

AGREE REALTY CORP  
Form S-8  
June 27, 2014

As filed with the Securities and Exchange Commission on June 27, 2014

Registration No. 333-\_\_\_\_\_

**UNITED STATES**

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM S-8

REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

Agree Realty Corporation

(Exact name of Registrant as specified in its charter)

**Maryland**  
(State or other jurisdiction of  
incorporation or organization)

**38-3148187**  
(I.R.S. Employer Identification Number.)

**31850 Northwestern Highway**

**Farmington Hills, Michigan**  
(Address of principal executive offices)

**48334**  
(Zip code)

**AGREE REALTY CORPORATION**  
**2014 OMNIBUS INCENTIVE PLAN**  
(Full title of the plan)

**Joel N. Agree**

**President and Chief Executive Officer**

**Agree Realty Corporation**

**31850 Northwestern Highway**

**Farmington Hills, Michigan 48334**

**(Name and Address of Agent for Service)**

**(248) 737-4190**

(Name, address, including zip code, and  
telephone number, including area code, of  
agent for service)

**Copy to:**

**Donald J. Kunz, Esq.**

**Honigman Miller Schwartz and Cohn  
LLP**

**2290 First National Building**

**660 Woodward Ave.**

**Detroit, Michigan 48226-3506**

**(313) 465-7454 (telephone)**

**(313) 465-7455 (facsimile)**

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

Large accelerated filer  Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company) Smaller reporting company

CALCULATION OF REGISTRATION FEE

<b>Title of securities to be registered</b>	<b>Amount to be registered(1)</b>	<b>Proposed maximum offering price per share(2)</b>	<b>Proposed maximum aggregate offering price(2)</b>	<b>Amount of registration fee</b>
Common Stock, par value \$0.0001	700,000	\$30.45	\$21,311,500.00	\$2,744.92

(1) Represents shares of common stock issuable under the Agree Realty Corporation 2014 Omnibus Incentive Plan, approved by the registrant's stockholder on May 5, 2014 (the "Plan") and, pursuant to Rule 416 under the Securities Act of 1933, as amended (the "Securities Act"), an indeterminate amount of additional shares of common stock that may become issuable under the Plan by reason of certain corporate transactions or events, including any stock dividend, stock split, reorganization or any other similar transaction that affects the stock such that an adjustment is appropriate in order to prevent dilution of the rights of participants under the Plan.

(2) Estimated solely for the purpose of calculating the registration fee pursuant to paragraphs (c) and (h) of Rule 457 under the Securities Act, on the basis of the average of the high (\$30.67) and low (\$30.22) sales price for the Common Stock of the registrant as quoted on the New York Stock Exchange on June 23, 2014, a date within five business days prior to the date of filing of this registration statement.

EXPLANATORY NOTE

This Registration Statement on Form S-8 is being filed by Agree Realty Corporation, a Maryland corporation (the “Registrant”), relating to 700,000 shares of its common stock, par value \$0.0001 (“Common Stock”), which have been reserved for issuance under the Plan to eligible employees, directors and consultants of the Registrant, and its affiliates.

PART I

**INFORMATION REQUIRED IN PROSPECTUS**

The documents containing the information required in this Part I will be delivered to the participants in the Plan, as specified in Rule 428(b)(1) of the Securities Act. Such documents are not required to be filed with the Securities and Exchange Commission (the “Commission”) as part of this Registration Statement.

PART II

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

Item 3. Incorporation of Documents By Reference.

The following documents filed with the Commission by the Registrant are hereby incorporated by reference in this Registration Statement:

(a) the Registrant’s Annual Report on Form 10-K for the year ended December 31, 2013, filed with the Commission on March 7, 2014;

Edgar Filing: AGREE REALTY CORP - Form S-8

(b) the Registrant's Quarterly Report on Form 10-Q for the quarter ending March 31, 2014, filed with the Commission on May 2, 2014;

(c) the Registrant's Current Report on Form 8-K filed with the Commission on May 6, 2014; and

(d) the description of Registrant's Common Stock, par value \$0.0001 per share, set forth in the Registrant's Form 8-A filed March 18, 1994.

In addition, all documents the Registrant subsequently files pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the filing of this Registration Statement and prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities covered hereby then remaining unsold are incorporated by reference in this Registration Statement and are a part hereof from the date of filing of such documents.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein, or in any subsequently filed document, which also is or is deemed to be incorporated by reference herein, modifies or supersedes such prior statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute part of this Registration Statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Maryland General Corporation Law (“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 established by a final judgment and which is material to the cause of action.

The Registrant’s charter contains such a provision that eliminates directors’ and officers’ liability to the maximum extent permitted by Maryland law. These limitations of liability do not apply to liabilities arising under the federal securities laws and do not generally affect the availability of equitable remedies such as injunctive relief or rescission.

The Registrant’s officers and directors are and will be indemnified under Maryland law and the Registrant’s articles of incorporation, as amended, against certain liabilities. The Registrant’s charter requires it to indemnify its directors and officers to the fullest extent permitted from time to time by the laws of the State of Maryland.

Maryland law requires a corporation (unless its charter provides otherwise, which the Registrant’s charter does not) to indemnify a director or officer who has been successful in the defense of any proceeding to which he or she is made, or threatened to be made, a party by reason of his or her service in that capacity. Maryland law 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 (1) was committed in bad faith or (2) 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.

However, under Maryland law, a Maryland corporation may not indemnify for an adverse judgment in a suit by or in the right of the corporation or for a judgment of liability on the basis of that personal benefit was improperly received, unless in either case a court orders indemnification and then only for expenses. In addition, Maryland law permits a corporation to advance reasonable expenses to a director or officer upon the corporation’s 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 corporation; and  
a written undertaking by him or her on his or her behalf to repay the amount paid or reimbursed by the corporation if it is ultimately determined that the standard of conduct was not met.

The Registrant maintains liability insurance for each director and officer for certain losses arising from claims or charges made against them while acting in their capacities as the Registrant's directors or officers.

Insofar as the foregoing provisions permit indemnification of directors, executive officers or persons controlling the Registrant for liability arising under the Securities Act, the Registrant has been informed that, in the opinion of the SEC, this indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Item 7. Exemption from Registration Claimed.

Not applicable.

**Item 8. Exhibits.**

<u>Exhibit No.</u>	<u>Description</u>
4.1	Articles of Incorporation of the Registrant, including all amendments and articles supplementary thereto, (incorporated by reference to Exhibit 3.1 to the Registrant's Quarterly Report on Form 10-Q (No. 001-12928) for the quarter ended June 30, 2013)
4.2	Bylaws of the Registrant (incorporated by reference to Exhibit 3.2 to the Registrant's Annual Report on Form 8-K (No. 001-12928) filed on May 9, 2013)
4.3	Rights Agreement, dated as of December 7, 1998, by and between Agree Realty Corporation, a Maryland corporation, and Computershare Trust Registrant, N.A., f/k/a EquiServe Trust Company, N.A., a national banking association, as successor rights agent to BankBoston, N.A., a national banking association (incorporated by reference to Exhibit 4.1 to the Registrant's Registration Statement on Form S-3/A (No. 333-161520) filed on November 13, 2009)
4.4	Second Amendment to Rights Agreement, dated as of December 8, 2008, by and between Agree Realty Corporation, a Maryland corporation, and Computershare Trust Company, N.A., f/k/a EquiServe Trust Company, N.A., a national banking association, as successor rights agent to BankBoston, N.A., a national banking association (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K (No. 001-12928) filed on December 9, 2008)
4.5	Amended and Restated Registration Rights Agreement, dated July 8, 1994 by and among the Registrant, Richard Agree, Edward Rosenberg and Joel Weiner (incorporated by reference to Exhibit 10.2 to the Registrant's Annual Report on Form 10-K (No. 001-12928) for the year ended December 31, 1994)
5.1*	Opinion of Honigman Miller Schwartz and Cohn LLP
10.1	Agree Realty Corporation 2014 Omnibus Incentive Plan, incorporated by reference to Appendix A to the Registrant's Proxy Statement filed on Schedule 14A with the Commission on April 4, 2014
23.1*	Consent of Grant Thornton LLP
23.2*	Consent of Baker Tilly Virchow Krause, LLP



Edgar Filing: AGREE REALTY CORP - Form S-8

- 23.3\* Consent of Honigman Miller Schwartz and Cohn LLP (included in its opinion filed as Exhibit 5.1 to this Registration Statement)
- 24.1\* Power of Attorney (included after the signature of the Registrant contained on Signature Page of this Registration Statement)

\* Filed herewith

Item 9. Undertakings.

(a) The Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement;

(iii) to include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

*provided, however*, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement; and

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offer thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The Registrant hereby undertakes that, for the purpose of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating

to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Farmington Hills, State of Michigan, on June 27, 2014.

**AGREE REALTY CORPORATION**

By: /s/ Joel N. Agree  
Joel N. Agree  
President and Chief Executive Officer

**POWER OF ATTORNEY**

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Joel N. Agree and Brian R. Dickman as his true and lawful attorneys-in-fact and agents with full power of substitution, severally, for him in any and all capacities, to sign the Registration Statement on Form S-8 of Agree Realty Corporation, and any or all amendments (including post-effective amendments thereto), and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully for all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or his or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement on Form S-8 has been signed by the following persons in the capacities and on the dates indicated.

<u>SIGNATURE</u>	<u>TITLE</u>	<u>DATE</u>
/s/ Richard Agree Richard Agree	Executive Chairman of the Board and Director	June 27, 2014
/s/ Joel N. Agree	President, Chief Executive Officer	June 27, 2014

Edgar Filing: AGREE REALTY CORP - Form S-8

Joel N. Agree and Director

/s/ Brian R. Dickman Chief Financial Officer June 27, 2014  
Brian R. Dickman (Principal Financial and Accounting Officer)

/s/ Farris G. Kalil Director June 27, 2014  
Farris G. Kalil

/s/ Gene Silverman Director June 27, 2014  
Gene Silverman

/s/ John Rakolta, Jr. Director June 27, 2014  
John Rakolta, Jr.

/s/ Michael Rotchford Director June 27, 2014  
Michael Rotchford

[Signature Page to Registration Statement on Form S-8]

/s/ William S. Rubenfaer Director June 27, 2014  
William S. Rubenfaer

/s/ Leon M. Schurgin Director June 27, 2014  
Leon M. Schurgin

[Signature Page to Registration Statement on Form S-8]

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
4.1	Articles of Incorporation of the Registrant, including all amendments and articles supplementary thereto, (incorporated by reference to Exhibit 3.1 to the Registrant's Quarterly Report on Form 10-Q (No. 001-12928) for the quarter ended June 30, 2013)
4.2	Bylaws of the Registrant (incorporated by reference to Exhibit 3.2 to the Registrant's Annual Report on Form 8-K (No. 001-12928) filed on May 9, 2013)
4.3	Rights Agreement, dated as of December 7, 1998, by and between Agree Realty Corporation, a Maryland corporation, and Computershare Trust Registrant, N.A., f/k/a EquiServe Trust Company, N.A., a national banking association, as successor rights agent to BankBoston, N.A., a national banking association (incorporated by reference to Exhibit 4.1 to the Registrant's Registration Statement on Form S-3/A (No. 333-161520) filed on November 13, 2009)
4.4	Second Amendment to Rights Agreement, dated as of December 8, 2008, by and between Agree Realty Corporation, a Maryland corporation, and Computershare Trust Company, N.A., f/k/a EquiServe Trust Company, N.A., a national banking association, as successor rights agent to BankBoston, N.A., a national banking association (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K (No. 001-12928) filed on December 9, 2008)
4.5	Amended and Restated Registration Rights Agreement, dated July 8, 1994 by and among the Registrant, Richard Agree, Edward Rosenberg and Joel Weiner (incorporated by reference to Exhibit 10.2 to the Registrant's Annual Report on Form 10-K (No. 001-12928) for the year ended December 31, 1994)
5.1*	Opinion of Honigman Miller Schwartz and Cohn LLP
10.1	Agree Realty Corporation 2014 Omnibus Incentive Plan, incorporated by reference to Appendix A to the Registrant's Proxy Statement filed on Schedule 14A with the Commission on April 4, 2014
23.1*	Consent of Grant Thornton LLP
23.2*	Consent of Baker Tilly Virchow Krause, LLP
23.3*	Consent of Honigman Miller Schwartz and Cohn LLP (included in its opinion filed as Exhibit 5.1 to this Registration Statement)
24.1*	Power of Attorney (included after the signature of the Registrant contained on Signature Page of this Registration Statement)

\* Filed herewith



">56% 8%

Higher education (HE)

126 10% 132 10% 5%

Public sector (PS)

101 8% 91 7% (10)%

Software & processing solutions

914 70% 965 72% 6%

Availability services (AS)

388 30% 370 28% (5)% \$1,302 100% \$1,335 100% 3%

**Costs and Expenses**

Cost of sales and direct operating

\$643 49% \$691 52% 7%

Sales, marketing and administration

277 21% 276 21% %

Product development

79 6% 75 6% (5)%

Depreciation and amortization

67 5% 69 5% 3%

Amortization of acquisition- related intangible assets

112 9% 124 9% 11% \$1,178 90% \$1,235 93% 5%

**Income from Operations**

Financial systems<sup>(1)</sup>

\$121 18% \$119 16% (2)%

Higher education<sup>(1)</sup>

24 19% 27 20% 13%

Edgar Filing: AGREE REALTY CORP - Form S-8

Public sector<sup>(1)</sup>

18 18% 17 19% (6)%

Software & processing solutions<sup>(1)</sup>

163 18% 163 17% %

Availability services<sup>(1)</sup>

101 26% 89 24% (12)%

Corporate administration

(12) (1)% (13) (1)% 8%

Amortization of acquisition- related intangible assets

(112) (9)% (124) (9)% 11%

Stock compensation expense

(7) (1)% (7) (1)% %

Other items<sup>(2)</sup>

(9) (1)% (8) (1)% (11)% \$124 10% \$100 7% (19)%

**Table of Contents**

(1) Percent of revenue is calculated as a percent of revenue from FS, HE, PS, software and processing solutions, and AS, respectively.

(2) Other items include certain purchase accounting adjustments and management fees paid to the Sponsors, partially offset by capitalized software development costs.

The following table sets forth, for the periods indicated, certain supplemental revenue data, the relative percentage that those amounts represent to total revenue and the percentage change in those amounts from period to period.

(in millions)	Three Months Ended March 31, 2008		Three Months Ended March 31, 2009		Percent Increase (Decrease) 2009 vs. 2008
	(unaudited)	percent of revenue	(unaudited)	percent of revenue	
<b>Financial Systems</b>					
Services	\$ 615	47%	\$ 698	52%	13%
License and resale fees	34	3%	26	2%	(24)%
Total products and services	649	50%	724	54%	12%
Reimbursed expenses	38	3%	18	1%	(53)%
	\$ 687	53%	\$ 742	56%	8%
<b>Higher Education</b>					
Services	\$ 110	8%	\$ 114	9%	4%
License and resale fees	14	1%	16	1%	14%
Total products and services	124	10%	130	10%	5%
Reimbursed expenses	2	%	2	%	%
	\$ 126	10%	\$ 132	10%	5%
<b>Public Sector</b>					
Services	\$ 89	7%	\$ 69	5%	(22)%
License and resale fees	11	1%	21	2%	91%
Total products and services	100	8%	90	7%	(10)%
Reimbursed expenses	1	%	1	%	%
	\$ 101	8%	\$ 91	7%	(10)%
<b>Software &amp; Processing Solutions</b>					
Services	\$ 814	63%	\$ 881	66%	8%
License and resale fees	59	5%	63	5%	7%
Total products and services	873	67%	944	71%	8%
Reimbursed expenses	41	3%	21	2%	(49)%
	\$ 914	70%	\$ 965	72%	6%
<b>Availability Services</b>					
Services	\$ 384	29%	\$ 366	27%	(5)%
License and resale fees		%	1	%	%

Edgar Filing: AGREE REALTY CORP - Form S-8

Total products and services	384	29%	367	27%	(4)%
Reimbursed expenses	4	%	3	%	(25)%
	\$ 388	30%	\$ 370	28%	(5)%
<b>Total Revenue</b>					
Services	\$ 1,198	92%	\$ 1,247	93%	4%
License and resale fees	59	5%	64	5%	8%
Total products and services	1,257	97%	1,311	98%	4%
Reimbursed expenses	45	3%	24	2%	(47)%
	\$ 1,302	100%	\$ 1,335	100%	3%

## **Table of Contents**

### **Income from Operations:**

Our total operating margin was 7% for the three months ended March 31, 2009, compared to 10% for the three months ended March 31, 2008 primarily due to the decline in operating margins at AS and FS.

#### *Financial Systems:*

The FS operating margin was 16% and 18% for the three months ended March 31, 2009 and 2008, respectively. The operating margin decline is primarily related to a \$9 million decrease in software license fees, the impact of the increase in revenue at one of our trading systems businesses which has an inherently lower margin and by the impact of recently acquired businesses which tend to have lower operating margins at the outset and improve over a number of years.

#### *Higher Education:*

The HE operating margin was 20% and 19% for the three months ended March 31, 2009 and 2008, respectively. The operating margin increase is due primarily to a \$1 million increase in software license fees.

#### *Public Sector:*

The PS operating margin was 19% and 18% for the three months ended March 31, 2009 and 2008, respectively, due primarily to improvement in the U.K. business, with the impact of foreign exchange movements in revenue and expenses largely offsetting each other in our U.K.-based business.

#### *Availability Services:*

The AS operating margin was 24% and 26% for the three months ended March 31, 2009 and 2008, respectively. The operating margin decline and the decrease of \$12 million are primarily due to currency movements and facility expansions in Europe and North America, which increased the fixed cost base in advance of anticipated revenue growth.

### **Revenue:**

Total revenue increased \$33 million or 2.5% for the three months ended March 31, 2009 compared to the first quarter of 2008. On a constant currency basis, organic revenue growth was 2% in the first quarter of 2009 compared to the prior year period. Organic revenue is defined as revenue for businesses owned for at least one year and further adjusted for the effects of businesses sold in the previous twelve months. Including the impact of foreign exchange movements, most notably the strengthening of the U.S. dollar, organic revenue declined 3% in the quarter compared to the first quarter of 2008, primarily because of a decline in professional services revenue across all of our segments except AS. Approximately 5% of organic revenue growth in the quarter was attributed to one of our broker/dealer businesses.

#### *Financial Systems:*

FS revenue increased \$55 million or 8% in the first quarter of 2009 from the prior year period. On a constant currency basis, organic revenue grew 4% in the quarter. Including the impact of foreign exchange movements, organic revenue grew just under 1% in the quarter compared to the first quarter of 2008. Approximately 9% of organic revenue growth was attributed to one of our broker/dealer businesses. The broker/dealer revenue has remained uncharacteristically high and is a function of market volatility and customer mix; while this revenue increased year over year, it declined sequentially from the fourth quarter of 2008. We expect this revenue to decline further but are unable to predict the timing. Professional services revenue decreased \$35 million or 22%. Revenue from license and resale fees included software license revenue of \$21 million and \$30 million in the three months ended March 31, 2009 and 2008, respectively.

