reverse Stock Split that are not timely claimed after the effective time in accordance with applicable law may be required to be paid to the designated agent for each such jurisdiction. Thereafter, stockholders otherwise entitled to receive such funds may have to seek to obtain them directly from the state to which they were paid.

Effect of the Reverse Stock Split on Employee Plans, Options, Restricted Stock Awards and Units, Warrants and Convertible or Exchangeable Securities

Based upon the ratio for the Reverse Stock Split determined by the Board of Directors, proportionate adjustments are generally required to be made to the per Share exercise price and the number of Shares issuable upon the exercise or conversion of all outstanding options. This would result in approximately the same aggregate price being required to be paid under such options upon exercise, and approximately the same value of Shares being delivered upon such exercise, exchange or conversion, immediately following the Reverse Stock Split as was the case immediately preceding the Reverse Stock Split. The number of Shares deliverable upon settlement or vesting of restricted stock awards and restricted stock units will be similarly adjusted. The number of Shares reserved for issuance pursuant to these securities will be adjusted proportionately based upon the ratio for the Reverse Stock Split determined by the Board of Directors.

Accounting Matters

The amendment to our Restated Certificate of Incorporation, as amended, will not affect the par value of our common stock per Share, which will remain $0.02. As a result, as of the effective time of the Reverse Stock Split, the stated capital attributable to common stock and the additional paid-in capital account on our balance sheet will not change due to the Reverse Stock Split. Reported per Share net income or loss will be higher because there will be fewer Shares outstanding.

No Appraisal Rights

Stockholders will not have dissenters or appraisal rights under New York corporate law or under the Company s Restated Certificate of Incorporation in connection with the proposed Reverse Stock Split.

Federal Income Tax Consequences of the Reverse Stock Split

Unless otherwise specifically indicated herein, this summary addresses the tax consequences only to a beneficial owner of our Shares that is (i) a citizen or individual resident of the United States, (ii) a corporation (or any other entity or arrangement treated as a corporation for U.S. federal income tax purposes) organized in or under the laws of the United States or any state thereof or the District of Columbia, (iii) a trust if (1) a U.S. court is able to exercise primary supervision over administration of such trust and one or more U.S. persons have the authority to control all substantial decisions of the trust or (2) it has a valid election in place to be treated as a U.S. person or (iv) an estate whose income is subject to U.S. federal income taxation regardless of its source (a U.S. holder). This summary does not address all of the tax consequences that may be relevant to a holder based

41

Table of Contents

on the holder s personal circumstances or particular situation, such as (i) the tax consequences to persons that may be subject to special treatment under U.S. federal income tax law, such as banks, insurance companies, thrift institutions, regulated investment companies, real estate investment trusts, tax-exempt organizations, U.S. expatriates, traders in securities that elect to mark to market and dealers in securities or currencies, (ii) persons that hold our common stock as part of a position in a straddle or as part of a hedging, conversion or other integrated investment transaction for U.S federal income tax purposes or (iii) persons that do not hold our common stock as capital assets (generally, property held for investment). This summary does not address the U.S. federal alternative minimum tax consequences or state, local or foreign tax consequences of the Reverse Stock Split.

If a partnership (or other entity classified as a partnership for U.S. federal income tax purposes) is the beneficial owner of our common stock, the U.S. federal income tax treatment of a partner in the partnership will generally depend on the status of the partner and the activities of the partnership. Partnerships that hold our common stock, and partners in such partnerships, should consult their own tax advisors regarding the U.S. federal income tax consequences of the Reverse Stock Split.

The following discussion summarizing certain federal income tax consequences of the Reverse Stock Split is based on the Code of 1986, as amended (the Code), the applicable Treasury Regulations promulgated thereunder, judicial authority and current administrative rulings and practices in effect on the date this Proxy Statement was first mailed to stockholders. This discussion is for general information only and does not discuss consequences that may apply to special classes of taxpayers (e.g., non-resident aliens, broker-dealers, or insurance companies). The following discussion has not been prepared by tax counsel, but has been reviewed by management and is believed to be accurate as of the date of this Proxy Statement. Our views regarding the tax consequences of the Reverse Stock Split are not binding upon the Internal Revenue Service or the courts, and there can be no assurance that the Internal Revenue Service (IRS) or the courts would accept the positions expressed herein.