## **Table of Contents**

### *Higher Education:*

HE revenue increased \$6 million or 5% for the three months ended March 31, 2009 compared to the corresponding period in 2008 due entirely to organic revenue growth. HE services revenue increased \$4 million, primarily due to revenue associated with a customer conference held in the first quarter of 2009 that was held in the second quarter of 2008 partly offset by a decrease in professional services. Revenue from license and resale fees included software license revenue of \$5 million in the three months ended March 31, 2009, an increase of \$1 million from the prior year period.

### *Public Sector:*

PS revenue decreased \$10 million or 10% for the three months ended March 31, 2009 compared to the corresponding period in 2008, all of which was organic. On a constant currency basis, organic revenue increased 2%. Revenue from license and resale fees included software license revenue of \$5 million in both the three months ended March 31, 2009 and 2008.

### *Availability Services:*

AS revenue decreased \$18 million or 5% in 2009. On a constant currency basis, organic revenue grew 1% in the quarter. Including the impact of foreign exchange movements, organic revenue declined 7%. In North America, revenue grew 1.5% overall, but decreased 1% organically where decreases in basic and advanced recovery services exceeded growth in managed services. Revenue in Europe decreased 22.5%, but grew 7% on a constant currency basis.

## **Costs and Expenses:**

Cost of sales and direct operating expenses as a percentage of total revenue was 52% and 49% in the three-month periods ended March 31, 2009 and 2008, respectively, largely the result of the higher volumes of the broker/dealer business previously mentioned. Also impacting the period were increased costs from acquired businesses, net of a business sold in 2008.

Sales, marketing and administration expenses as a percentage of total revenue was 21% in each of the three-month periods ended March 31, 2009 and 2008. Organic decreases in sales, marketing and administration expenses, most notably decreases in FS and PS employment-related expenses, were mostly offset by increases from acquired businesses.

Because AS product development costs are insignificant, it is more meaningful to measure product development expenses as a percentage of revenue from software and processing solutions. For the three months ended March 31, 2009 and 2008, product development costs were 8% and 9% of revenue from software and processing solutions, respectively.

Depreciation and amortization as a percentage of total revenue was 5% in each of the three-month periods ended March 31, 2009 and 2008. The \$2 million increase in 2009 was due primarily to capital expenditures supporting FS from the FS businesses acquired in 2008.

Amortization of acquisition-related intangible assets as a percentage of total revenue was 9% in each of the three-month periods ended March 31, 2009 and 2008. The \$12 million increase in 2009 was due to shortening the remaining useful lives of certain intangible assets to reflect revisions to estimated customer attrition rates as well as acquisitions made in 2008.

Interest expense was \$151 million and \$148 million for the three months ended March 31, 2009 and 2008, respectively. The increase in interest expense was due primarily to increased borrowings from the issuance of \$500 million senior notes due 2015, a \$500 million increase in the term loan and additional borrowings under our revolving credit facility, partially offset by interest rate decreases.

**Table of Contents**

Other income was \$7 million for the three months ended March 31, 2009 compared to other expense of \$21 million for the three months ended March 31, 2008. The change is primarily attributable to \$7 million of foreign currency translation gains primarily related to our Euro denominated term loan in the three months ended March 31, 2009 compared to \$16 million of translation losses in the same period in 2008.

The effective income tax rates in the three months ended March 31, 2009 and 2008 were 21% and 45%, respectively. The rate in the first quarter of 2009 reflects limitations on our ability to utilize certain foreign tax credits.

**Fiscal Years Ended December 31, 2006, 2007 and 2008**

The following table sets forth, for the periods indicated, certain amounts included in our Consolidated Statements of Operations and the relative percentage that those amounts represent to consolidated revenue (unless otherwise indicated).

(in millions)	2006		2007		2008	
		% of revenue		% of revenue		% of revenue
<b>Revenue</b>						
Financial systems (FS)	\$ 2,072	48%	\$ 2,500	51%	\$ 3,078	55%
Higher education (HE)	498	12%	543	11%	540	10%
Public sector systems (PS)	395	9%	410	8%	411	7%
Software & processing solutions	2,965	69%	3,453	70%	4,029	72%
Availability services (AS)	1,358	31%	1,448	30%	1,567	28%
	\$ 4,323	100%	\$ 4,901	100%	\$ 5,596	100%
<b>Costs and Expenses</b>						
Cost of sales and direct operating	\$ 1,980	46%	\$ 2,268	46%	\$ 2,744	49%
Sales, marketing and administration	915	21%	1,042	21%	1,151	21%
Product development	255	6%	271	6%	308	6%
Depreciation and amortization	238	6%	251	5%	278	5%
Amortization of acquisition-related intangible assets	399	9%	438	9%	515	9%
Goodwill impairment charge and merger costs	4	%		%	130	2%
	\$ 3,791	88%	\$ 4,270	87%	\$ 5,126	92%
<b>Income from operations</b>						
Financial systems <sup>(1)</sup>	\$ 414	20%	\$ 525	21%	\$ 608	20%
Higher education <sup>(1)</sup>	118	24%	143	26%	130	24%
Public sector systems <sup>(1)</sup>	79	20%	84	20%	79	19%
Software & processing solutions <sup>(1)</sup>	611	21%	752	22%	817	20%
Availability services <sup>(1)</sup>	412	30%	428	30%	443	28%
Corporate administration	(46)	(1)%	(55)	(1)%	(51)	(1)%
Amortization of acquisition-related intangible assets	(399)	(9)%	(438)	(9)%	(515)	(9)%
Goodwill impairment charge		%		%	(128)	(2)%
Stock Compensation expense	(38)	(1)%	(32)	(1)%	(35)	(1)%
Merger costs and other items <sup>(2)</sup>	(8)	%	(24)	%	(61)	(1)%
Income from operations	\$ 532	12%	\$ 631	13%	\$ 470	8%

## Edgar Filing: AGREE REALTY CORP - Form S-8

- (1) Percent of revenue is calculated as a percent of revenue from FS, HE, PS, Software & Processing Solutions, and AS, respectively.
  
- (2) Merger costs and other items include merger costs, management fees paid to the Sponsors, purchase accounting adjustments, including in 2008 certain acquisition-related compensation expense, and, in 2007, an unfavorable arbitration award related to a customer dispute, partially offset in each year by capitalized software development costs.



**Table of Contents**

The following table sets forth, for the periods indicated, certain supplemental revenue data and the relative percentage that those amounts represent to total revenue.

(in millions)	2006		2007		2008	
		% of revenue		% of revenue		% of revenue
<b>Financial Systems</b>						
Services	\$ 1,792	41%	\$ 2,155	44%	\$ 2,737	49%
License and resale fees	196	5%	232	5%	229	4%
Total products and services	1,988	46%	2,387	49%	2,966	53%
Reimbursed expenses	84	2%	113	2%	112	2%
	\$ 2,072	48%	\$ 2,500	51%	\$ 3,078	55%
<b>Higher Education</b>						
Services	\$ 409	9%	\$ 435	9%	\$ 453	8%
License and resale fees	80	2%	98	2%	77	1%
Total products and services	489	11%	533	11%	530	9%
Reimbursed expenses	9	%	10	%	10	%
	\$ 498	12%	\$ 543	11%	\$ 540	10%
<b>Public Sector Systems</b>						
Services	\$ 329	8%	\$ 348	7%	\$ 349	6%
License and resale fees	62	1%	58	1%	57	1%
Total products and services	391	9%	406	8%	406	7%
Reimbursed expenses	4	%	4	%	5	%
	\$ 395	9%	\$ 410	8%	\$ 411	7%
<b>Software &amp; Processing Solutions</b>						
Services	\$ 2,530	59%	\$ 2,938	60%	\$ 3,539	63%
License and resale fees	338	8%	388	8%	363	6%
Total products and services	2,868	66%	3,326	68%	3,902	70%
Reimbursed expenses	97	2%	127	3%	127	2%
	\$ 2,965	69%	\$ 3,453	70%	\$ 4,029	72%
<b>Availability Services</b>						
Services	\$ 1,340	31%	\$ 1,426	29%	\$ 1,544	28%
License and resale fees	4	%	8	%	6	%
Total products and services	1,344	31%	1,434	29%	1,550	28%
Reimbursed expenses	14	%	14	%	17	%
	\$ 1,358	31%	\$ 1,448	30%	\$ 1,567	28%
<b>Total Revenue</b>						
Services	\$ 3,870	90%	\$ 4,364	89%	\$ 5,083	91%

Edgar Filing: AGREE REALTY CORP - Form S-8

License and resale fees	342	8%	396	8%	369	7%
Total products and services	4,212	97%	4,760	97%	5,452	97%
Reimbursed expenses	111	3%	141	3%	144	3%
	\$ 4,323	100%	\$ 4,901	100%	\$ 5,596	100%

**Table of Contents**

**Year Ended December 31, 2008 Compared to Year Ended December 31, 2007**

*Income from Operations:*

Our total operating margin decreased from 13% in 2007 to 8% in 2008 primarily due to a \$128 million goodwill impairment charge in PS, intangible asset write-offs of \$67 million and the decline in operating margins at each of our operating segments.

*Financial Systems:*

The FS operating margin was 20% for the year ended December 31, 2008, compared to 21% for the prior year period. The operating margin decline reflects the impact of the increase in revenue at one of our trading systems businesses which has an inherently lower margin, an increase in restructuring charges and an \$11 million decrease in software license revenue.

The most important factors affecting the FS operating margin are:

the level of trading volumes,

the level of IT spending and its impact on the overall demand for professional services and software license sales,

the rate and value of contract renewals, new contract signings and contract terminations,

the extent and degree of price negotiation by our customers,

the overall condition of the financial services industry and the effect of any further consolidation among financial services firms, and

the operating margins of recently acquired businesses, which tend to be lower at the outset and improve over a number of years.

*Higher Education:*

The HE operating margin was 24% for the year ended December 31, 2008 compared to 26% for the year ended December 31, 2007. The operating margin decline is due to a \$15 million decrease in software license fees.

The most important factors affecting the HE operating margin are:

the rate and value of contract renewals, new contract signings and contract terminations,

the level of IT spending and its impact on the overall demand for professional services and software license sales, and

the extent and degree of price negotiation by our customers.

*Public Sector:*

## Edgar Filing: AGREE REALTY CORP - Form S-8

The PS operating margin was 19% for the year ended December 31, 2008 compared to 20% for the year ended December 31, 2007. The operating margin decline is due primarily to the impact of significantly lower margins in the U.K. business and a \$4 million decrease in software license fees.

The most important factors affecting the PS operating margin are:

the rate and value of contract renewals, new contract signings and contract terminations,

the level of IT spending and its impact on the overall demand for professional services and software license sales, and

the extent and degree of price negotiation by our customers.

## **Table of Contents**

### *Availability Services:*

The AS operating margin was 28% for the year ended December 31, 2008 compared to 30% for the year ended December 31, 2007, primarily due to facility expansions in both North America and Europe, which increased the fixed cost base in advance of anticipated revenue growth.

The most important factors affecting the AS operating margin are:

the rate and value of contract renewals, new contract signings and contract terminations,

the timing and magnitude of equipment and facilities expenditures, and

the trend toward availability solutions utilizing more dedicated resources.

The margin rate of the AS European business is inherently lower than the margin rate of the North American business due primarily to lower economies of scale in the distinct geographic markets served. However, the differential in the margins has narrowed over the past several years because of operational improvements in Europe and the growing proportion of managed services in North America.

### *Revenue:*

Total revenue was \$5.60 billion for the year ended December 31, 2008 compared to \$4.90 billion for the year ended December 31, 2007. The increase in total revenue in 2008 is due primarily to organic revenue growth of approximately 10%, with trading volumes of one of our trading systems businesses adding \$335 million or six percentage points to the growth rate. The broker/dealer revenue has remained uncharacteristically high and is a function of market volatility and customer mix. We expect this revenue to decline at some point but are unable to predict the timing. Organic revenue is defined as revenue from businesses owned for at least one year and further adjusted for the effects of businesses sold in the previous twelve months. When assessing our financial results, we focus on growth in organic revenue because overall revenue growth is affected by the timing and magnitude of acquisitions, dispositions and by purchase accounting adjustments.

Services revenue, which is largely recurring in nature, includes revenue from availability services, processing services, software support and rentals, professional services, broker/dealer fees and hardware rentals. Services revenue increased to \$5.08 billion from \$4.36 billion, representing approximately 91% of total revenue in 2008 compared to 89% in 2007. The revenue increase of \$719 million in 2008 was due primarily to organic revenue growth of \$529 million, mostly in FS with \$333 million coming from the broker/dealer mentioned above, and the impact of acquired revenue in FS and AS.

Professional services revenue was \$961 million and \$886 million in 2008 and 2007, respectively. The \$75 million increase was due primarily to FS acquired and organic revenue.

Revenue from license and resale fees was \$369 million and \$396 million for the years ended December 31, 2008 and 2007, respectively, and includes software license revenue of \$266 million and \$293 million, respectively.

### *Financial Systems:*

FS revenue was \$3.08 billion for the year ended December 31, 2008 compared to \$2.50 billion for the year ended December 31, 2007. Organic revenue growth was approximately 18% in 2008, with trading volumes of one of our trading systems businesses adding \$335 million or 13 percentage points to the growth rate. The broker/dealer revenue has remained uncharacteristically high and is a function of market volatility and customer mix. We expect this revenue to decline at some point but are unable to predict the timing.

Professional services revenue increased \$63 million or 11%. Revenue from license and resale fees included software license revenue of \$204 million and \$214 million, respectively, in 2008 and 2007.



## **Table of Contents**

### *Higher Education:*

HE revenue was \$540 million for the year ended December 31, 2008 compared to \$543 million for the year ended December 31, 2007. Services revenue increased \$18 million, primarily from increases in software support revenue. Professional services revenue was \$146 million in 2008, an increase of \$7 million. In 2008, longer sales cycles caused software license fees and resale fees to decline by \$15 million and \$6 million, respectively. HE organic revenue decreased 1% in 2008.

### *Public Sector:*

PS revenue was \$411 million for the year ended December 31, 2008 compared to \$410 million for the year ended December 31, 2007. Excluding the impact of currency exchange rates, organic revenue increased approximately 2%. Increases in software support revenue and processing revenue were offset by a decrease in professional services. Software license fees were \$25 million in 2008, a decrease of \$4 million.

### *Availability Services:*

AS revenue was \$1.57 billion for the year ended December 31, 2008 compared to \$1.45 billion for the year ended December 31, 2007, an 8% increase. AS organic revenue increased approximately 3% in 2008. In North America, revenue grew 10% overall and 3% organically as strong growth in managed services was offset in part by a decrease in basic and advanced recovery services. Revenue from license and resale fees included software license revenue of \$6 million, an increase of \$3 million from the prior year. Revenue in Europe grew 4% overall and 9% excluding the impact of currency exchange rates.

### *Costs and Expenses:*

Cost of sales and direct operating expenses as a percentage of total revenue was 49% and 46% for the years ended December 31, 2008 and 2007, respectively, largely the result of the higher volumes of the trading systems business previously mentioned. Also impacting the period were increased costs resulting from acquired businesses, an increase in FS and HE employee-related expenses supporting increased services revenue and an increase in AS facilities costs.

The increase in sales, marketing and administration expenses of \$109 million was due primarily to increased costs resulting from acquired businesses, AS employee-related expenses and an insurance settlement in 2007, partially offset by decreases in HE and FS employee-related expenses and an unfavorable arbitration award in 2007 related to a customer dispute.

Because AS product development costs are insignificant, it is more meaningful to measure product development expense as a percentage of revenue from software and processing solutions. For the years ended December 31, 2008 and 2007, software development expenses were unchanged at 8% of revenue from software and processing solutions.

Depreciation and amortization as a percentage of total revenue was 5% for each of the years ended December 31, 2008 and 2007. The \$27 million increase in 2008 was due primarily to capital expenditures supporting FS and AS and from the AS business acquired in the third quarter of 2007.

Amortization of acquisition-related intangible assets was 9% of total revenue for each of the years ended December 31, 2008 and 2007. Amortization of acquisition-related intangible assets increased \$77 million in 2008 due primarily to the impact of recent acquisitions made by the Company and a \$57 million increase in impairment charges.

As a result of the change in the economic environment in the second half of 2008 and completion of the annual budgeting process, we reviewed our annual impairment test in December 2008 and concluded that the decline in expected future cash flows in one of our PS reporting units was sufficient to result in an impairment of goodwill of \$128 million.

## **Table of Contents**

Interest expense was \$599 million for the year ended December 31, 2008 compared to \$645 million for the year ended December 31, 2007. The decrease is primarily due to interest rate decreases and the redemption of the senior floating rate notes in 2007, partially offset by the issuance of \$500 million senior notes due 2015, a \$500 million increase in the term loan and additional borrowings under our revolving credit facility.

Other expense increased \$25 million in the year ended December 31, 2008 due primarily to increased foreign currency translation losses primarily related to our Euro denominated term loan and losses on Euros purchased in advance of and fees associated with unused alternative financing commitments for the acquisition of GL TRADE S.A. ( GL TRADE ), partially offset by \$28 million of expense in 2007 associated with the early retirement of the \$400 million of senior floating rate notes due 2013, of which \$19 million represented the retirement premium paid to noteholders.

We believe that our overall effective income tax rate is typically between 38% and 40%. The effective income tax rates for 2008 and 2007 were -19% and 5%, respectively. The rate in 2008 reflects a nondeductible goodwill impairment charge as well as an increase to our income tax reserve for tax matters for open years, some of which are currently under audit. The rate in 2007 reflects a change in the mix of taxable income in various jurisdictions and limitations on our ability to utilize certain foreign tax credits.

### **Year Ended December 31, 2007 Compared to Year Ended December 31, 2006**

#### *Income from Operations:*

Our total operating margin increased from 12% in 2006 to 13% in 2007 because of improved performance within FS and HE.

#### *Financial Systems:*

The FS operating margin was 21% for the year ended December 31, 2007 compared to 20% for the prior year period. The \$32 million increase in software license fees, improvement in the operating contribution from the growth in professional services revenue and operating leverage from other services revenue were partially offset by the impact of recently acquired businesses.

#### *Higher Education:*

The HE operating margin was 26% for the year ended December 31, 2007 compared to 24% for the year ended December 31, 2006. Income from operations increased \$25 million in 2007 primarily due to a \$15 million increase in resale fees, improved operating profit contribution from services revenue, and a \$4 million increase in software license fees.

#### *Public Sector:*

The PS operating margin was 20% for the year ended December 31, 2007, unchanged from the prior year period. Income from operations increased \$5 million in 2007 primarily due to a \$3 million increase in software license fees.

#### *Availability Services:*

The AS operating margin was 30% for the year ended December 31, 2007, unchanged from the prior year period. Income from operations increased \$16 million in 2007 primarily due to improved operating profit contribution.

#### *Revenue:*

Total revenue was \$4.90 billion for the year ended December 31, 2007 compared to \$4.32 billion for the year ended December 31, 2006. The increase in total revenue in 2007 is due primarily to organic revenue growth of approximately 11%, with trading volumes of one of our trading systems businesses adding three percentage



## **Table of Contents**

points to the growth rate and changes in currency exchange rates adding approximately two percentage points overall. Excluding these items, organic growth would have been 6%.

Services revenue increased to \$4.36 billion from \$3.87 billion, representing approximately 89% of total revenue in 2007 compared to 90% in 2006. The revenue increase of \$494 million in 2007 was due to organic revenue growth of \$391 million across all segments and the impact of acquired revenue in FS.

Professional services revenue was \$886 million and \$767 million in 2007 and 2006, respectively. The \$119 million increase was due primarily to FS organic and acquired revenue.

Revenue from license and resale fees was \$396 million and \$342 million for the years ended December 31, 2007 and 2006, respectively, and includes software license revenue of \$293 million and \$255 million, respectively.

### *Financial Systems:*

FS revenue was \$2.50 billion for the year ended December 31, 2007 compared to \$2.07 billion for the year ended December 31, 2006. Organic revenue growth was approximately 17% in 2007, with trading volumes of one of our trading systems businesses adding \$121 million or five percentage points to the growth rate, which exceeded our expectations for the year and the future. Excluding this business, organic revenue growth was approximately 12% in 2007.

Professional services had the most significant contribution to overall FS growth, having increased \$133 million or 29%. Revenue from license and resale fees included software license revenue of \$214 million and \$182 million, respectively, in 2007 and 2006.

### *Higher Education:*

HE revenue was \$543 million for the year ended December 31, 2007 compared to \$498 million for the year ended December 31, 2006. Services revenue increased \$26 million. In 2007, resale fees were \$51 million, an increase of \$15 million, and software license fees were \$47 million, an increase of \$4 million. HE organic revenue growth was approximately 9% in 2007.

### *Public Sector:*

PS revenue was \$410 million for the year ended December 31, 2007 compared to \$395 million for the year ended December 31, 2006, an increase of 4%, with changes in currency exchange rates adding approximately five percentage points. Organic revenue declined approximately 2%. Software license fees were \$28 million in 2007, an increase of \$3 million.

### *Availability Services:*

AS revenue was \$1.45 billion for the year ended December 31, 2007 compared to \$1.36 billion for the year ended December 31, 2006, a 7% increase. AS organic revenue increased approximately 4% in 2007. In North America revenue grew 4% overall and 1% organically as strong growth in managed services was offset by a net decrease in basic and advanced recovery services. Revenue in Europe grew 17%, 8% excluding the impact of currency exchange rates.

### *Costs and Expenses:*

Cost of sales and direct operating expenses as a percentage of total revenue remained unchanged at 46% for each of the years ended December 31, 2007 and 2006. The increase of \$288 million was due primarily to an increase in FS employee-related and consultant expenses supporting increased services revenue and increased costs related to the higher volumes in one of our trading systems businesses.

---

**Table of Contents**

Sales, marketing and administration expenses remained unchanged as a percentage of total revenue at 21% for each of the years ended December 31, 2007 and 2006. The increase of \$127 million was due primarily to FS businesses acquired in the last twelve months and an unfavorable arbitration award related to a customer dispute, partially offset by reduced stock compensation expense and an insurance settlement.

Because AS product development costs are insignificant, it is more meaningful to measure product development expense as a percentage of revenue from software and processing solutions. For the years ended December 31, 2007 and 2006, software development expenses were 8% and 9% of revenue from software and processing solutions, respectively.

Depreciation and amortization as a percentage of total revenue was 5% and 6% for the years ended December 31, 2007 and 2006, respectively. The \$13 million increase in 2007 was due primarily to capital expenditures supporting AS.

Amortization of acquisition-related intangible assets was 9% of total revenue for each of the years ended December 31, 2007 and 2006. Amortization of acquisition-related intangible assets increased \$39 million in 2007 due primarily to the impact of recent acquisitions made by the Company and an impairment charge of \$10 million.

Interest expense was \$645 million for the year ended December 31, 2007 compared to \$656 million for the year ended December 31, 2006. The decrease is primarily due to a lower effective interest cost due to the refinancing of our term loan facility in February 2007, partially offset by the additional borrowing on our Term loan prior to the early retirement of the senior floating rate notes and an increase in average borrowings under the revolving credit facility.

Other expense increased \$39 million in the year ended December 31, 2007 due primarily to \$28 million of expense associated with the early retirement of the \$400 million of senior floating rate notes due 2013, of which \$19 million represented the retirement premium paid to noteholders.

We believe that our overall effective income tax rate is typically between 38% and 40%. The effective income tax rates for 2007 and 2006 were 5% and 15%, respectively. The lower rates in 2007 and 2006 reflect the combination of our overall net loss in each year, limitations on our ability to utilize foreign tax credits resulting from the large amount of interest expense and, in 2007, changes in enacted tax rates in certain state and foreign jurisdictions. The result is a lower income tax benefit in each of 2007 and 2006 than would otherwise be expected.

**Liquidity And Capital Resources**

At March 31, 2009, cash and equivalents were \$491 million, a decrease of \$484 million from December 31, 2008. Cash flow used in operations was \$72 million in the three months ended March 31, 2009 compared to cash flow provided by operations of \$28 million in the three months ended March 31, 2008. The decrease in cash flow from operations is due primarily to an \$84 million increase in working capital requirements related to lower deferred revenue balances and higher requirements for the clearing broker/dealer.

Net cash used in investing activities was \$90 million in the three months ended March 31, 2009, comprised of cash paid for property and equipment and other assets, one business acquired in our PS segment and payment of a contingent purchase obligation.

Net cash used in financing activities was \$316 million for the three months ended March 31, 2009, primarily related to repayment at maturity of the \$250 million senior notes, repayment of \$275 million of borrowings under the revolving credit facility, partially offset by cash received from the new receivables facility (net of associated fees). At March 31, 2009, there was \$225 million outstanding under our revolving credit facility and \$250

**Table of Contents**

million outstanding under the receivables facility. During the three months ended March 31, 2009, we entered into interest rate swap agreements, with an aggregate notional amount of \$1.2 billion, which expire in February 2012 under which we pay fixed interest payments (at 1.78%) for the term of the swaps and, in turn, receive variable interest payments based on LIBOR.

At March 31, 2009, contingent purchase price obligations that depend upon the operating performance of certain acquired businesses could total \$54 million, of which \$4 million could be due in the next 12 months. Of this amount, we currently expect to pay approximately \$1 million. We also have outstanding letters of credit and bid bonds that total approximately \$27 million.

At March 31, 2009, we have outstanding \$8.56 billion in aggregate indebtedness, with additional borrowing capacity of \$755 million under our revolving credit facility (after giving effect to outstanding letters of credit). In May 2009, we increased the size of our receivables facility by \$66.5 million.

We expect our cash flows from operations, combined with availability under our revolving credit facility and receivables facility, to provide sufficient liquidity to fund our current obligations, projected working capital requirements and capital spending for a period that includes the next 12 months.

At December 31, 2008, cash and cash equivalents were \$975 million, an increase of \$548 million from December 31, 2007, while availability under our revolving credit facility decreased \$458 million to \$483 million. Early in 2009, \$250 million was used to repay the senior notes.

Cash flow from operations was \$385 million in the year ended December 31, 2008 compared to cash flow from operations of \$701 million in the year ended December 31, 2007. The decrease in cash flow from operations is due primarily to increased working capital needed to replace the liquidity provided by the terminated accounts receivable securitization program, higher income tax payments and higher incentive compensation payments, partially offset by lower interest payments and improvement in earnings before interest, taxes, depreciation and amortization and goodwill impairment ( EBITDA as defined and calculated below).

Net cash used in investing activities was \$1.1 billion in 2008 and \$564 million in 2007. We spent \$721 million for six acquisitions during 2008, including \$546 million for the acquisition of GL TRADE in our FS business, and \$265 million for eleven acquisitions during 2007, including \$161 million for the acquisition of Vericenter in our AS business. Capital expenditures were \$392 million in 2008 and \$307 million in 2007.

Net cash provided by financing activities was \$1.3 billion in 2008, the proceeds of which were used to fund the acquisition of GL TRADE, replace the liquidity provided by the terminated accounts receivable securitization facility and repay \$250 million of senior notes due in January 2009.

In September 2008 the Credit Agreement was amended to increase the amount of our term loan borrowings under the Credit Agreement by \$500 million ( Incremental Term Loan ), and we issued at a \$6 million discount \$500 million aggregate principal amount of 10.625% Senior Notes due 2015.

**Table of Contents**

We use interest rate swap agreements to manage the amount of our floating rate debt in order to reduce our exposure to variable rate interest payments associated with the senior secured credit facilities. We pay a stream of fixed interest payments for the term of the swap, and in turn, receive variable interest payments based on LIBOR (2.39% at December 31, 2008). The net receipt or payment from the interest rate swap agreements is included in interest expense. A summary of our interest rate swaps at December 31, 2008 follows:

Inception	Maturity	Notional Amount (in millions)	Interest rate paid	Interest rate received
November 2005	February 2009	\$ 800	4.85%	LIBOR
February 2006	February 2011	\$ 800	5.00%	LIBOR
January 2008	February 2011	\$ 750	3.17%	LIBOR
February 2008	February 2010	\$ 750	2.71%	LIBOR
Total/Weighted average interest rate		\$ 3,100	3.96%	

In early 2009, we entered into 3-year interest rate swaps that expire in February 2012 for an aggregate notional amount of \$1.2 billion under which we pay fixed interest payments (at 1.78%) for the term of the swaps, and in turn, receive variable interest payments based on LIBOR.

At December 31, 2008, contingent purchase price obligations that depend upon the operating performance of certain acquired businesses could total \$71 million, \$20 million of which could be due in the next 12 months. We also have outstanding letters of credit and bid bonds that total approximately \$25 million.

We are highly leveraged and our debt service requirements are significant. At December 31, 2008, our total indebtedness was \$8.87 billion and we had \$483 million available for borrowing under the revolving credit facility, after giving effect to certain outstanding letters of credit. In addition, at December 31, 2008, we had outstanding \$77 million under our \$450 million off-balance sheet accounts receivable securitization program that was terminated in December 2008. We funded the \$77 million outstanding during January 2009 with collections of receivables previously sold into the facility and repaid the \$250 million senior notes that matured in January 2009.

At December 31, 2008, our contractual obligations follow (in millions):

	Total	2009	2010	2011	2012	2013	2014 and After
Short-term and long-term debt <sup>(1)</sup>	\$ 8,901	\$ 322	\$ 625	\$ 5,730	\$ 2,224		
Interest payments <sup>(2)</sup>	2,907	563	1,091	919	334		
Operating leases	942	198	291	200	253		
Purchase obligations <sup>(3)</sup>	151	89	51	8	3		
	\$ 12,901	\$ 1,172	\$ 2,058	\$ 6,857	\$ 2,814		

(1) The senior notes due 2014 and the senior notes due 2015 are recorded at \$230 million and \$494 million, respectively, as of December 31, 2008, reflecting the remaining unamortized discount caused by the Transaction. The \$26 million discount at December 31, 2008 will be amortized and included in interest expense over the remaining periods to maturity.

(2) Interest payments consist of interest on both fixed-rate and variable-rate debt. Variable-rate debt consists primarily of the unhedged portion of the US\$ term loan facility (\$849 million at 3.58% at December 31, 2008), the euro denominated portion of the term loan facility (\$181 million at 4.71% at December 31, 2008) and pound sterling denominated portion of the term loan facility (\$119 million at 4.52% at December 31, 2008), the revolving credit facility (\$500 million at 3.1%) and the Incremental Term Loan (\$499 million at 6.75%). See

Note 5 to Notes to Consolidated Financial Statements. The swap agreements put in place in

---

## **Table of Contents**

early 2009 will increase the amount of interest payments in the table above by \$2 million in 2009 and \$5 million in 2010-2011.

- (3) Purchase obligations include our estimate of the minimum outstanding obligations under noncancelable commitments to purchase goods or services.

We expect our cash on hand, cash flows from operations and availability under our revolving credit facility to provide sufficient liquidity to fund our current obligations, projected working capital requirements and capital spending for a period that includes the next 12 months.

Depending on market conditions, the Company, its Sponsors and their affiliates, may from time to time repurchase debt securities issued by the Company, in privately negotiated or open market transactions, by tender offer or otherwise.

### **Receivables Facility**

#### *Overview*

On March 27, 2009, SunGard AR Financing LLC, a newly-formed wholly-owned, bankruptcy-remote, special purpose financing subsidiary ( Financing ) of SunGard entered into a syndicated receivables facility with each of the financial institutions signatory thereto from time to time, as the Lenders and General Electric Capital Corporation, as a Lender, as the Swing Line Lender and as administrative agent (the Receivables Facility ). The initial maximum commitment under the Receivables Facility is \$250 million of which approximately \$107 million is on a revolving basis and the balance is a term loan. The Receivables Facility has a term of three years.

Subject to obtaining the commitment of additional lenders, and the satisfaction of other customary conditions, the Receivables Facility may be increased up to a maximum amount of \$500 million.

In May 2009, the Company increased the size of its receivables facility by \$66.5 million.

The full amount of the initial availability under the Receivables Facility was borrowed as of March 30, 2009. Subsidiaries of SunGard that participate in the Receivables Facility ( Sellers ) transfer their receivables as a true sale to Financing pursuant to the Receivables Sale Agreement dated as of March 27, 2009 (the Receivables Sale Agreement ) and without recourse except for recourse for breaches of customary representations and warranties related to the receivables. Additional subsidiaries of SunGard may become parties to the Receivables Facility, subject to the satisfaction of specified conditions. Upon becoming parties, receivables originated by these subsidiaries will be included in the receivables balance eligible for funding under the Receivables Facility and will be included in the calculation of available funding thereunder.

Availability of funding under the Receivables Facility depends primarily upon the outstanding trade accounts receivable balance of the Sellers. Aggregate availability is determined by using a formula that reduces the gross receivables balance by factors that take into account historical default and dilution rates, excessive concentrations and average days outstanding and the costs of the facility.

#### *Interest Rates and Fees*

Under the Receivables Facility, Financing is generally required to pay interest on the amount of each advance at the one month LIBOR rate, adjusted for statutory reserves, plus 4.50% per annum. Financing is required to pay a fee on the unused portion of the Receivables Facility of 1.00% per annum, payable monthly in arrears. In addition, SunGard, acting as the initial receivables servicer, services, administers and collects receivables transferred pursuant to the Receivables Facility. Under the Receivables Facility, SunGard receives a monthly servicing fee of 1.00% per annum of the daily average outstanding balance of the receivables under such facility, payable monthly in arrears by Financing.

## **Table of Contents**

The Receivables Facility may be terminated for material breaches of representations and warranties, bankruptcies of any Seller, the collection agent or Financing, a default by any Seller or Financing in the performance of any payment required to be made under the transaction documents, a merger or similar transaction involving Financing, cross acceleration under our other facilities, a change of control affecting SunGard, and a failure to maintain a minimum fixed charge coverage ratio, among other reasons.

### ***Guaranty and Security***

SunGard unconditionally guarantees the performance of the Sellers' obligations under the Receivables Sale Agreement. All obligations under the Receivables Facility are secured by the receivables purchased by Financing under the Receivables Sale Agreement.

### **The Transaction**

As a result of the Transaction (August 11, 2005), we are highly leveraged and our debt service requirements are significant. Below is a summary of our debt instruments.

#### ***Senior Secured Credit Facilities***

Borrowings under the senior secured credit facilities bear interest at a rate equal to an applicable margin plus, at our option, either (a) a base rate that is the higher of (1) the prime rate of JPMorgan Chase Bank, N.A. and (2) the federal funds rate plus 1/2 of 1% or (b) LIBOR based on the costs of funds for deposits in the currency of such borrowing for either 30, 60, 90 or 180 days. The applicable margin for borrowings under the revolving credit facility and the term loan facility may change subject to attaining certain leverage ratios. In addition to paying interest on outstanding principal under the senior secured credit facilities, we pay a commitment fee to the lenders under the revolving credit facility in respect of the unutilized commitments.

All obligations under the senior secured credit facilities are fully and unconditionally guaranteed by SunGard Holdco LLC and by substantially all domestic, 100% wholly owned subsidiaries.

We are required to repay installments on the loans under the term loan facilities in quarterly principal amounts of 0.25% of their funded total principal amount through March 2013, with the remaining amount payable in May 2013, provided, however, that such date will automatically become February 2014 if all the Senior Notes due 2013 are extended, renewed or refinanced on or prior to May 15, 2013.

The senior secured credit facilities also require us to prepay outstanding term loans, subject to certain exceptions, with excess cash flow and proceeds from certain asset sales, casualty and condemnation events, other borrowings and certain financings under our accounts receivable securitization program (terminated in December 2008). Any required payments would be applied pro rata to the term loan lenders and to installments of the term loan facilities in direct order of maturity.

Principal amounts outstanding under the revolving credit facility are due and payable in full at maturity in August 2011. As of March 31, 2009, we have \$755 million available under the revolving credit facility, after giving effect to certain letters of credit.

The second amendment to the Credit Agreement in September 2008 changed certain terms applicable to the Incremental Term Loan. Borrowings can be at either a Base Rate or a Eurocurrency Rate. Base Rate borrowings reset daily and bear interest at a minimum of 4.0% plus a spread of 2.75%. Eurocurrency borrowings can be made for periods of 30, 60, 90 or 180 days and bear interest at a minimum of 3.0% plus a spread of 3.75%. The interest rate at March 31, 2009 was 6.75%.

---

**Table of Contents**

The senior secured credit facilities contain a number of covenants that, among other things, restrict, subject to certain exceptions, our (and most or all of our subsidiaries ) ability to incur additional debt or issue preferred stock, pay dividends and distributions on or repurchase capital stock, create liens on assets, enter into sale and leaseback transactions, repay subordinated indebtedness, make investments, loans or advances, make capital expenditures, engage in certain transactions with affiliates, amend certain material agreements, change our lines of business, sell assets and engage in mergers or consolidations. In addition, under the senior secured credit facilities, we are required to satisfy certain total leverage and interest coverage ratios. We were in compliance with all covenants at March 31, 2009.

*2009 Amendment to the Senior Secured Credit Agreement*

On June 9, 2009, we entered into an amendment to the Credit Agreement ( Amended Credit Agreement ) which, among other things, (a) extends the maturity date of \$2.5 billion of its dollar-denominated term loans, £40 million of pound sterling-denominated term loans, and 120 million of euro-denominated term loans to February 28, 2016, (b) reduces existing revolving credit commitments to \$829 million and extends the termination date of \$580 million of revolving credit commitments to May 11, 2013, and (c) amends certain other provisions of the Credit Agreement, including provisions relating to negative covenants and financial covenants.

Interest rate spreads with respect to the extended term loans and interest rate spreads (and letter of credit fees) with respect to the 2013 revolving credit facility will be the applicable rate as set forth in the Amended Credit Agreement and may change subject to attaining certain leverage ratios. All other interest rate spreads and fees remain unchanged.

Based on the leverage ratio for the period ended March 31, 2009, the current interest spread for extended LIBOR based loans is 3.625% and for 2013 revolving credit loans is 3.25%. The commitment fee on the daily unused portion of the 2013 revolving credit commitments is 0.75%.

*Senior Notes due 2009 and 2014*

On January 15, 2004, we issued \$500 million of senior unsecured notes, of which \$250 million 3.75% notes were due and paid in full in January 2009 and \$250 million are 4.875% notes due 2014, which are subject to certain standard covenants. As a result of the Transaction, these senior notes became collateralized on an equal and ratable basis with loans under the senior secured credit facilities and are guaranteed by all subsidiaries that guarantee the senior notes due 2013 and 2015 and senior subordinated notes due 2015. The senior notes due 2014 are recorded at \$231 million as of March 31, 2009, reflecting the remaining unamortized discount caused by the Transaction. The \$19 million discount will be amortized and included in interest expense.