PLEASE CONSULT YOUR OWN TAX ADVISOR REGARDING THE U.S. FEDERAL, STATE, LOCAL AND FOREIGN INCOME, ALTERNATIVE MINIMUM AND OTHER TAX CONSEQUENCES OF THE REVERSE STOCK SPLIT IN YOUR PARTICULAR CIRCUMSTANCES UNDER THE INTERNAL REVENUE CODE AND THE LAWS OF ANY OTHER TAXING JURISDICTION.

U.S. Holders

The Reverse Stock Split is intended to be treated as a recapitalization for U.S. federal income tax purposes pursuant to Section 368(a)(1)(E) of the Internal Revenue Code. Therefore, a U.S. holder generally will not recognize gain or loss on the Reverse Stock Split as a result of the receipt of the common stock following the effective date of the Reverse Stock Split, solely in exchange for the common stock held prior to the Reverse Stock Split, except to the extent of cash, if any, received in lieu of a fractional Share interest in the post-Reverse Stock Split Shares. The aggregate tax basis of the post-Reverse Stock Split Shares received will be equal to the aggregate tax basis of the pre-Reverse Stock Split Shares exchanged therefor (excluding any portion of the holder s basis allocated to fractional Shares), and the holding period of the post-Reverse Stock Split Shares received will include the holding period of the pre-Reverse Stock Split Shares exchanged. A holder of the pre-Reverse Stock Split Shares who receives cash in lieu of a fractional Share will generally recognize gain or loss equal to the difference between the portion of the tax basis of the pre-Reverse Stock Split Shares allocated to the fractional Share interest and the cash received. Such gain or loss will be a capital gain or loss and will be short term if the pre-Reverse Stock Split Shares were held for one year or less and long term if such Shares were held more than one year. No gain or loss will be recognized by us as a result of the Reverse Stock Split.

Information Reporting and Backup Withholding

In general, information reporting requirements may apply to the receipt of cash in lieu of fractional Shares by U.S. holders that are not exempt recipients (such as corporations). A backup withholding tax, currently at a rate of [   ]%, may apply to such payments if the U.S. holder (i) fails to provide to us or our distribution agent a

Table of Contents

taxpayer identification number, (ii) furnishes an incorrect taxpayer identification number, (iii) is notified by the IRS that it has failed to properly report payments of interest and dividends, or (iv) under certain circumstances, fails to certify, under penalty of perjury, that it has furnished a correct taxpayer identification number and has not been notified by the IRS that it is subject to backup withholding.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules may be refunded or credited against a U.S. holder s U.S. federal income tax liability, provided that the required information is timely provided to the IRS.

Non-U.S. Holders

The following is a general discussion of the material U.S. federal income tax consequences to Non-U.S. Holders of common stock in connection with the Reverse Stock Split. A Non-U.S. Holder is an individual, corporation, trust or estate that is a beneficial owner of common stock, holds such stock as a capital asset and is not a U.S. holder.

For purposes of the discussion below, gain on the sale of fractional Shares in respect of the Reverse Stock Split will be considered U.S. trade or business income to a Non-U.S. Holder if such dividends or gains are:

- effectively connected with the Non-U.S. Holder s conduct of a U.S trade or business; or
- in the case of a treaty resident, attributable to a U.S. permanent establishment (or in the case of an individual, a fixed base) maintained by the Non-U.S. Holder in the United States.

Generally, U.S. trade or business income is subject to U.S. federal income tax on a net income basis at regular graduated U.S. federal income tax rates. Moreover, U.S. trade or business income received by a Non-U.S. Holder that is a corporation may, under specific circumstances, be subject to an additional tax the branch profits tax at a 30% rate (or such lower rate as may be specified by an applicable income tax treaty).

Gain realized by a Non-U.S. Holder on the receipt of cash in lieu of fractional Shares generally will not be subject to U.S. federal income tax or withholding, unless:

- the gain is U.S. trade or business income;
- subject to certain exceptions, the Non-U.S. Holder is an individual who holds common stock as a capital asset, is present in the United States for 183 days or more in the taxable year of the share distribution and meets certain other requirements; or
- The Company is or has been a U.S. real property holding corporation for federal income tax purposes at any time during the shorter of the five-year period ending on the date of the share distribution and the Non-U.S. Holder s holding period in the common stock, and the Non-U.S. Holder does not fall within a *de minimis* exemption.