*Senior Notes due 2013 and 2015 and Senior Subordinated Notes due 2015*

The senior notes due 2013 and 2015 are senior unsecured obligations that rank senior in right of payment to future debt and other obligations that are, by their terms, expressly subordinated in right of payment to the senior notes, including the senior subordinated notes. The senior notes (i) rank equally in right of payment to all existing and future senior debt and other obligations that are not, by their terms, expressly subordinated in right of payment to the senior notes, (ii) are effectively subordinated in right of payment to all existing and future secured debt to the extent of the value of the assets securing such debt, and (iii) are structurally subordinated to all obligations of each subsidiary that is not a guarantor of the senior notes. All obligations under the senior notes are fully and unconditionally guaranteed, subject to certain exceptions, by substantially all domestic, 100% wholly owned subsidiaries of the Company.

The senior subordinated notes due 2015 are unsecured senior subordinated obligations that are subordinated in right of payment to the existing and future senior debt, including the senior secured credit facilities, the senior notes due 2014 and the senior notes due 2013 and 2015. The senior subordinated notes (i) rank equally in right of payment to all future senior subordinated debt, (ii) are effectively subordinated in right of payment to all existing and future secured debt to the extent of the value of the assets securing such debt, (iii) are structurally



---

**Table of Contents**

subordinated to all obligations of each subsidiary that is not a guarantor of the senior subordinated notes, and (iv) rank senior in right of payment to all future debt and other obligations that are, by their terms, expressly subordinated in right of payment to the senior subordinated notes.

The senior notes due 2013 and 2015 and senior subordinated notes due 2015 are redeemable in whole or in part, at our option, at any time at varying redemption prices that generally include premiums, which are defined in the applicable indentures. In addition, upon a change of control, we are required to make an offer to redeem all of the senior notes and senior subordinated notes at a redemption price equal to 101% of the aggregate principal amount thereof plus accrued and unpaid interest.

The indentures governing the senior notes due 2013 and 2015 and senior subordinated notes due 2015 contain a number of covenants that restrict, subject to certain exceptions, our ability and the ability of our restricted subsidiaries to incur additional indebtedness or issue certain preferred shares, pay dividends on or make other distributions in respect of its capital stock or make other restricted payments, make certain investments, enter into certain types of transactions with affiliates, create liens securing certain debt without securing the senior notes due 2013 and 2015 or senior subordinated notes due 2015, as applicable, sell certain assets, consolidate, merge, sell or otherwise dispose of all or substantially all of our assets and designate our subsidiaries as unrestricted subsidiaries.

The senior notes due 2015 contain registration rights by which the Company has agreed to use its reasonable efforts to register with the U.S. Securities & Exchange Commission notes having substantially identical terms. The Company will use its reasonable best efforts to cause the exchange offer to be completed or, if required, to have one or more shelf registration statements declared effective, within 360 days after the issue date of the senior notes due 2015.

If the Company fails to meet this target (a registration default) with respect to the senior notes due 2015, the annual interest rate on the senior notes due 2015 will increase by 0.25% for each subsequent 90-day period during which the registration default continues, up to a maximum additional interest rate of 1.0% per year over the applicable interest rate. If the registration default is corrected or, if it is not corrected, upon the two year anniversary of the issue date of the senior notes due 2015, the applicable interest rate on such senior notes due 2015 will revert to the original level.

*Off-Balance Sheet Debt Accounts Receivable Securitization Program*

In December 2008, we terminated our accounts receivable securitization program. Under the accounts receivable facility, eligible receivables were sold to third-party conduits through a wholly owned, bankruptcy remote special purpose entity that is not consolidated for financial reporting purposes. We serviced the receivables and charged a monthly servicing fee at market rates. The third-party conduits were sponsored by certain lenders under our senior secured credit facilities.

Sales of receivables under the facility qualified as sales under applicable accounting pronouncements. Accordingly, receivables totaling \$363 million net of applicable allowances, and the corresponding borrowings, totaling \$77 million, are excluded from our consolidated balance sheet as of December 31, 2008. Our retained interest in these receivables is \$285 million as of December 31, 2008. Expenses associated with the receivables facilities totaled \$25 million for 2008, which related to the loss on sale of the receivables and the discount on retained interest, and is recorded in other income (expense) in our consolidated statements of operations. The loss on sale of receivables was determined at the date of transfer based upon the fair value of the assets sold and the interests retained based on the present value of expected cash flows.

*Covenant Compliance*

Our senior secured credit facilities and the indentures governing our senior notes due 2013 and 2015 and our senior subordinated notes due 2015 contain various covenants that limit our ability to engage in specified types of transactions. These covenants limit our ability to, among other things:

incur additional indebtedness or issue certain preferred shares,

---

**Table of Contents**

pay dividends on, repurchase or make distributions in respect of our capital stock or make other restricted payments,

make certain investments,

sell certain assets,

create liens,

consolidate, merge, sell or otherwise dispose of all or substantially all of our assets, and

enter into certain transactions with our affiliates.

In addition, pursuant to the Principal Investor Agreement by and among our Holding Companies and the Sponsors, we are required to obtain approval from certain Sponsors prior to the declaration or payment of any dividend by us or any of our subsidiaries (other than dividends payable to us or any of our wholly owned subsidiaries).

Under the senior secured credit facilities, we are required to satisfy and maintain specified financial ratios and other financial condition tests. As of March 31, 2009, we are in compliance with the financial and nonfinancial covenants. While we believe that we will remain in compliance, our continued ability to meet those financial ratios and tests can be affected by events beyond our control, and there is no assurance that we will meet those ratios and tests. A breach of any of these covenants could result in a default under the senior secured credit facilities. Upon the occurrence of an event of default under the senior secured credit facilities, the lenders could elect to declare all amounts outstanding under the senior secured credit facilities to be immediately due and payable and terminate all commitments to extend further credit.

Adjusted earnings before interest, taxes, depreciation and amortization and goodwill impairment ( EBITDA ) is a non-GAAP measure used to determine our compliance with certain covenants contained in the indentures governing the senior notes due 2013 and 2015 and senior subordinated notes due 2015 and in our senior secured credit facilities. Adjusted EBITDA is defined as EBITDA further adjusted to exclude unusual items and other adjustments permitted in calculating covenant compliance under the indentures and our senior secured credit facilities. We believe that including supplementary information concerning Adjusted EBITDA is appropriate to provide additional information to investors to demonstrate compliance with our financing covenants.

The breach of covenants in our senior secured credit facilities that are tied to ratios based on Adjusted EBITDA could result in a default and the lenders could elect to declare all amounts borrowed due and payable. Any such acceleration would also result in a default under our indentures. Additionally, under our debt agreements, our ability to engage in activities such as incurring additional indebtedness, making investments and paying dividends is also tied to ratios based on Adjusted EBITDA.

Adjusted EBITDA does not represent net income (loss) or cash flow from operations as those terms are defined by GAAP and does not necessarily indicate whether cash flows will be sufficient to fund cash needs. While Adjusted EBITDA and similar measures are frequently used as measures of operations and the ability to meet debt service requirements, these terms are not necessarily comparable to other similarly titled captions of other companies due to the potential inconsistencies in the method of calculation. Adjusted EBITDA does not reflect the impact of earnings or charges resulting from matters that we may consider not to be indicative of our ongoing operations. In particular, the definition of Adjusted EBITDA in the indentures allows us to add back certain non-cash, extraordinary, unusual or non-recurring charges that are deducted in calculating net income (loss). However, these are expenses that may recur, vary greatly and are difficult to predict. Further, our debt instruments require that Adjusted EBITDA be calculated for the most recent four fiscal quarters. As a result, the measure can be disproportionately affected by a particularly strong or weak quarter. Further, it may not be comparable to the measure for any subsequent four-quarter period or any complete fiscal year.

**Table of Contents**

The following is a reconciliation of net loss, which is a GAAP measure of our operating results, to Adjusted EBITDA as defined in our debt agreements. The terms and related calculations are defined in the indentures.

(in millions)	Year ended December 31,			Three Months Ended March 31,		Last Twelve Months
	2006	2007	2008	2008 (unaudited)	2009 (unaudited)	March 31, 2009 (unaudited)
Net loss	\$ (118)	\$ (60)	\$ (242)	\$ (22)	\$ (34)	\$ (254)
Interest expense, net	642	626	581	143	150	588
Taxes	(21)	(3)	38	(18)	(9)	47
Depreciation and amortization	637	689	793	179	193	807
Goodwill impairment charge			128			128
EBITDA	1,140	1,252	1,298	282	300	1,316
Purchase accounting adjustments <sup>(1)</sup>	(2)	14	39	11	5	34
Non-cash charges <sup>(2)</sup>	41	37	35	6	9	38
Unusual or non-recurring items <sup>(3)</sup>	30	43	68	1	4	71
Acquired EBITDA, net of disposed EBITDA <sup>(4)</sup>		12	57	(2)		38
Pro forma expense savings related to acquisitions <sup>(5)</sup>			17		1	14
Other <sup>(6)</sup>	16	38	76	20	1	55
Adjusted EBITDA Senior Secured Credit Facilities	1,225	1,396	1,590	318	320	1,566
Loss on sale of receivables <sup>(7)</sup>	29	29	25	4		21
Adjusted EBITDA Senior Notes due 2013 and 2015 and Senior Subordinated Notes due 2015	\$ 1,254	\$ 1,425	\$ 1,615	\$ 322	\$ 320	\$ 1,587

- (1) Purchase accounting adjustments include the adjustment of deferred revenue and lease reserves to fair value at the dates of the Transaction and subsequent acquisitions made by the Company and certain acquisition-related compensation expense.
- (2) Non-cash charges include stock-based compensation resulting from stock-based compensation accounted for under SFAS 123R (see Note 7 of Notes to Consolidated Financial Statements) and loss on the sale of assets.
- (3) Unusual or non-recurring items include debt refinancing costs, severance and related payroll taxes, an unfavorable arbitration award related to a customer dispute, an insurance recovery and other expenses associated with acquisitions made by the Company.
- (4) Acquired EBITDA net of disposed EBITDA reflects the EBITDA impact of businesses that were acquired or disposed of during the period as if the acquisition or disposition occurred at the beginning of the period.
- (5) Pro forma adjustments represent the full-year impact of savings resulting from post-acquisition integration activities.
- (6) Other includes gains or losses related to fluctuation of foreign currency exchange rates impacting the foreign-denominated debt, management fees paid to the Sponsors and franchise and similar taxes reported in operating expenses, partially offset by certain charges relating to the accounts receivable securitization facility (terminated in December 2008).

- (7) The loss on sale of receivables under the accounts receivable securitization facility (terminated in December 2008) is added back in calculating Adjusted EBITDA for purposes of the indentures governing the senior notes due 2013 and 2015 and the senior subordinated notes due 2015 but is not added back in calculating Adjusted EBITDA for purposes of the senior secured credit facilities.

**Table of Contents**

Our covenant requirements and actual ratios for the twelve months ended March 31, 2009 are as follows:

	<b>Covenant Requirements</b>	<b>Actual Ratios</b>
<b>Senior secured credit facilities<sup>(1)</sup></b>		
Minimum Adjusted EBITDA to consolidated interest expense ratio	1.65x	2.67x
Maximum total debt to Adjusted EBITDA	6.75x	5.04x
<b>Senior Notes due 2013 and Senior Subordinated Notes due 2015<sup>(2)</sup></b>		
Minimum Adjusted EBITDA to fixed charges ratio required to incur additional debt pursuant to ratio provisions	2.00x	2.69x

- (1) Our senior secured credit facilities require us to maintain an Adjusted EBITDA to consolidated interest expense ratio at a minimum of 1.65x for the four-quarter period ended December 31, 2008 and increasing over time to 1.70x by the end of 2009, to 1.80x by the end of 2010 and 2.20x by the end of 2013. Consolidated interest expense is defined in the senior secured credit facilities as consolidated cash interest expense less cash interest income further adjusted for certain non-cash or nonrecurring interest expense and the elimination of interest expense and fees associated with our receivables facility. Beginning with the four-quarter period ending December 31, 2008, we are required to maintain a consolidated total debt to Adjusted EBITDA ratio of 6.75x and decreasing over time to 6.25x by the end of 2009 and to 4.75x by the end of 2013. Consolidated total debt is defined in the senior secured credit facilities as total debt less certain indebtedness and further adjusted for cash and cash equivalents on our balance sheet in excess of \$50 million. Failure to satisfy these ratio requirements would constitute a default under the senior secured credit facilities. If our lenders failed to waive any such default, our repayment obligations under the senior secured credit facilities could be accelerated, which would also constitute a default under our indentures.
- (2) Our ability to incur additional debt and make certain restricted payments under our indentures, subject to specified exceptions, is tied to an Adjusted EBITDA to fixed charges ratio of at least 2.0x, except that we may incur certain debt and make certain restricted payments and certain permitted investments without regard to the ratio, such as our ability to incur up to an aggregate principal amount of \$5.75 billion under credit facilities (inclusive of amounts outstanding under our senior credit facilities from time to time; as of March 31, 2009, we had \$4.72 billion outstanding under our term loan facilities and available commitments of \$755 million under our revolving credit facility), to acquire persons engaged in a similar business that become restricted subsidiaries and to make other investments equal to 6% of our consolidated assets. Fixed charges is defined in the indentures governing the Senior Notes due 2013 and 2015 and the Senior Subordinated Notes due 2015 as consolidated interest expense less interest income, adjusted for acquisitions, and further adjusted for non-cash interest and the elimination of interest expense and fees associated with our accounts receivable securitization program.

**Effect of Recent Accounting Pronouncements:**

In April 2009, the Financial Accounting Standards Board issued FSP FAS 107-1, *Interim Disclosures about Fair Value of Financial Instruments* ( FSP 107-1 ). FSP 107-1 increase the frequency of fair value disclosures from annual only to quarterly, in an effort to provide financial statement users with more timely and transparent information about the effects of current market conditions on financial instruments. FSP 107-1 is effective as of April 1, 2009. The Company is evaluating the impact of this standard but does not expect it to have a material impact on the consolidated financial statements.

In December 2007, the FASB issued Statement of Financial Accounting Standards ( SFAS ) No. 141R, Business Combinations, ( SFAS 141R ), which changes accounting principles for business acquisitions. SFAS No. 141R requires the recognition of all the assets acquired and liabilities assumed in the transaction based on the acquisition-date fair value. Certain provisions of this standard will, among other things, impact the determination

---

**Table of Contents**

of consideration paid or payable in a business combination and change accounting practices for transaction costs, acquired contingencies, acquisition-related restructuring costs, in-process research and development, indemnification assets, and tax benefits. SFAS No. 141R is effective for business combinations and adjustments to all acquisition-related deferred tax asset and liability balances occurring after December 31, 2008. This standard could have a significant impact on our consolidated financial statements.

In December 2007, the FASB also issued SFAS No. 160, Noncontrolling Interests in Consolidated Financial Statements, an amendment of ARB No. 51 ( SFAS 160 ). The objective of SFAS 160 is to improve the relevance, comparability and transparency of the financial information that a reporting entity provides in its consolidated financial statements by establishing accounting and reporting standards for the noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. SFAS 160 is effective January 1, 2009. SFAS 160 did not have a material impact on the consolidated financial statements.

In March 2008, the FASB issued SFAS No. 161, Disclosures about Derivative Instruments and Hedging Activities ( SFAS 161 ). SFAS 161 is intended to help investors better understand how derivative instruments and hedging activities affect an entity's financial position, financial performance and cash flows through enhanced disclosure requirements. SFAS 161 is effective as of January 1, 2009. We do not expect the adoption of SFAS 161 to have a material impact on the consolidated financial statements.

In April 2008, the FASB issued FASB Staff Position ( FSP ) No. FAS 142-3, Determination of the Useful Life of Intangible Assets. FSP 142-3 amends the factors that should be considered in developing renewal or extension assumptions used to determine the useful life of a recognized intangible asset under SFAS No. 142, Goodwill and Other Intangible Assets ( SFAS 142 ). FSP 142-3 is intended to improve the consistency between the useful life of an intangible asset determined under SFAS 142 and the period of expected cash flows used to measure the fair value of the asset under SFAS 141R and other GAAP. FSP 142-3 is effective as of January 1, 2009. We do not expect the adoption of FSP 142-3 to have a material impact on the consolidated financial statements.

In November 2008, the Emerging Issues Task Force ( EITF ) issued Issue No. 08-7, Accounting for Defensive Intangible Assets ( EITF 08-7 ). EITF 08-7 applies to all acquired intangible assets in which the acquirer does not intend to actively use the asset but intends to hold (lock up) the asset to prevent its competitors from obtaining access to the asset (a defensive asset), assets that the acquirer will never actually use, as well as assets that will be used by the acquirer during a transition period when the intention of the acquirer is to discontinue the use of those assets. EITF 08-7 is effective as of January 1, 2009. We do not expect the adoption of EITF 08-7 to have a material impact on the consolidated financial statements.

**Quantitative and Qualitative Disclosures about Market Risk:**

We do not use derivative financial instruments for trading or speculative purposes. We have invested our available cash in short-term, highly liquid financial instruments, with a substantial portion having initial maturities of three months or less. When necessary, we have borrowed to fund acquisitions.

At March 31, 2009, we had total debt of \$8.56 billion, including \$5.20 billion of variable rate debt. We have entered into interest rate swap agreements which fixed the interest rates for \$3.5 billion of our variable rate debt. Swap agreements with a notional value of \$800 million effectively fix our interest rates at 5.00% and expire in February 2011. Swap agreements expiring in February 2010 and 2011 each have a notional value of \$750 million and, effectively, fix our interest rates at 2.71% and 3.17%, respectively. Swap agreements expiring in February 2012 have a notional value of \$1.2 billion and effectively fix our interest rates at 1.78%. Our remaining variable rate debt of \$1.70 billion is subject to changes in underlying interest rates, and, accordingly, our interest payments will fluctuate. During the period when all of our interest rate swap agreements are effective, a 1% change in interest rates would result in a change in interest of approximately \$17 million per year. Upon the

**Table of Contents**

expiration of each interest rate swap agreement in February 2010, February 2011 and February 2012, a 1% change in interest rates would result in a change in interest of approximately \$25 million, \$40 million and \$52 million per year, respectively.

At December 31, 2008, we had total debt of \$8.87 billion, including \$5.25 billion of variable rate debt. We entered into four interest rate swap agreements which fixed the interest rates for \$3.1 billion of our variable rate debt. Our four swap agreements each have notional values of \$800 million or \$750 million (see table above), and effectively fix our interest rates at a weighted average rate of 3.96%, and expire in February 2009, 2010 or 2011. In early 2009, we entered into additional three-year interest rate swap agreements for a notional amount of \$1.2 billion, under which we are required to pay a stream of fixed rate interest payments of 1.78%, and in turn, receive variable interest payments based on LIBOR. After the early 2009 activity, our remaining variable rate debt of \$1.75 billion is subject to changes in underlying interest rates and our interest payments will also change as a result of market changes. During the period when our interest rate swap agreements are effective, a 1% change in interest rates would result in a change in interest of approximately \$17 million per year. Upon the expiration of interest rate swap agreements in February 2010, 2011 and 2012, a 1% change in interest rates would result in a change in interest of approximately \$25 million, \$40 million and \$52 million per year, respectively. See Note 5 to Consolidated Financial Statements.

In addition, at December 31, 2008, one of our U.K. subsidiaries, whose functional currency is the pound sterling, has \$181 million of debt which is denominated in euros. A 10% change in the euro-pound sterling exchange rate would result in a charge or credit in the statement of operations of approximately \$19 million.

During 2008, approximately 29% of our revenue was from customers outside the United States with approximately 76% of this revenue coming from customers located in the United Kingdom and Continental Europe. Only a portion of the revenue from customers outside the United States is denominated in other currencies, the majority being pounds sterling and euros. Revenue and expenses of our foreign operations are generally denominated in their respective local currencies. We continue to monitor our exposure to currency exchange rates.

## Table of Contents

### BUSINESS

#### Our Company

We are one of the world's leading software and IT services companies. We provide software and processing solutions to institutions throughout the financial services industry, higher education, and the public sector. We also provide disaster recovery services, managed services, information availability consulting services and business continuity management software. We operate our business in four segments:

Financial Systems ( FS ) serves financial services companies, corporate and government treasury departments and energy companies;

Higher Education ( HE ) serves higher education institutions;

Public Sector ( PS ) serves state and local governments, public safety and justice agencies, and not-for-profit organizations; and

Availability Services ( AS ) serves IT-dependent companies across virtually all industries.

We serve more than 25,000 customers in more than 70 countries, including the world's 25 largest financial services companies. We seek to establish long-term customer relationships by negotiating multi-year contracts and by emphasizing customer support and product quality and integration. We believe that we are one of the most efficient operators of mission-critical IT solutions as a result of the economies of scale we derive from serving multiple customers on shared platforms. Our revenue is highly diversified by customer and product, with no single customer accounting for more than 8% of our total revenue during any of the past three fiscal years. We estimate that approximately 90% of our revenue for the past three fiscal years was recurring in nature.

We were acquired on August 11, 2005 by a consortium of private equity investment funds associated with Bain Capital Partners, The Blackstone Group, Goldman Sachs & Co., Kohlberg Kravis Roberts & Co., Providence Equity Partners, Silver Lake and TPG (the Transaction ).

#### Our Strengths

**Leading franchise in attractive industries.** Built over many years, our business has leading positions and strong customer relationships in industries with attractive growth dynamics.

**Leading industry positions.** We believe that the majority of businesses within our FS segment are leaders in the sectors in which they participate within the highly fragmented global market for financial services IT software and services. We believe that HE and PS are both leading providers of software and services to higher education institutions and the public sector, respectively. AS is the pioneer and leading provider in the availability services industry.

**Attractive industry dynamics.** While the current economic crisis has presented some challenges in the near term, we believe that, over the long term, the sectors in which we participate will continue to have favorable growth dynamics. We believe that the sectors in which we participate have favorable growth dynamics. We believe that FS will benefit from several key industry dynamics: the shift from internal to external IT spending, the shift from infrastructure to application software spending, and the general increase in IT spending associated with rising compliance and regulatory requirements and real-time information needs. We anticipate that HE and PS will benefit from favorable growth dynamics in higher education and public justice and safety IT spending. We believe that AS will continue to benefit from favorable organic growth in the small and medium business sector. We believe that our strong relationships with our customers in the relatively fragmented software and processing sectors that we serve and our extensive experience and the significant total capital that we have invested in AS help us to maintain leading positions. We believe that these factors provide us with competitive advantages and enhance our growth potential.



## **Table of Contents**

***Highly attractive business model.*** Our portfolio of businesses has substantial recurring revenue, a diversified customer base and significant operating cash flow generation.

***Extensive portfolio of businesses with substantial recurring revenue.*** With a large portfolio of services and products in each of our four business segments, we have a diversified and stable business. We estimate that approximately 90% of our revenue for the past three fiscal years was recurring in nature. Because our FS customers generally pay us monthly fees that are based on metrics such as number of accounts, trades or transactions, users or number of hours of service, we believe that our FS revenue is more insulated from trading and transaction volumes than the financial services industry at large. Our portfolio of businesses and the largely recurring nature of our revenue across all four of our segments have reduced volatility in our revenue and income from operations.

***Diversified and stable customer base.*** Our base of more than 25,000 customers includes the world's 25 largest financial services firms, a variety of other financial services firms, corporate and government treasury departments, energy companies, higher education institutions, school districts, local governments and not-for-profit organizations. Our AS business serves customers across virtually all industries. We believe that our specialized solutions and services help our customers improve operational efficiency, capture growth opportunities and respond to regulatory requirements, which results in long-term customer relationships. Our customer base is highly diversified with no single customer accounting for more than 8% of total revenue during any of the last three fiscal years.

***Significant operating cash flow generation.*** The combination of moderate capital expenditures and minimal working capital requirements allows us to convert a significant proportion of our revenue to cash available for debt service.

***Experienced and committed management team with track record of success.*** Our management team fosters an entrepreneurial culture, has a long track record of operational excellence, has a proven ability to acquire and integrate complementary businesses, and is highly committed to our company's long-term success.

***Long track record of operational excellence.*** We have a solid track record of performance consistent with internal financial targets. Our experienced senior executive officers have proven capabilities in both running a global business and managing numerous applications that are important to our customers. Our FS solutions account for and manage over \$25 trillion in investment assets and process over 5 million transactions per day. In our HE business, 1,600 organizations including colleges, universities, campuses, foundations and state systems rely on SunGard Higher Education. Our PS products are used by agencies that serve more than 140 million citizens in North America and 40 million citizens in the U.K. Our AS business has had a 100% success rate in supporting customer recoveries since our inception.

***Successful, disciplined acquisition program.*** To complement our organic growth, we have a highly disciplined due diligence program to evaluate, execute and integrate acquisitions. We have completed 170 acquisitions and overall have improved the operating performance of acquired businesses. Our ongoing acquisition program has contributed significantly to our long-term growth and success.

***Experienced and committed management team.*** Our executive officers have on average more than 15 years of industry experience. Our senior managers have committed significant personal capital to our company in connection with the Transaction.

## **Table of Contents**

### **Business Strategy**

We are focused on expanding our position not only as a leading provider of integrated software and processing solutions, but also as the provider of choice for a wide range of availability services for IT-dependent companies. Our operating and financial strategy emphasizes fiscal discipline, profitable revenue growth and significant operating cash flow generation. In pursuit of these objectives, we have implemented the following strategies:

***Expand our industry-leading franchise.*** We are constantly enhancing our product and service offerings across our portfolio of businesses, further building and leveraging our customer relationships, and looking to acquire complementary businesses at attractive valuations.

***Enhance our product and service offerings.*** We continually support, upgrade and enhance our systems to incorporate new technology and meet the needs of our customers for increased operational efficiency and resilience. Our strong base of recurring revenue allows us to consistently reinvest in our products and services. We continue to introduce innovative products and services in all four of our business segments. We believe that our focus on product enhancement and innovation will help us to increase our penetration of existing and new customers.

***Extend our strong customer relationships.*** We focus on developing trusted, well-managed, long-term relationships with our customers. We look to maximize cross-selling opportunities, increase our share of our customers' total IT spending and maintain a high level of customer satisfaction. Our global account management program allows us to present a single face to our larger FS customers as well as better target potential cross-selling opportunities.

***Acquire and integrate complementary businesses.*** We seek opportunistically to acquire, at attractive valuations, businesses that broaden our existing product and service offerings, expand our customer base and strengthen our leadership positions, especially within the fragmented FS, HE and PS markets. Before committing to an acquisition, we devote significant resources to due diligence and to developing a post-acquisition integration plan, including the identification and quantification of potential cost savings and synergies. Our ongoing acquisition program has contributed significantly to our long-term growth and success.

***Optimize our attractive business model.*** We continue to focus on maintaining our attractive business model and, in particular, increasing our recurring revenue base and implementing incremental operational improvements.

***Increase our recurring revenue base.*** We strive to generate a high level of recurring revenue and stable cash flow from operations. We prefer to charge customers monthly subscription fees under multi-year contracts, and we continue to prefer such contracts because they offer high levels of revenue stability and visibility. Moreover, we believe that our high quality services and customized solutions help increase the level of integration and efficiency for our customers and reduce customer defections to other vendors or to in-house solutions.

***Implement incremental operational improvements.*** We have identified opportunities to further increase revenue, reduce costs and improve cash flow from operations. These include the global account management program within FS, which stimulates cross-selling opportunities and account penetration for our largest customers; centralization of certain product management functions and expansion of certain software development capacity in lower-cost regions; the selective integration of certain FS, HE and PS business units and back-office operations; and the increased focus on generating revenue from ancillary services such as customer training and education as well as consulting.

***Enhance our performance-based culture.*** We have an experienced management team that is focused on enhancing our performance-based culture. We continue to evaluate and implement programs to improve our current management structure through competitive compensation plans and continue to design effective human resources initiatives to retain key individuals at acquired businesses. Our compensation program, consistent with past practices, is highly performance-based.



**Table of Contents****Business Segment Overview****Our Segments**

	<b>Financial Systems</b>	<b>Software &amp; Processing Higher Education</b>	<b>Public Sector</b>	<b>Availability Services</b>
Revenue for the Year Ended December 31, 2008	\$3.1 billion	\$540 million	\$411 million	\$1.6 billion
Product and Service Offerings	Specialized software and processing solutions that automate the business processes associated with trading securities, managing portfolios and accounting for investment assets, consulting services, and IT management services	Specialized software and enterprise resource planning solutions, professional services, consulting services and IT management services to address the administrative, academic and community needs of higher education institutions	Specialized software and enterprise resource planning and administrative solutions, public safety and justice solutions, K-12 student information solutions, consulting services and IT management services	Portfolio of standby recovery services, advanced recovery and managed services, consulting services and software that help companies maintain uninterrupted access to their mission-critical IT systems
Number of Customers	14,000	1,600	2,000	10,000
Primary Customers	Financial services companies  Corporate and government treasury departments  Energy companies	Higher education organizations around the world, including colleges, universities, campuses, foundations and state systems	School districts  Federal, state and local governments  Public safety and justice agencies  Not-for-profit organizations	Large, medium and small companies across virtually all industries, primarily in North America and Europe

**Financial Systems**

FS provides mission-critical software and IT services to institutions in virtually every segment of the financial services industry. The primary purpose of these systems is to automate the many detailed processes associated with trading, managing investment portfolios and accounting for investment assets. These solutions address the processing requirements of a broad range of users within financial services, including asset managers, traders, custodians, compliance officers, treasurers, insurers, risk managers, hedge fund managers, plan administrators and clearing agents. In addition, we also provide professional services that focus on application implementation and integration of these solutions and on custom software development. Since our inception, we have consistently enhanced our FS solutions to add new features, process new types of financial instruments, meet new regulatory requirements, incorporate new technologies and meet evolving customer demands.

We deliver many of our FS solutions as an application service provider, primarily from our data centers located in North America and Europe that customers access through the Internet or virtual private networks. We also deliver some of our FS solutions by licensing the software to customers for use on their own computers.

## **Table of Contents**

Our FS businesses are grouped internally into two divisions. The main distinction between the two divisions is that one division serves customers whose business is primarily in North America while the other division serves customers whose business is primarily international. The grouping of FS businesses in two divisions also takes into account the balance of management workload.

*Americas Division:* The Americas division includes our Brokerage & Clearance, Corporations, Insurance, Trading and Wealth Management businesses as well as our US-based Consulting Services. It offers software solutions and strategic IT consulting to a broad range of users, including insurers and reinsurers, traders, custodians, plan administrators and compliance officers. These solutions help automate and manage the trading and processing requirements of banks, broker/dealers, insurance companies, pension companies, fiduciary trusts and other financial services firms primarily in North America.

*International Division:* The International division includes our Alternative Investments, Banks, Capital Markets & Investment Banking, Global Trading and Institutional Asset Management businesses, as well as our European-based Consulting Services. It also includes our FS international distribution organization which conducts business with customers in China, Japan, and the rest of Asia-Pacific, Central and Eastern Europe, Africa and the Middle East. The International division offers software solutions and strategic IT consulting to a broad range of users including asset managers, fund administrators, traders, compliance officers, market makers, chief financial officers and treasurers. These solutions help connect every stage of the investment lifecycle, from portfolio analysis to regulatory compliance to investor accounting and reporting. They also help mitigate risk and deliver straight-through processing.

Our FS businesses in the Americas and International divisions are organized in the following customer-facing business areas:

### *Alternative Investments*

We offer solutions specifically designed for firms specializing in alternative investments. These solutions support multiple asset classes and their derivatives, including equities, currency exchange rates, interest rates, credit, commodities, and convertibles. Solutions include strategy-specific applications for convertible and capital structure arbitrage, global repurchase agreements, stock finance, and listed options trading. Our enterprise-wide, straight-through processing solutions meet the trading, risk management, and investor and portfolio accounting requirements of single- and multi-strategy institutions.

### *Banks*

We provide an integrated solution suite for asset/liability management, budgeting and planning, regulatory compliance, and profitability. Our products also manage all aspects of universal banking including back-office transaction processing, front-office multi-channel delivery, card management and payments.

### *Corporations*

Our solutions provide chief financial officers and treasurers with the ability to monitor cash flow in real time and with increased operational controls on treasury, receivables and payments functions. An end-to-end collaborative financial management framework gives CFOs and treasurers tools to help drive maximum value from working capital and reduce risk.

### *Brokerage & Clearance*

We are a leading provider of solutions for the global processing of securities and derivatives. These solutions support trade processing, clearing, and accounting, helping brokerage and clearing firms streamline operations and control risk and cost. Our solutions provide centralized transactional databases, support cross-asset business functions, and offer consolidated views of accounts and risk management. These solutions help firms gain front-to-back operational efficiencies and realize advantages of scale, supporting business growth.

## **Table of Contents**

### *Capital Markets & Investment Banking*

Our solutions support cross-asset trading and straight-through processing of derivative instruments, helping investment banks to manage global trading books in multiple asset classes. These solutions also support securities lending and borrowing, repurchase agreements, and related transactions. We also offer solutions for the enterprise-wide management of market, credit, interest rate and liquidity risk. In addition, we provide a framework for helping banks to manage operational risk and compliance requirements.

### *Institutional Asset Management*

We provide asset managers with comprehensive, integrated solutions to support their global investment operations. These solutions help connect every stage of the investment lifecycle, from portfolio analysis and electronic trading connectivity to regulatory compliance and investment accounting and reporting. We also provide systems for trading, pre- and post-trade compliance measurement, risk management, performance measurement and attribution, and data management.

### *Insurance*

We provide IT solutions for the insurance industry in each of the following major business lines: life/health/annuities/pensions, property and casualty, reinsurance and asset management. Our software and services support functions from the front-office through the back-office from customer service and policy administration to actuarial calculations, financial and investment accounting, and reporting.

### *Trading*

We provide traders of U.S. equities, commodities and listed options with Web-based, electronic trading platforms for trade order management, direct market access and risk and compliance management. Our cross-asset solutions automate the transaction lifecycle, providing network connectivity and straight-through processing from pre- to post-trade. Our data analysis tools help improve the speed and ease of optimizing portfolios, assessing risk exposure and identifying market opportunities. Our energy solutions help financial services institutions, industrial and energy companies to efficiently compete in global energy markets by streamlining and integrating the trading, risk management and operations of physical commodities and their associated financial instruments.

### *Global Trading*

Through the acquisition of GL TRADE S.A. in October 2008, we provide multi-asset, front- to back-office trading solutions for equities, fixed income, derivatives, FX and commodities on exchanges worldwide. These solutions support full lifecycle trading and trade processing activities including information services, market connectivity and order management that help improve trade efficiency and risk monitoring.

### *Wealth Management*

Our wealth management solutions help investment advisors, trust bank managers and wealth managers grow their businesses by helping support the needs of their mass affluent and high-net worth clients. We provide solutions for financial planning, asset allocation, surveillance and suitability, new account opening, portfolio management, unified managed account programs, trade execution, asset management, custody and trust accounting. Our compliance and data management solutions help compliance officers mitigate risk and improve efficiencies through centralized data infrastructures, automated trade supervision and code-of-ethics monitoring. We also serve organizations that administer defined-contribution and defined-benefit retirement plans. Our retirement plan recordkeeping systems support many plan types and fulfill functions ranging from processing of contributions and payments to tax reporting and trade management.

## **Table of Contents**

### ***Higher Education***

In HE, we provide software, strategic and systems integration consulting, and technology management services to colleges and universities. Our HE solutions help institutions worldwide strengthen institutional performance by improving constituent services, increasing accountability and enhancing the education experience. Our Unified Digital Campus Solutions unite people, processes and technology in an environment that addresses the needs of higher education institutions and the people they serve with specific components tailored to the unique needs of each institution. HE solutions include administration and enterprise resource planning, advancement, IT management and outsourcing, portal and communication tools, performance management, enrollment management, academic performance and strategic planning.

### ***Public Sector***

In PS, we provide software and processing solutions designed to meet the specialized needs of local, state, federal and central governments, public safety and justice agencies, public schools, utilities, non-profits, and other public sector institutions. Our systems and services help institutions improve the efficiency of their operations and utilize the Web and wireless technologies in serving their constituents. Our PS products support a range of specialized enterprise resource planning and administrative solutions for functions such as accounting, human resources, payroll, utility billing, land management, public safety and criminal justice, and grant and project management.

### ***Availability Services***

In AS, we help our customers improve the uptime and resilience of their information and computer systems by providing them with cost-effective IT infrastructure and services to help them keep their mission-critical business systems reliable and secure. Since we pioneered commercial disaster recovery in the 1970s, we believe that our specialization in information availability solutions, together with our experience, technology expertise, resource management capabilities, vendor neutrality and diverse service offerings, have uniquely positioned us to meet customers' varied needs in an environment where businesses are critically dependent on availability of IT. Over three decades, we have developed a comprehensive portfolio of business continuity and information availability services that extend from always ready standby services to advanced recovery services and always on production and managed services. We also provide business continuity management software and consulting services to help our customers design, implement and maintain plans to protect their central business systems. To serve our 10,000 AS customers, we utilize 4,000,000 square feet of operations space at over 60 locations in nine countries and a global network of approximately 25,000 miles. Since our inception, we have had a 100% success rate helping our customers recover from unplanned interruptions resulting from major disasters including the Gulf Coast hurricanes in 2008, widespread flooding in the U.K. in 2007, hurricane Katrina and Gulf Coast hurricanes in 2005, Florida hurricanes in 2004, the Northeast U.S. blackout in 2003 and the terrorist attacks of September 11, 2001.

We provide the following four categories of services: recovery services, managed services, consulting services and business continuity management software. They can be purchased independently or collectively, depending on the level of information availability required by customers as well as their other business continuity and IT infrastructure services needs. Although recovery services remain our principal revenue generating services, managed services, consulting and business continuity management software increasingly accounts for a greater percentage of our new sales. Because these services are often unique to individual customers and utilize a greater proportion of dedicated vs. shared resources, they typically require modestly more capital expenditures and command a somewhat lower operating margin rate than recovery services. The combination of all of these services provides our customers with a total, end-to-end business continuity solution.