Gain described in the first bullet point above will be subject to U.S. federal income tax on a net income basis at the regular graduated U.S. federal income tax rates in much the same manner as if such holder were a resident of the United States. A Non-U.S. holder that is a corporation also may be subject to an additional branch profits tax equal to 30% (or such lower rate specified by an applicable income tax treaty) of its effectively connected earnings and profits for the taxable year, as adjusted for certain items. Gain described in the second bullet point above will be subject to U.S. federal income tax at a flat 30% rate (or such lower rate specified by an applicable income tax treaty), but may be offset by U.S. source capital losses from the same taxable year (even though the individual is not considered a resident of the United States), provided that the non-U.S. holder has timely filed U.S. federal income tax returns with respect to such losses.

We believe that we have not been and are not currently a U.S. real property holding corporation.

Table of Contents

THIS SUMMARY IS PROVIDED FOR GENERAL INFORMATION ONLY AND DOES NOT PURPORT TO ADDRESS ALL ASPECTS OF THE POSSIBLE FEDERAL INCOME TAX CONSEQUENCES OF THE REVERSE STOCK SPLIT AND IS NOT INTENDED AS TAX ADVICE TO ANY PERSON. IN PARTICULAR, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THIS SUMMARY ASSUMES THAT OUR SHARES ARE HELD AS CAPITAL ASSETS AS DEFINED IN THE CODE, AND DOES NOT CONSIDER THE FEDERAL INCOME TAX CONSEQUENCES TO OUR STOCKHOLDERS IN LIGHT OF THEIR INDIVIDUAL INVESTMENT CIRCUMSTANCES OR TO HOLDERS WHO MAY BE SUBJECT TO SPECIAL TREATMENT UNDER THE FEDERAL INCOME TAX LAWS (SUCH AS DEALERS IN SECURITIES, INSURANCE COMPANIES, FOREIGN INDIVIDUALS AND ENTITIES, FINANCIAL INSTITUTIONS AND TAX EXEMPT ENTITIES). IN ADDITION, THIS SUMMARY DOES NOT ADDRESS ANY CONSEQUENCES OF THE REVERSE STOCK SPLIT UNDER ANY STATE, LOCAL OR FOREIGN TAX LAWS. THE STATE AND LOCAL TAX CONSEQUENCES OF THE REVERSE STOCK SPLIT MAY VARY AS TO EACH STOCKHOLDER DEPENDING ON THE STATE IN WHICH SUCH STOCKHOLDER RESIDES. AS A RESULT, IT IS THE RESPONSIBILITY OF EACH STOCKHOLDER TO OBTAIN AND RELY ON ADVICE FROM HIS, HER OR ITS TAX ADVISOR AS TO, BUT NOT LIMITED TO, THE FOLLOWING: (A) THE EFFECT ON HIS, HER OR ITS TAX SITUATION OF THE REVERSE STOCK SPLIT, INCLUDING, BUT NOT LIMITED TO, THE APPLICATION AND EFFECT OF STATE, LOCAL AND FOREIGN INCOME AND OTHER TAX LAWS; (B) THE EFFECT OF POSSIBLE FUTURE LEGISLATION OR REGULATIONS; AND (C) THE REPORTING OF INFORMATION REQUIRED IN CONNECTION WITH THE REVERSE STOCK SPLIT ON HIS, HER OR ITS OWN TAX RETURNS. IT WILL BE THE RESPONSIBILITY OF EACH STOCKHOLDER TO PREPARE AND FILE ALL APPROPRIATE FEDERAL, STATE AND LOCAL TAX RETURNS.

Required Vote

The approval of the Reverse Stock Split requires the affirmative vote of a majority of the outstanding Shares entitled to vote at the Special Meeting. Abstentions and Broker Non-Votes will have the effect of a vote against this proposal.

THE BOARD BELIEVES THAT A VOTE FOR PROPOSAL II TO APPROVE THE REVERSE STOCK SPLIT AS DESCRIBED ABOVE IS IN THE BEST INTERESTS OF OUR STOCKHOLDERS AND RECOMMENDS A VOTE FOR PROPOSAL II.