## **Table of Contents**

### *Recovery Services*

AS helps customers maintain access to the information and computer systems they need to run their businesses by providing cost-effective solutions to keep IT systems operational and secure in the event of an unplanned business disruption. These business disruptions can range from man-made events (e.g. power outages, telecommunications disruptions and acts of terrorism) to natural disasters (e.g. floods, hurricanes and earthquakes). AS offers a complete range of recovery services, depending on the length of time deemed acceptable by customers for IT systems outage ranging from minutes (for mission-critical applications) to several hours or several days (for non-mission-critical applications). We deliver these services using processors, servers, storage devices, networks and other resources and infrastructure that are subscribed to by multiple customers, which results in economies of scale for us and cost-effectiveness for our customers. These shared services range from basic standby disaster recovery services to blended services labeled as advanced recovery or high availability solutions that combine the basic standby services with dedicated workgroup recovery and data storage resources that allow customers to continuously replicate data to one of our sites, helping customers to minimize data loss and reduce recovery times.

### *Managed Services*

AS increasingly provides IT infrastructure and production services that customers use to run their businesses on a day-to-day basis. These services range from co-located IT infrastructure (e.g., where AS provides data center space, power, cooling and network connectivity) to fully-managed infrastructure services (e.g., where AS fully manages the daily operation of a customer's IT infrastructure). Managed services typically require more dedicated processors, servers, storage devices, networks and other resources, which are either obtained by the customer or provided by us for the customer's exclusive use. Managed services are designed in a flexible manner allowing customers to choose the services they need from a menu of options. Therefore, the combination of selected managed services is unique to each customer, with solutions crafted to meet that customer's specific needs. Managed services help customers augment their IT resources and skills without having to hire full-time internal IT staff.

### *Consulting and Professional Services*

AS offers consulting services to help customers solve critical business continuity and IT infrastructure problems including business continuity, data storage and management, information security, and numerous categories of IT infrastructure operations. In addition, we also provide professional services that help customers design, implement and maintain other services provided by AS.

### *Business Continuity Management Software*

AS offers software solutions that help customers operate a comprehensive and professional business continuity plan across their enterprise. AS software solutions include business risk assessment, business continuity plan development, emergency notification in the event of a business disruption and virtual command center functionality. These solutions help enable ongoing business operations and management when business teams cannot be physically together because of an unplanned business disruption.



---

## **Table of Contents**

### **Acquisitions**

To complement organic growth, we have a highly disciplined due diligence program to evaluate, execute and integrate acquisitions. Generally, we seek to acquire businesses that broaden our existing product lines and service offerings by adding complementary products and service offerings and by expanding our geographic reach. During 2008, we spent approximately \$721 million in cash to acquire six businesses.

The following table lists the businesses we acquired in 2008:

<b>Acquired Company/Business</b>	<b>Date Acquired</b>	<b>Description</b>
Advanced Portfolio Technologies, Inc.	02/29/08	Portfolio optimization and risk management software.
Corporate Payments Division of Payformance Corporation	02/29/08	Integrated electronic and outsourced payment solutions.
Strohl Systems Group, Inc.	05/21/08	Business continuity planning software.
Delphi Technologies Ltd.	07/01/08	Consulting and IT professional services to banks and insurance companies in Ireland.
GL TRADE SA	10/01/08	Global provider of multi-asset front to back solutions, connectivity and information services.
Assets of a disaster recovery business based in Paris, France	10/07/08	Disaster recovery business based in Paris, France.

### **Product Development**

We continually support, upgrade and enhance our systems and develop new products to meet the needs of our customers for operational efficiency and resilience and to leverage advances in technology. FS is transforming some of the key functionality of its core systems into components to form a new software development and on-demand delivery environment called Infinity. Infinity enables financial institutions to develop and deploy custom applications, integrating SunGard components with their own proprietary or third party components. Infinity uses SunGard's Common Services Architecture (CSA), a service-oriented architecture (SOA) development framework, offering business process management (BPM) and a virtualized, software-as-a-service (SaaS) infrastructure.

Our expenditures for software development during the years ended December 31, 2006, 2007 and 2008, including amounts that were capitalized, totaled approximately \$276 million, \$297 million and \$325 million, respectively. These amounts do not include routine software support costs that are included in cost of sales, nor do they include costs incurred in performing certain customer-funded development projects in the ordinary course of business.

### **Marketing**

Most of our FS solutions are marketed throughout North America and Western Europe and many are marketed world wide, including Asia-Pacific, Central and Eastern Europe, the Middle East and Africa, with the principal focus being on selling additional products and services to existing customers. Our AS, HE and PS solutions are marketed primarily in North America and Europe, with a focus on both new accounts and existing accounts. Our revenue from sales outside the United States during the years ended December 31, 2006, 2007 and 2008 totaled approximately \$1.23 billion, \$1.48 billion and \$1.64 billion, respectively.

## **Table of Contents**

### **Competition**

Since most of our computer services and software solutions are specialized and technical in nature, most of the market niches in which we compete have a relatively small number of significant competitors. Some of our existing competitors and some potential competitors have substantially greater financial, technological and marketing resources than we have (see Risk Factors ).

**Financial Systems.** In our FS business, we compete with numerous other data processing and software vendors that may be broadly categorized into two groups. The first group is comprised of specialized financial systems companies that are much smaller than us. The second group is comprised of large computer services companies whose principal businesses are not in the financial systems area, some of which are also active acquirors. We also face competition from the internal processing and IT departments of our customers and prospects. The key competitive factors in marketing financial systems are the accuracy and timeliness of processed information provided to customers, features and adaptability of the software, level and quality of customer support, degree of responsiveness, level of software development expertise, total cost of ownership and return on investment. We believe that we compete effectively with respect to each of these factors and that our leadership, reputation and experience in this business are important competitive advantages.

**Higher Education and Public Sector.** In our HE and PS businesses, we compete with a variety of other vendors depending upon customer characteristics such as size, type, location, computing environment and functional requirements. For example, there may be different competitors for different sizes or types of educational institutions or government agencies, or in different states or geographic regions. Competitors in this business range from larger providers of generic enterprise resource planning systems to smaller providers of specialized applications and technologies. We also compete with outsourcers and systems integrators, as well as the internal processing and information technology departments of our customers and prospective customers. The key competitive factors in marketing higher education and public sector systems are the accuracy and timeliness of processed information provided to customers, features and adaptability of the software, level and quality of customer support, degree of responsiveness, level of software development expertise and overall net cost. We believe that we compete effectively as to each of these factors and that our leadership, reputation and experience in these businesses are important competitive advantages.

**Availability Services.** In our AS business, our greatest source of competition for recovery and advanced recovery services is in-house dedicated solutions, which are solutions that our customers or prospective customers develop and maintain internally instead of purchasing from a vendor such as us. Historically, our single largest commercial competitor in the AS business for recovery and advanced recovery services has been IBM Corporation, which we believe is the only company other than ours that currently provides the full continuum of availability services. We also face competition from specialized vendors, including hardware manufacturers, data-replication and virtualization software companies, outsourcers, managed hosting companies, IT services companies and telecommunications companies. Competition among managed or data center service providers is fragmented with various competitor types, such as major telecommunication providers, carrier neutral managed services providers, real estate investment trusts, IT outsourcers and regional colocation providers. We believe that we compete effectively with respect to the key competitive dimensions in information availability, namely economies of scale, quality of infrastructure, scope and quality of services, including breadth of hardware platforms and network capacity, level and quality of customer support, level of technical expertise, vendor neutrality and price. We also believe that our experience and reputation as an innovator in information availability solutions, our proven track record, our financial stability and our ability to provide the entire portfolio of availability services as a single vendor solution are important competitive advantages.

### **Employees**

On March 31, 2009, we had approximately 20,000 employees. We believe that our success depends partly on our continuing ability to retain and attract skilled technical, sales and management personnel. While

## **Table of Contents**

skilled personnel are in high demand and competition exists for their talents, we believe that we have been able to retain and attract highly qualified personnel (see Risk Factors ). We believe that our employee relations are excellent.

### **Proprietary Protection**

We own registered marks for the SUNGARD name and own or have applied for trademark registrations for many of our services and software products.

To protect our proprietary services and software, we rely upon a combination of copyright, patent, trademark and trade secret law, confidentiality restrictions in contracts with employees, customers and others, software security measures, and registered copyrights and patents. We also have established policies requiring our personnel and representatives to maintain the confidentiality of our proprietary property. We have a few registrations of our copyrights and a number of patents and patent applications pending. We will continue to apply for software and business method patents on a case-by-case basis and will continue to monitor ongoing developments in the evolving software and business method patent field (see Risk Factors ).

### **Sustainable Development**

We have a strong commitment to sustainability. The customers, communities and environment we do business with and in are increasingly influenced by sustainability issues. Our employees identify strongly with global issues such as climate change, and most of our businesses already have established practices for recycling, conservation and disposal of hazardous materials. We believe in accountability, doing business ethically and doing the right thing. During 2008, we adopted a company-wide sustainability policy and supplier code of conduct, began a process to measure our carbon footprint and continued our employee engagement and communications programs. We also continued our partnerships with the World Business Council on Sustainable Development, The Green Grid and the Corporate Eco-Forum as part of our objective to work with companies across industries to implement best practices. We remain dedicated to establishing a corporate culture of sustainable development to help ensure that SunGard can continue to take pride in what we do and the way we do it.

### **Properties and Facilities**

We lease space, primarily for availability services facilities, data centers, sales offices, customer support offices and administrative offices, in many locations worldwide. We also own some of our computer and office facilities. Our principal facilities include our leased availability services facilities in Philadelphia, Pennsylvania (640,000 square feet), Carlstadt, New Jersey (578,600 square feet), and Hounslow, England (195,000 square feet) and include our financial systems application service provider centers in Voorhees, New Jersey, Birmingham, Alabama, Burlington, Massachusetts, Hopkins, Minnesota and Ridgefield, New Jersey. We believe that our leased and owned facilities are adequate for our present operations.

### **Legal Proceedings**

We are presently a party to certain lawsuits arising in the ordinary course of our business. We believe that none of our current legal proceedings will be material to our business, financial condition or results of operations.

**Table of Contents****MANAGEMENT**

Our executive officers and directors are listed below.

<b>Name</b>	<b>Age</b>	<b>Principal Position With SunGard Data Systems Inc.</b>
<b>Executive Officers</b>		
James E. Ashton III	50	Division Chief Executive Officer, Financial Systems
Kathleen Asser Weslock	53	Senior Vice President Human Resources and Chief Human Resources Officer
Eric Berg	46	Group Chief Executive Officer, Availability Services
Cristóbal Conde	49	President, Chief Executive Officer and Director
Harold C. Finders	53	Division Chief Executive Officer, Financial Systems
Till M. Guldimann	60	Vice Chairman
Ronald M. Lang	58	Group Chief Executive Officer, Higher Education
Karen M. Mullane	44	Vice President and Controller
Brian Robins	50	Senior Vice President and Chief Marketing Officer
Michael J. Ruane	55	Senior Vice President Finance and Chief Financial Officer
Gilbert O. Santos	49	Group Chief Executive Officer, Public Sector
Victoria E. Silbey	45	Senior Vice President Legal and General Counsel
Richard C. Tarbox	56	Senior Vice President Corporate Development
<b>Directors</b>		
Chinh E. Chu	42	Director
John Connaughton	43	Director
James H. Greene, Jr.	58	Director
Glenn H. Hutchins	53	Chairman of the Board of Directors
James L. Mann	75	Director
John Marren	46	Director
Sanjeev Mehra	50	Director
Julie Richardson	46	Director

Mr. Ashton has been Division Chief Executive Officer, Financial Systems, since 2007. Mr. Ashton was Group Chief Executive Officer, SunGard Trading, Treasury & Risk Management from 2005 to 2007. Mr. Ashton served as Group Chief Executive Officer, SunGard Trading and Risk Systems from 1999 to 2005 and Group Chief Executive Officer, SunGard Treasury Systems from 2003 to 2005. From 1997 to 1999, he served as Senior Vice President and General Manager of a wealth management systems business that we acquired in 1997.

Ms. Asser Weslock has been Senior Vice President Human Resources and Chief Human Resources Officer since 2006. From 2005 to 2006, Ms. Asser Weslock was head of Human Resources at Deloitte Financial Services LLP, and from 2001 to 2005 she was Director of Global Human Resources for Shearman & Sterling LLP, an international law firm. Ms. Asser Weslock has over twenty years of human resources experience as both a consultant and a practitioner.

Mr. Berg has been Group Chief Executive Officer, SunGard Availability Services since 2007. Before joining SunGard, Mr. Berg was Chief Administrative Officer of NCR Corporation from 2003 to 2007. Prior to that, Mr. Berg was Chief Information Officer at The Goodyear Tire & Rubber Company and a Regional Vice President of PepsiCo's Frito-Lay division.

Mr. Conde has been Chief Executive Officer since 2002, President since 2000 and a director since 1999. Mr. Conde served as Chief Operating Officer from 1999 to 2002 and Executive Vice President from 1998 to 1999. Before then, Mr. Conde was Chief Executive Officer of SunGard Trading Systems Group from 1991 to 1998. Mr. Conde was cofounder of a trading and risk systems business that we acquired in 1987.

**Table of Contents**

Mr. Finders has been Division Chief Executive Officer, Financial Systems, since 2007. Mr. Finders was Group Chief Executive Officer, SunGard Europe from 2005 to 2007. From 2001 to 2005, Mr. Finders headed the SunGard Investment Management Systems businesses based in Europe. From 1996 to 2001, he held various senior management positions with us overseeing a number of our European financial systems businesses. Mr. Finders headed a Geneva-based wealth management systems business that we acquired in 1996.

Mr. Guldimann has been Vice Chairman since 2002. He was our Senior Vice President, Strategy and a member of our board of directors from 1999 to 2002. Mr. Guldimann was Vice Chairman from 1997 to 1999 and Senior Vice President from 1995 to 1997 of a trading and risk systems business that we acquired in 1998.

Mr. Lang has been Group Chief Executive Officer, SunGard Higher Education since January 2009 and Group Chief Executive Officer, Enterprise Solutions Group from 2005 until January 2009. He was Chief Product Officer Financial Systems from January to December 2005. From 2000 to 2005, Mr. Lang was Group Chief Executive Officer, SunGard Trading Systems and was responsible for our SunGard Brokerage Systems and SunGard Financial Networks groups from 2003 to January 2005. Mr. Lang was Vice President of Marketing from 1997 to 1998 and President from 1998 to 2000 of a trading and risk systems business that we acquired in 1998.

Ms. Mullane has been Vice President and Contoller since 2006, Vice President and Director of SEC Reporting from 2005 to 2006, Director of SEC Reporting from 2004 to 2005 and Manager of SEC Reporting from 1999 to 2004. From 1997 to 1999, she was Vice President of Finance at NextLink Communications of Pennsylvania and, from 1994 to 1997, she was Director of Finance at EMI Communications. Ms. Mullane is a director and/or officer of most of our domestic subsidiaries.

Mr. Robins has been Senior Vice President Chief Marketing Officer since 2005. From 2003 to 2005, he was Senior Vice President Corporate Marketing and was Vice President Corporate Marketing from 2000 to 2003. From 1995 to 2000, Mr. Robins held various marketing positions, including Vice President Marketing, with a trading and risk systems business that we acquired in 1998.

Mr. Ruane has been Senior Vice President Finance since 2001 and our Chief Financial Officer since 1994. He was Vice President Finance from 1994 to 2001 and Treasurer from 1994 to 2005. From 1984 to 1994, Mr. Ruane held various executive positions with us. Mr. Ruane is a director and officer of most of our domestic and foreign subsidiaries. Mr. Ruane was a director of Arbinet-thexchange, Inc. from 2004 to 2009.

Mr. Santos has been Group Chief Executive Officer, SunGard Public Sector since 2007. Mr. Santos held various senior executive positions, including most recently President and Chief Executive Officer, with a business that we acquired in 2003 and that he joined in 1998. From 1983 to 1998, Mr. Santos held various executive positions at Motorola, Inc., including Director of the Public Sector Solutions Division and Land Mobile Sector Strategy Office.

Ms. Silbey has been Senior Vice President Legal and General Counsel since 2006 and Vice President Legal and General Counsel from 2005 to 2006. From 1997 to 2005, Ms. Silbey held various legal positions with us, including Vice President Legal and Assistant General Counsel from 2004 to 2005. From 1991 to 1997, she was a lawyer with Morgan, Lewis & Bockius LLP, Philadelphia. Ms. Silbey is a director and officer of most of our domestic and foreign subsidiaries.

Mr. Tarbox has been Senior Vice President Corporate Development since 2001 and was Vice President Corporate Development from 1987 to 2001.

Mr. Chu has been a Director since 2005. Mr. Chu is a Senior Managing Director of The Blackstone Group, a private equity firm which he joined in 1990. Mr. Chu serves on the Boards of Directors of Alliant Insurance, Allied Barton, Bayview, Catalent Pharma Solutions, DJO Incorporated, Financial Guaranty Insurance Company, Graham Packaging Holdings Company, HealthMarkets, Inc. and Stiefel Laboratories.

---

**Table of Contents**

Mr. Connaughton has been a Director since 2005. Mr. Connaughton has been a Managing Director of Bain Capital Partners, LLC, a global private investment firm, since 1997 and a member of the firm since 1989. Mr. Connaughton serves on the Boards of Directors of Clear Channel, CRC Health Group, MC Communications (PriMed), Quintiles Transnational Corp., The Boston Celtics, Warner Chilcott, Warner Music Group Corp. and Hospital Corporation of America.

Mr. Greene has been a Director since 2005. Mr. Greene joined Kohlberg Kravis Roberts & Co. LP, a private equity firm ( KKR ), in 1986 and was a General Partner of KKR from 1993 until 1996, when he became a member of KKR & Co. L.L.C., which is the general partner of KKR. Mr. Greene serves on the Boards of Directors of Aricent Inc., Avago Technologies, NuVox Inc., Sun Microsystems, Inc., Western New York Energy, LLC and Zhong Technologies, Inc.

Mr. Hutchins has been Chairman of the Board of Directors since 2005. Mr. Hutchins is a co-founder and Co-Chief Executive of Silver Lake, a technology investment firm that was established in 1999. Mr. Hutchins serves on the Board of Directors of The Nasdaq OMX Group, Inc.

Mr. Mann has been a Director since September 2006 and has been employed by SunGard since 1983. Mr. Mann served as Chairman of the Board from 1987 to 2005 and as a Director from 1983 to 1986. Mr. Mann served as Chief Executive Officer from 1986 to 2002, President from 1986 to 2000, and Chief Operating Officer from 1983 to 1985. Mr. Mann serves on the Board of Directors of athenahealth, Inc.

Mr. Marren has been a Director since 2005. Mr. Marren joined TPG Capital, a private equity firm, in 2000 as a partner and leads the firm's technology team. From 1996 to 2000, he was a Managing Director at Morgan Stanley. From 1992 to 1996, he was a Managing Director and Senior Semiconductor Research Analyst at Alex Brown & Sons. Mr. Marren is currently the Chairman of the Board of MEMC Electronic Materials, Inc. and serves on the Boards of Directors of AllTel Corporation, Avaya Inc., Freescale Semiconductor Inc., Intergraph Corp. and Isola Group S.à r.l.

Mr. Mehra has been a Director since 2005. Mr. Mehra has been a partner of Goldman, Sachs & Co. since 1998 and a Managing Director of Goldman, Sachs & Co.'s Principal Investment Area of its Merchant Banking Division since 1996. He serves on the Boards of Directors of ADESA, Inc., ARAMARK Corporation, Burger King Corporation, First Aviation Services, Inc., Hawker Beechcraft, Inc. and Sigma Electric.

Ms. Richardson has been a Director since 2005. Ms. Richardson has been a Managing Director of Providence Equity Partners since 2003 and oversees the New York-based team. Between 1998 and 2003, Ms. Richardson held various roles at JPMorgan, including Vice Chairman of the firm's investment banking division and Global Co-Head of the firm's Telecom, Media and Technology group. Prior to joining JPMorgan in 1998, Ms. Richardson was a Managing Director at Merrill Lynch, where she spent over 11 years. Ms. Richardson serves on the Boards of Directors of eTelecare Global Solutions, Open Solutions Inc. and USIS Corporation.

The Principal Investor Agreement dated August 10, 2005 by and among our four parent companies and the Sponsors contain agreements among the parties with respect to the election of our directors and the directors or managers of our parent companies. Each Sponsor is entitled to elect one representative to the board of directors of SunGard Capital Corp., which will then cause the board of directors or managers, as applicable, of the other parent companies and of us to consist of the same members. In accordance with the charter of the Nominating and Corporate Governance Committee, to the extent consistent with applicable agreements, the Nominating and Corporate Governance Committee will identify, recommend and recruit qualified candidates to fill new positions on the Board and will conduct the appropriate and necessary inquiries into the backgrounds and qualifications of possible candidates.

**Table of Contents**

The Board has determined that Mr. Connaughton qualifies as an audit committee financial expert within the meaning of regulations adopted by the Securities and Exchange Commission. Mr. Connaughton is not an independent director because of his affiliation with Bain Capital Partners, LLC, the affiliated funds of which hold a 13.70% equity interest in SunGard Capital Corp. and SunGard Capital Corp. II (collectively referred to as the Parent Companies ).

We adopted a Global Business Conduct and Compliance Program that is applicable to our directors and employees, including the chief executive officer, chief financial officer and controller. The Global Business Conduct and Compliance Program is available on our website at [www.sungard.com/corporateresponsibility](http://www.sungard.com/corporateresponsibility). A free copy of our Global Business Conduct and Compliance Program may be requested from:

SunGard Data Systems Inc.

Chief Compliance Officer

680 East Swedesford Road

Wayne, PA 19087

If we make any substantive amendments to the Global Business Conduct and Compliance Program which apply to our chief executive officer, chief financial officer or controller or grant any waiver, including any implicit waiver, from a provision of the Global Business Conduct and Compliance Program to our directors or executive officers, we will disclose the nature of the amendment or waiver on our website at [www.sungard.com/corporateresponsibility](http://www.sungard.com/corporateresponsibility) or in a report on Form 8-K.

## **Table of Contents**

### **Executive Compensation Compensation Discussion and Analysis**

This section discusses the principles underlying our executive compensation policies and decisions. It provides qualitative information regarding the manner in which compensation is earned by our executive officers and places in context the data presented in the tables that follow. In addition, in this section, we address the compensation paid or awarded during fiscal year 2008 to our chief executive officer (principal executive officer), chief financial officer (principal financial officer) and three other executive officers who were the most highly compensated executive officers in fiscal year 2008. We refer to these five executive officers as our Named Executive Officers.

Our executive compensation program is overseen and administered by the Compensation Committee. The Compensation Committee operates under a written charter adopted by our Board and has responsibility for discharging the responsibilities of the Board of Directors relating to the compensation of the Company's executive officers and related duties. Management, including our chief executive officer, or CEO, evaluates a number of factors in developing cash and equity compensation recommendations to the Compensation Committee for its consideration and approval. Following this in-depth review and in consultation with management, our CEO makes compensation recommendations for our corporate executive officers and our Named Executive Officers to the Compensation Committee based on his evaluation of each officer's performance, expectations for the coming year and market compensation data, and our CEO also provides an overview of compensation for other executive officers. The Compensation Committee reviews these proposals and makes all final compensation decisions for corporate executive officers and Named Executive Officers by exercising its discretion in accepting, modifying or rejecting any management recommendations, including any recommendations from our CEO.

#### **Objectives of Our Compensation Program**

Our executive compensation program is intended to meet three principal objectives:

to provide competitive compensation packages to attract and retain superior executive talent;

to reward successful performance by the executive and the Company by linking a significant portion of compensation to future financial and business results; and

to further align the interests of executive officers with those of our ultimate parent company stockholders by providing long-term equity compensation and meaningful equity ownership.

To meet these objectives, our compensation program balances short-term and long-term performance goals and mixes fixed and at-risk compensation that is directly related to stockholder value and overall performance.

Our compensation program for senior executives, including the Named Executive Officers, is designed to reward Company performance. The compensation program is intended to reinforce the importance of performance and accountability at various operational levels, and therefore a significant portion of total compensation is in both cash and stock-based compensation incentives that reward performance as measured against established goals, i.e., pay for performance. Each element of our compensation program is reviewed individually and considered collectively with the other elements of our compensation program to ensure that it is consistent with the goals and objectives of both that particular element of compensation and our overall compensation program. For each Named Executive Officer, we look at each individual's contributions to our overall results, our operating and financial performance compared with the targeted goals, and our size and complexity compared with companies in our compensation peer group.

#### **Elements of Our Executive Compensation Program**

In 2008, the principal elements of compensation for Named Executive Officers were:

annual cash compensation consisting of base salary and performance-based incentive bonuses;



long-term equity incentive compensation;

benefits and perquisites; and

severance compensation and change of control protection.

**Table of Contents**

*Annual Cash Compensation*

Management, including our CEO, develops recommendations for annual executive cash compensation plans by using compensation survey data for a broad set of organizations of comparable business, size and complexity, and then compares the survey results to publicly available compensation data for a group of companies we consider to be our peer group. We believe that the compensation practices of these companies provide us with appropriate benchmarks because they also provide technology products and services to a variety of customers and compete with us for executives and other employees.

The survey data comes from three sources: Radford Executive Benchmark Survey, which focuses on technology companies; Towers Perrin Compensation Data Bank, which focuses on a broader array of organizations including professional services, high-tech and manufacturing companies; and CHiPS, which has a technology industry focus. For purposes of establishing compensation recommendations, we use a blend of the Radford, Towers Perrin and CHiPS survey data to reflect our size and industry. From the Radford survey data, we assessed compensation from 220 public and private companies with annual revenues above \$1 billion, from the Towers Perrin survey data we assessed compensation of 80 companies with annual revenues in the range of \$3 billion to \$6 billion, and from the CHiPS survey data we assessed compensation from 66 companies with annual revenues between \$1 billion to \$10 billion.

The companies we consider within our peer group are financial services and software companies of similar industry and revenue as the Company, and some of which various businesses within the Company compete against for business and for talent. Peer group compensation data is limited to publicly available information and therefore generally does not provide precise comparisons by position as offered by the more comprehensive survey data from Radford, Towers Perrin and CHiPS. As a result, the peer group data provides limited guidance and does not dictate the setting of executive officers' compensation. The following companies comprised our peer group in 2008:

Automatic Data Processing, Inc.		MasterCard Incorporated
	DST Systems, Inc.	
BMC Software, Inc.		Paychex, Inc.
	Fidelity National Information Services, Inc.	
Broadridge Financial Solutions, Inc.		SEI Investments Company
Computer Sciences Corporation	Fiserv, Inc.	The Thomson Corporation
Convergys Corporation	Iron Mountain Incorporated	The Western Union Company

Our annual cash compensation packages for executive officers include base salary and a performance-based executive incentive compensation ( EIC ) bonus. We generally target total cash compensation at approximately 85% of the blended survey data. Because we pay for performance, we weight the cash compensation more heavily toward the performance incentives and less toward the base salary.

*Base Salary.* For base salary, we generally target the 60th percentile of the blended survey data to provide a fixed compensation based on competitive market practice that is not subject to performance risk while also considering other factors, such as individual and company performance. We review the base salaries for each Named Executive Officer annually as well as at the time of any promotion or significant change in job responsibilities. Base salaries are determined for each Named Executive Officer based on his or her position and responsibility by using survey data. In 2008, we provided salary increases for the Named Executive Officers of 2.0% to 5.6% to more closely align base salaries with the targeted 60<sup>th</sup> percentile of market data for each position. Salary for each Named Executive Officer for calendar year 2008 is reported in Table 1 Summary Compensation Table below.

*Performance-Based Incentive Compensation.* The annual EIC bonus for executive officers is designed to reward our executives for the achievement of annual financial goals related to the business for which they have responsibility. A minimum incentive may be earned at threshold EIC goals, which are set generally at levels that reflect an improvement over prior year results, and no payment is awarded if the threshold goal is not achieved.

**Table of Contents**

On-target EIC goals are set generally at levels that reflect budgeted performance. Consistent with our focus on pay for performance, additional amounts can be earned when actual performance exceeds on-target performance. Additional mid-range goals between threshold and target with corresponding incentive amounts are also established. The Company may revise or cancel an executive's EIC at any time as a result of a significant change in circumstances or the occurrence of an unusual event that was not anticipated when the performance plan was approved. Internal EBITA targets are adjusted to take into account acquisitions and/or dispositions which were not included in the budgeted EIC targets.

The financial measures used for the 2008 EIC bonuses for the Named Executive Officers were one or both of the following: (i) EBITA, which represents actual earnings before interest, taxes and amortization, noncash stock compensation expense, management fees paid to the Sponsors and certain other unusual items ( Internal EBITA ) and (ii) budgeted revenue growth of the Company's business segments. Internal EBITA and budgeted revenue growth were selected as the most appropriate measures upon which to base the 2008 EIC bonuses for the Named Executive Officers because they are important metrics that management and the Sponsors use to evaluate the performance of the Company. For Messrs. Ashton and Finders, EIC bonuses earned on the achievement of EBITA goals were subject to a multiplier that, depending upon the achievement of year-over-year revenue growth goals of the Financial Systems segment, could result in the executives receiving less than or more than their EBITA incentive amount. The multiplier ranged from 0 to 1.5, meaning that revenue growth results could reduce or increase the EBITA incentive amount; with a multiplier of 1 resulting in no adjustment to the EBITA incentive.

The following table provides the 2008 threshold, mid-range, and on-target Internal EBITA goals for the Named Executive Officers and the EIC bonuses paid to them based on actual results from 2008:

Name	Threshold (in thousands)	Mid-Point (in thousands)	On-Target (in thousands)	Actual 2008 EIC Bonus
<b>Cristóbal Conde</b>				
Consolidated Company Internal EBITA	\$ 1,134,000	\$ 1,164,000	\$ 1,194,000	\$ 1,946,000
<b>Michael J. Ruane</b>				
Consolidated Company Internal EBITA	\$ 1,134,000	\$ 1,164,000	\$ 1,194,000	\$ 726,000
<b>James E. Ashton III</b>				
Financial Systems Segment Internal EBITA	\$ 522,640	\$ 542,100	\$ 556,000	\$ 770,130
<b>Harold C. Finders</b>				
Financial Systems Segment Internal EBITA	\$ 522,640	\$ 542,100	\$ 556,000	\$ 731,665
<b>Michael K. Muratore</b>				
Financial Systems, Higher Education and Public Sector Segments Internal EBITA	\$ 783,900	\$ 844,600	\$ 825,200	\$ 885,000

The following table provides the low, target and maximum multiplier applicable to the 2008 EBITA incentive amounts earned by Messrs. Ashton and Finders, which is based on the percentage increase or decrease in revenue of the Financial Systems segment as compared to the prior year.

Name	0 Multiplier Low	1 Multiplier Target	1.5 Multiplier Max	Actual 2008 Multiplier
<b>James E. Ashton III</b>				
Financial Systems Segment Revenue Growth (% increase/(decrease) over prior year)	(1.0%)	5.2-7.4%	14.0%	1
<b>Harold C. Finders</b>				
Financial Systems Segment Revenue Growth (% increase/(decrease) over prior year)	(1.0%)	5.2-7.4%	14.0%	1



---

**Table of Contents**

*Long-Term Equity Compensation*

We intend for our equity program to be the primary vehicle for offering long-term incentives and rewarding our executive officers, managers and key employees. Because of the direct relationship between the value of an option or restricted stock unit ( RSU ) award and the value of our stock, we believe that granting options and RSUs is the best method of motivating our executive officers to manage our Company in a manner that is consistent with the interests of our Company and our stockholders. We also regard our equity program as a key retention tool. Retention is an important factor in our determination of the type of award to grant and the number of underlying Units to grant.

In 2005 in connection with the Transaction, executive officers and other managers and key employees were granted a combination of time-based and performance-based options to purchase equity in the Parent Companies. The size of these initial option grants were commensurate with the executive s position, performance and tenure with the Company and were agreed to in connection with the Transaction. These grants were intended to cover the period between the grant date and December 31, 2010, absent promotions or other unusual circumstances. Accordingly, no Named Executive Officers has received equity grants since 2005 other than Mr. Finders, who received a 2007 option grant due to his promotion to Division Chief Executive Officer, Financial Systems. Additional information on all outstanding grants to the Named Executive Officers is shown in Table 3 Outstanding Equity Awards at 2008 Fiscal Year-End below.

Performance-based options granted to the Named Executive Officers vest upon the attainment of certain annual or cumulative earnings goals based on Internal EBITA targets for the Company during a specified performance period, generally five or six years. Based upon actual year-end 2008 results, 3.86% of each 2005 performance-based option award vested out of a maximum of 16.67% available to vest each of six years in the performance period, and 4.63% of each 2007 performance-based option award vested out of a maximum of 20% available to vest each of five years in the performance period. The annual vesting goals for the performance-based options were agreed to by the Sponsors and senior management in 2005 in connection with the Transaction and require sustained and superior company-wide performance in each of the years in the performance period but allow for additional vesting for over performance.

*Benefits and Perquisites*

We offer a variety of health and welfare programs to all eligible employees, including the Named Executive Officers. The Named Executive Officers are eligible for the same benefit programs on the same basis as the rest of the Company s employees in the particular country in which the Named Executive Officer resides, including medical and dental care coverage, life insurance coverage, short-and long-term disability and a 401(k) or defined contribution pension plan.

The Company limits the use of perquisites as a method of compensation and provides executive officers with only those perquisites that we believe are reasonable and consistent with our overall compensation program to better enable the Company to attract and retain superior employees for key positions. The perquisites provided to the Named Executive Officers include leased automobiles and related tax gross-ups and are quantified in Table 1 Summary Compensation Table below.

*Employment Agreements, Severance Compensation & Change of Control Protection*

In connection with the Transaction, the Company entered into definitive employment agreements with certain senior managers, including the Named Executive Officers. The executives with such agreements are eligible for payments if employment terminates or if there is a change of control, as described under Potential Payments on Termination or Change of Control below. The agreements were designed to retain executives and provide continuity of management in the event of an actual or threatened change of control.

## **Table of Contents**

The agreements include the following terms:

A term through December 31, 2010, with one-year automatic renewals unless terminated on one year's advance notice.

The same base salary as that payable by the Company prior to the Transaction, subject to annual adjustments, if any, made by the board of directors or the compensation committee of the board, in consultation with the chief executive officer. See **Base Salary** above for a description of the determination of base salary for the Company's senior management.

The opportunity to earn an annual cash bonus provided that the aggregate bonus opportunity for the senior management as a group will be consistent with that provided by the Company to executives as a group prior to the Transaction, although the board of directors may re-align the performance metrics and other terms in consultation with the chief executive officer. See **Performance-Based Incentive Compensation** above for a description of the determination of cash bonuses for the Company's senior management.

Employee benefits consistent with those provided by the Company to executives prior to the Transaction, including the right to participate in all employee benefit plans and programs.

Participation in the equity plan of SunGard Capital Corp. and SunGard Capital Corp. II.

The right to receive certain severance payments, including upon a termination without cause, a resignation for good reason or a change of control, consistent with the severance payments provided for under the change of control agreement with the Company in effect prior to the Transaction. See **Potential Payments Upon Termination or Change of Control** below.

Certain restrictive covenants (noncompetition, confidentiality and nonsolicitation) that continue for applicable post-termination periods.

The right to receive a tax gross-up payment should any payment provided under the agreement be subject to the excise tax under section 4999 of the Internal Revenue Code of 1986, as amended.

In addition, under the terms of the option awards made to executives, acceleration of vesting of options occurs if a change of control takes place or due to certain other termination events. These arrangements and potential post-employment termination compensation payments are described in more detail in the section entitled **Potential Payments Upon Termination or Change of Control** below.

## **Accounting and Tax Implications**

The accounting and tax treatment of particular forms of compensation do not materially affect the Compensation Committee's compensation decisions. However, we evaluate the effect of such accounting and tax treatment on an ongoing basis and will make appropriate modifications to compensation policies where appropriate.

## **Stock Ownership**

The Company does not have a formal policy requiring stock ownership by management. Our senior managers, including the Named Executive Officers, however, have committed significant personal capital to our Company in connection with the Transaction. See **Beneficial Ownership** below.

## **2009 Compensation Update**

## Edgar Filing: AGREE REALTY CORP - Form S-8

Our normal schedule would have called for approval of salary and bonus adjustments during the February 2009 Compensation Committee meeting. However, because the economic outlook for 2009 remains uncertain and in order to help best position our Company to emerge from this economic crisis stronger, we determined that there will be no increases of salary or EIC performance bonus for the Named Executive Officers and other senior executives in 2009.

**Table of Contents****Summary Compensation Table**

The following table contains certain information about compensation earned in 2008, 2007 and 2006 by the Named Executive Officers.

**Table 1 Summary Compensation Table**

Name and Principal Position	Year	Salary (\$)	Bonus (\$)	Stock Awards (\$)	Option Awards <sup>(1)</sup> (\$)	Non-Equity Incentive Plan Compensation <sup>(2)</sup> (\$)	Change in Pension Value and Nonqualified Deferred Compensation Earnings (\$)	All Other Compensation <sup>(3)</sup> (\$)	Total (\$)
Cristóbal Conde	2008	931,000			4,530,698	1,946,000		47,588	7,455,286
President, Chief Executive Officer and Director	2007	887,000			4,770,589	1,883,400		46,110	7,587,099
	2006	874,000			5,580,358	1,517,972		46,299	8,018,629
Michael J. Ruane Senior Vice President Finance and Chief Financial Officer	2008	454,000			1,004,429	726,000		46,712	2,231,141
	2007	430,000			1,060,530	698,851		40,145	2,229,526
James E. Ashton III <sup>(4)</sup> Division Chief Executive Officer, Financial Systems	2008	510,000			566,865	770,130		51,084	1,898,079
	2007	468,500			605,626	2,061,346		49,573	3,185,045
Harold C. Finders <sup>(5)</sup> Division Chief Executive Officer, Financial Systems	2008	522,532			823,770	731,665		71,505	2,149,472
	2007	487,740			675,241	2,011,400		190,327	3,364,708
Michael K. Muratore <sup>(6)</sup> Former Executive Vice President	2008	582,000			1,812,273	885,000		48,537	3,327,810
	2007	565,000			1,908,235	1,034,036		48,300	3,555,571
	2006	557,000			2,232,136	850,423		55,055	3,694,614

- (1) No option awards were granted in 2008 or 2006 to any of the Named Executive Officers. The amounts in this column reflect the dollar amount recorded for financial statement reporting purposes for the fiscal year ended December 31, 2008, 2007 and 2006, as applicable, in accordance with FAS 123(R), of awards granted pursuant to the SunGard 2005 Management Incentive Plan. The amounts for all of the Named Executive Officers thus include amounts from awards granted on August 12, 2005 at an exercise price of \$18.00 per Unit and for Mr. Finders additional amounts from awards granted on September 21, 2007 at an exercise price of \$20.72 per Unit. Assumptions used in the calculation of this amount are included in Note 7 of the Notes to the Company's Consolidated Financial Statements for the fiscal year ended December 31, 2008 included in this Annual Report on Form 10-K. Because these amounts represent expense for financial reporting purposes, they are not representative of the actual value that the Named Executive Officer would receive upon exercise of these options.
- (2) The amounts in this column reflect the cash awards payable under performance-based incentive compensation, which is discussed in further detail above in the Compensation Discussion and Analysis.
- (3) For Mr. Conde, amount includes health and welfare benefits, matching 401(k) savings plan contributions, car lease payments, and automobile tax gross-ups (\$12,341 in each of 2008 and 2007 and \$10,770 in 2006).