PROPOSAL III AUTHORIZATION TO SELL SHARES OF COMMON STOCK AT A PRICE OR PRICES BELOW THE COMPANY S THEN CURRENT NET ASSET VALUE PER SHARE IN ONE OR MORE OFFERINGS

If our stockholders approve Proposal I, as well as all other Proposals herein, we intend to effectuate the Reincorporation Transaction, make the BDC Election and undertake the Proposed Offering. Under the 1940 Act, a BDC may not sell shares of its common stock at a price below the then current net asset value per share of such stock (NAV), exclusive of sales compensation, unless its stockholders approve such a sale and the Company s Board of Directors make certain determinations. It is not possible to predict whether our BDC Shares will trade at a price above or below their NAV on the date we complete the Proposed Offering. **We will not sell any BDC Shares pursuant to this Proposal III UNLESS our stockholders approve this Proposal III and each of the other proposals set forth herein other than Proposal V.**

We are seeking the authorization of our stockholders so that, subsequent to effectuating the BDC Election, we may, in one or more public or private offerings, sell or otherwise issue BDC Shares at a price below our then current NAV, subject to certain conditions discussed below, including that our then current NAV is not diluted by an amount greater than 25%. Our Board of Directors believes that having the flexibility to sell our common stock below NAV in certain instances is in the best interests of stockholders. In particular, such flexibility will improve our ability to effectuate the BDC Election and undertake the Proposed Offering promptly thereafter, as

Table of Contents

discussed in Proposal I. Subsequent to effectuating the BDC Election, flexibility to sell our common stock below NAV will provide us with better access to the capital markets as attractive investment opportunities arise, and improve our ability to grow over time and pay dividends to stockholders. Generally, common stock offerings by BDCs are priced based on the market price of the currently outstanding Shares, less a small discount of approximately 5% (which may be higher or lower depending on market conditions). Accordingly, even when BDC Shares trade at a market price below NAV, this Proposal III would permit the Company to offer and sell shares of its common stock in accordance with pricing standards that market conditions generally require, subject to the conditions described below in connection with any offering undertaken pursuant to this Proposal III. If approved, as required under the 1940 Act, the authorization would be effective for securities sold during a period beginning on the date of such stockholder approval and expiring on the earlier of the anniversary of the date of this Special Meeting or the date of the Company s 2015 Annual Meeting of Stockholders.

After the Proposed Offering, the Company has no immediate plans to sell BDC Shares below NAV. However, it is seeking stockholder approval for multiple such offerings in order to maintain access to the markets if the Company determines it should sell BDC Shares below NAV. These sales typically must be undertaken quickly. The final terms of any such sale will be determined by the Board of Directors at the time of sale. Other than the Proposed Offering, as discussed herein, it is impracticable to describe the transaction or transactions in which our Shares would be sold at a price below NAV. Instead, any transaction where the Company sells such Shares, including the nature and amount of consideration that would be received by the Company at the time of sale and the use of any such consideration, will be reviewed and approved by the Board of Directors at the time of sale. Subject to the condition that our then current NAV is not diluted by an amount greater than 25%, there will be no limit on the percentage below NAV at which shares may be sold in an offering by the Company under this Proposal III. If this Proposal III is approved, no further authorization from the stockholders will be solicited prior to any such sale in accordance with the terms of this Proposal III.

This Proxy Statement is not an offer to sell securities. Securities may not be offered or sold in the United States absent registration with the SEC or an applicable exemption from SEC registration requirements.

1940 Act Conditions for Sales Below NAV

A BDC s ability to issue shares of its common stock at a price below NAV is governed by the 1940 Act. If stockholders approve this Proposal III, the Company will only sell BDC Shares at a price below NAV if the following conditions are met:

- a majority of the Company s directors who are not interested persons of the Company as defined in the 1940 Act, and who have no financial interest in the sale, shall have approved the sale and determined that it is in the best interests of the Company and its stockholders; and

- a majority of such directors, who are not interested persons of the Company, in consultation with the underwriter or underwriters of the offering if it is to be underwritten, have determined in good faith, and as of a time immediately prior to the first solicitation by or on behalf of the Company of firm commitments to purchase such securities or immediately prior to the issuance of such securities, that the price at which such securities are to be sold is not less than a price which closely approximates the market value of those securities, less any underwriting commission or discount, which could be substantial.

Board Approval

On [ ], 2014, the Company s Board of Directors, including a majority of the non-interested directors who have no financial interest in this Proposal III, approved this Proposal III as in the best interests of the Company and its stockholders and is recommending that the Company s stockholders vote in favor of this Proposal III to offer and sell BDC Shares at prices that may be less than NAV. In evaluating this Proposal III, the

Table of Contents

Company s Board of Directors, including the non-interested directors, considered and evaluated factors including the following, as discussed more fully below:

- possible long-term benefits to the Company s stockholders; and

- possible dilution to the Company s NAV

Prior to approving this Proposal III, the Company s