For Mr. Ruane, amount includes health and welfare benefits, matching 401(k) savings plan contributions, car lease payments and related maintenance expenses, and automobile tax gross-ups (\$10,844 in 2008 and \$11,066 in both 2007 and 2006).

For Mr. Ashton, amount includes health and welfare benefits, matching 401(k) savings plan contributions, car lease payments, reimbursement of fuel and maintenance expenses in 2007 and 2006, and automobile tax gross-ups (\$11,524 in 2008, \$10,104 in 2007 and



\$9,364 in 2006).

For Mr. Finders, amount includes health and welfare benefits, company defined contribution pension plan contributions, car lease payments and reimbursement of fuel and maintenance expenses.

**Table of Contents**

For Mr. Muratore, amount includes health and welfare benefits, matching 401(k) savings plan contributions, car lease payments, reimbursement of fuel and maintenance expenses, and automobile tax gross-ups (\$8,842 in 2008, \$10,610 in 2007 and \$13,639 in 2006).

- (4) For Mr. Ashton, the 2007 salary represents a blended rate of \$374,000 from January 1 to March 31, 2007 and \$500,000 from April 1 to December 31, 2007. In April 2007, Mr. Ashton received a promotion and a salary increase commensurate with his new responsibilities.
- (5) Mr. Finders' compensation was paid in Swiss Francs (CHF). All 2008 amounts have been converted into U.S. dollars at the currency exchange rate of 0.832260, which rate was used for purposes of the Company's 2008 operating budget and for purposes of establishing 2008 compensation, and all 2007 amounts have been converted into U.S. dollars at the 2007 average annual currency exchange rate of 0.83424. For Mr. Finders, the 2007 salary represents a blended rate of \$410,000 from January 1 to March 31, 2007 and \$500,000 from April 1 to December 31, 2007. In April 2007, Mr. Finders received a promotion and a salary increase commensurate with his new responsibilities. Compensation information for fiscal year 2006 is not provided for Mr. Finders because he was not a Named Executive Officer in that year.
- (6) Mr. Muratore retired on February 2, 2009. Mr. Muratore had been Executive Vice President since 2002 and most recently serving as acting Group Chief Executive Officer, SunGard Higher Education from September 2008 until his retirement. He was Senior Vice President from 1998 to 2002, Chief Executive Officer of the SunGard Financial Systems Group from 1995 to 1998 and Chief Executive Officer of the SunGard Computer Services Group from 1990 to 1995. From 1985 to 1990, Mr. Muratore held various senior executive positions with us.

***Grants of Plan-Based Awards in Fiscal Year 2008***

To provide long-term equity incentives following the Transaction, the SunGard 2005 Management Incentive Plan ( *Plan* ) was established. The Plan authorizes the issuance of equity subject to awards made under the Plan for up to 60 million shares of Class A common stock and 7 million shares of Class L common stock of SunGard Capital Corp. and 2.5 million shares of preferred stock of SunGard Capital Corp. II.

Under the Plan, awards of time-based and performance-based options have been granted to purchase Units in the Parent Companies. Each Unit consists of 1.3 shares of Class A common stock and 0.1444 shares of Class L common stock of SunGard Capital Corp. and 0.05 shares of preferred stock of SunGard Capital Corp. II. The shares comprising a Unit are in the same proportion as the shares issued to all stockholders of the Parent Companies. The options are exercisable only for whole Units and cannot be separately exercised for the individual classes of stock. Beginning in 2007, hybrid equity awards generally were granted under the Plan, which awards are composed of restricted stock units ( RSUs ) for Units in the Parent Companies and options to purchase Class A common stock in SunGard Capital Corp. All awards under the Plan are granted at fair market value on the date of grant.

Time-based options vest over five years as follows: 25% one year after date of grant, and 1/48<sup>th</sup> of the remaining balance each month thereafter for 48 months. Time-based RSUs vest over five years as follows: 10% one year after date of grant, and 1/48<sup>th</sup> of the remaining balance each month thereafter for 48 months. Performance-based options and RSUs vest upon the attainment of certain annual or cumulative earnings goals based on Internal EBITA targets for the Company during a specified performance period, generally five or six years. Time-based and performance-based options can partly or fully vest upon a change of control and certain other termination events, subject to certain conditions, and expire ten years from the date of grant. Once vested, time-based and performance-based RSUs become payable in shares upon the first to occur of a change of control, separation from service without cause, or the date that is five years after the date of grant.

**Table of Contents**

The following table contains information concerning grants of plan-based awards to the Named Executive Officers during 2008.

**Table 2 2008 Grants of Plan-Based Awards**

Grant	Estimated Possible Payouts under Non-Equity Incentive Plan Awards <sup>(1)</sup>	Estimated Future Payouts Under Equity Incentive Plan Awards			All Other Stock Awards: Number of Shares of Stock or Units	All Other Option Awards: Number of Securities Underlying Options	Exercise or Base Price of Option Awards (\$/Sh)	Grant Date Fair Value of Stock and Option Awards
		Threshold	Target	Maximum				
Name	Date	(\$)	(#)	(#)	(#)	(#)		
Cristóbal Conde	N/A	1,946,000						
Michael J. Ruane	N/A	726,000						
James E. Ashton III	N/A	770,130						
Harold C. Finders	N/A	731,665						
Michael K. Muratore	N/A	885,000						

- (1) Amounts reflect the cash awards to the named individuals under the performance-based incentive compensation, which is discussed in further detail above in the Compensation Discussion and Analysis.

**Table of Contents****Outstanding Equity Awards at 2008 Fiscal Year-End**

The following table contains certain information with respect to options held as of December 31, 2008 by the Named Executive Officers.

**Table 3 Outstanding Equity Awards at 2008 Fiscal Year-End**

Name	Option Awards				Stock Awards				
	Number of Securities Underlying Unexercised Options (#)	Number of Securities Underlying Unexercised Options (#)	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Options (#)	Option Exercise Price (\$)	Option Expiration Date	Number of Shares or Units of Stock That Have Not Vested (#)	Market Value of Shares or Units of Stock That Have Not Vested (\$)	Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other Rights That Have Not Vested (#)	Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Other Rights That Have Not Vested (\$)
Cristóbal Conde	1,218,246 <sup>(1)</sup>	553,748	2,510,808	18.00	08/11/2015				
	678,735 <sup>(2)</sup>			18.00	08/11/2015				
Michael J. Ruane	265,992 <sup>(1)</sup>	120,905	585,852	18.00	08/11/2015				
	158,371 <sup>(2)</sup>			18.00	08/11/2015				
	3,424 <sup>(3)</sup>			4.50	02/26/2013				
	43,687 <sup>(3)</sup>			4.50	02/25/2014				
	59,153 <sup>(3)</sup>			4.50	03/03/2015				
James E. Ashton III	140,173 <sup>(1)</sup>	63,715	401,727	18.00	08/11/2015				
	108,598 <sup>(2)</sup>			18.00	08/11/2015				
	3,083 <sup>(3)</sup>			4.50	02/22/2010				
	50,648 <sup>(3)</sup>			4.50	08/22/2010				
	36,578 <sup>(3)</sup>			4.50	11/18/2010				
	11,111 <sup>(3)</sup>			4.50	03/07/2011				
	34,000 <sup>(3)</sup>			4.50	03/07/2011				
	10,740 <sup>(3)</sup>			4.50	03/06/2012				
	77,885 <sup>(3)</sup>			4.50	03/03/2013				
	39,437 <sup>(3)</sup>			4.50	02/25/2014				
55,038 <sup>(3)</sup>	4.50	03/03/2015							
Harold C. Finders	121,826 <sup>(1)</sup>	55,375	251,083	18.00	08/11/2015				
	31,568 <sup>(4)</sup>			20.72	09/20/2017				
	67,875 <sup>(2)</sup>			18.00	08/11/2015				
	18,934 <sup>(5)</sup>			20.72	09/20/2017				
Michael K. Muratore	487,297 <sup>(1)</sup>	221,498	1,004,320	18.00	08/11/2015				
	271,494 <sup>(2)</sup>			18.00	08/11/2015				

- (1) Time-based stock options granted on August 12, 2005 and which vest over five years with 25% vesting one year from the date of grant, and 1/48th of the remaining balance vesting each month thereafter for 48 months.
- (2) Performance-based options granted on August 12, 2005 and which vest upon the attainment of certain annual or cumulative earnings goals for the Company during the six-year period beginning January 1, 2005, as discussed in further detail above.
- (3) Continuation options are fully vested. To the extent outstanding options of the Predecessor company were not exercised before closing the Transaction, such options converted into fully vested options to purchase equity units in the Parent Companies.



**Table of Contents**

- (4) Time-based stock options granted on September 21, 2007 and which vest over five years with 25% vesting one year from the date of grant, and 1/48th of the remaining balance vesting each month thereafter for 48 months.
- (5) Performance-based options granted on September 21, 2007 and which vest upon the attainment of certain annual or cumulative earnings goals for the Company during the five-year period beginning January 1, 2007, as discussed in further detail above.

***Option Exercises and Stock Vested***

None of the Named Executive Officers exercised any stock options during the fiscal year ended December 31, 2008.

***Pension Benefits***

None of the Named Executive Officers receive benefits under any defined benefit or actuarial pension plan.

***Employment and Change of Control Agreements***

As discussed above, the Company entered into a definitive employment agreement with each of the Named Executive Officers. The terms of these agreements are described above under Compensation Discussion and Analysis.

***Potential Payments Upon Termination or Change of Control***

Pursuant to the terms of the executive employment agreements and option agreements, set forth below is a description of the potential payments the Named Executive Officers would receive if their employment was terminated on December 31, 2008.

The terms cause, good reason, change of control and sale of business are defined in the executive employment agreements. Forms of these agreements have been filed as exhibits to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2005.

***Termination without Cause or Resignation for Good Reason; Certain Change in Control or Sale of Business Transactions.*** If a Named Executive Officer's employment is terminated by the Company without cause, or a Named Executive Officer terminates his employment in certain circumstances which constitute good reason, including certain change of control and sale of business transactions, then:

the Company will pay the Named Executive Officer the following:

a lump sum cash severance amount equal to the applicable multiplier multiplied by the sum of 2008 base salary and target incentive bonus;

a lump sum cash payment of all accrued compensation (as defined in the agreement) as of December 31, 2008;

a lump sum cash payment in an amount equal to the applicable multiplier multiplied by the Company's cost of the Named Executive Officer's medical, dental and vision coverage in effect on December 31, 2008, as increased by a tax gross-up payment equal to the income and FICA tax imposed on such payment;

a lump sum cash payment in an amount equal to the applicable multiplier multiplied by \$17,500, in lieu of retirement, life insurance and long term disability coverage, as increased by a tax gross-up payment equal to the income and FICA tax imposed on such payment;

Edgar Filing: AGREE REALTY CORP - Form S-8

an amount equal to any excise tax charged to the Named Executive Officer as a result of the receipt of any change of control payments;

**Table of Contents**

performance-based options vest on a pro rata basis through the termination date, time-based options immediately stop vesting and all unvested time-based options are forfeited;

if a change of control occurs and employment is not offered, then all unvested performance-based options vest on a return-on-equity basis and all unvested time-based options become fully vested;

if a sale of the business occurs and the employment agreement is not assumed, then performance-based options vest on a pro rata basis through the termination date, all unvested time-based options become fully vested and all unvested performance-based options are forfeited.

*Resignation without Good Reason; Voluntary Retirement and Certain Change in Control Transactions.* If a Named Executive Officer terminates his employment voluntarily without good reason, including certain change of control transactions and retirements, then:

with the exception of certain voluntary retirements, the Company will pay the Named Executive Officer only a lump sum cash payment of all accrued compensation with the exception of his 2008 pro rated target incentive bonus. Under the terms of Mr. Conde's employment agreement, if a change of control occurs and Mr. Conde is offered employment but he resigns, his resignation is considered for good reason;

if the Named Executive Officer voluntarily retires after August 11, 2008, provided he is at least 62 years of age, the Company will pay the Named Executive Officer a lump sum cash payment of all accrued compensation and upon satisfying certain conditions, \$10,000 per month for twelve months from the date of termination;

all performance-based options stop vesting as of the beginning of the year of termination, all time-based options immediately stop vesting, and all unvested time-based and performance-based options are forfeited;

if a change of control occurs and employment is offered but the Named Executive Officer resigns, then all unvested performance-based options vest on a return-on-equity basis and all unvested time-based options become fully vested; and

if the Named Executive retires after August 11, 2008, provided he is at least 62 years of age, then all performance-based options stop vesting as of the beginning of the year of termination, all time-based options continue to vest throughout the consulting period and all unvested performance-based options are forfeited.

*Termination for Cause.* If the Company terminates a Named Executive Officer's employment for cause, then:

the Company will pay the Named Executive Officer only a lump sum cash payment of all accrued compensation with the exception of his 2008 pro rated target incentive bonus;

all vested and unvested time and performance options are forfeited.

*Disability or Death.* If a Named Executive Officer's employment is terminated due to his disability or death, then:

the Company will pay the Named Executive Officer (or his beneficiary in the event of death) a lump sum cash payment of all accrued compensation;



in the event of disability, if the Named Executive Officer elected to participate, he shall receive payments under an insurance policy offered through the Company until he reaches retirement age as defined by the 1983 Amended Social Security Normal Retirement Age;

in the event of death, the Named Executive Officer's beneficiary shall receive payments under an insurance policy offered through the Company; and

performance-based options vest on a pro rata basis through the termination date; all time-based options immediately stop vesting and all unvested time-based options are forfeited.

**Table of Contents**

In order to receive any of the above described severance benefits, the Named Executive Officer is required to execute a release of all claims against the Company. In order to exercise stock options, the Named Executive Officer must execute a certificate of compliance with the restrictive covenants contained in his employment agreement and all other agreements.

With the exception of Mr. Muratore, the tables below reflect the amount of compensation payable to each of the Named Executive Officers in the event of termination of such executive's employment. The amounts shown assume that such termination was effective as of December 31, 2008, and thus includes amounts earned through such time and are estimates of the amounts which would be paid out to the Named Executive Officers upon their termination. The actual amounts to be paid, if any, can only be determined at the time of such executive's separation from the Company. Effective as of February 2, 2009, Mr. Muratore retired from his position as an executive officer of the Company. The table for Mr. Muratore reflects the actual amount of compensation he received from the Company in connection with his retirement.

*Cristóbal Conde Potential Termination Payments and Benefits*

Executive Benefits and Payment Upon Termination	Termination Without Cause or Resignation For Good Reason	Termination For Cause; Resignation Without Good Reason	Termination Due to Voluntary Retirement	Termination Due to Sale of Business Employment Not Offered	Termination Due to Change of Control Employment Not Offered	Termination Due to Change of Control Employment Offered but Resigns	Termination Due to Disability	Termination Due to Death
<b>Compensation:</b>								
Base Salary & Target Incentive Bonus <sup>(1)</sup>	\$ 8,631,000			\$ 8,631,000	\$ 8,631,000	\$ 8,631,000		
Target Incentive Bonus of Year of Termination	\$ 1,946,000		1,946,000	\$ 1,946,000	\$ 1,946,000	\$ 1,946,000	\$ 1,946,000	\$ 1,946,000
Time-Based Stock Options <sup>(2)</sup>				\$ 2,214,992	\$ 2,214,992	\$ 2,214,992		
Performance-Based Stock Options <sup>(3)</sup>					\$ 10,043,231	\$ 10,043,231		
<b>Benefits &amp; Perquisites:</b>								
Health and Welfare Benefits <sup>(4)</sup>	\$ 174,984			\$ 174,984	\$ 174,984	\$ 174,984		
Life Insurance Proceeds								\$ 1,000,000
Disability Benefits								
Accrued Vacation Pay	\$ 17,904	\$ 17,904	17,904	\$ 17,904	\$ 17,904	\$ 17,904	\$ 17,904	\$ 17,904
Excise Tax & Gross-Up								
<b>Total:</b>	\$ 10,769,888	\$ 17,904	1,963,904	\$ 12,984,880	\$ 23,028,111	\$ 23,028,111	\$ 1,963,904	\$ 2,963,904

- (1) Consists of three times the sum of (a) 2008 base salary of \$931,000 and (b) 2008 target incentive bonus of \$1,946,000.
- (2) Represents the value of accelerated unvested time-based options based upon a fair market price of \$22.00 per Unit as of December 31, 2008. Excludes the value of vested time-based options.
- (3) Represents the value of accelerated performance-based options if the Sponsors receive an amount constituting at least 300% of their equity investment ( Investment ). If the Sponsors receive an amount constituting at least 200% of their Investment, then the value of the accelerated performance-based options would be \$4,253,575, and if the Sponsors receive an amount constituting less than 200% of their Investment the performance-based options would have no value. Excludes the value of vested performance-based options.
- (4) Consists of three times the sum of (a) the Company's cost of Mr. Conde's medical, dental and vision coverage and (b) \$17,500 in lieu of the Company's retirement plan matching contribution, life insurance and long-term disability coverage. The health and welfare benefits have been increased by a tax gross-up equal to the estimated income and FICA tax that would be imposed on such payments.

**Table of Contents**

*Michael J. Ruane Potential Termination Payments and Benefits*

Executive Benefits and Payment Upon Termination	Termination Without Cause or Resignation For Good Reason	Termination For Cause; Resignation Without Good Reason	Termination Due to Voluntary Retirement	Termination Due to Sale of Business Employment Not Offered	Termination Due to Change of Control Employment Not Offered	Termination Due to Change of Control Employment Offered but Resigns	Termination Due to Disability	Termination Due to Death
<b>Compensation:</b>								
Base Salary & Target Incentive Bonus <sup>(1)</sup>	\$ 3,540,000			\$ 3,540,000	\$ 3,540,000			
Target Incentive Bonus of Year of Termination	\$ 726,000		\$ 726,000	\$ 726,000	\$ 726,000		\$ 726,000	\$ 726,000
Time-Based Stock Options <sup>(2)</sup>				\$ 483,620	\$ 483,620	\$ 483,620		
Performance-Based Stock Options <sup>(3)</sup>					\$ 2,343,408	\$ 2,343,408		
<b>Benefits &amp; Perquisites:</b>								
Health and Welfare Benefits <sup>(4)</sup>	\$ 141,593			\$ 141,593	\$ 141,593			
Life Insurance Proceeds								\$ 909,000
Disability Benefits								