

BOTTOMLINE TECHNOLOGIES INC /DE/

Form 424B2

December 05, 2012

Table of Contents

Filed pursuant to Rule 424(b)(2)  
Registration No. 333-175582

The information in this preliminary prospectus supplement and the accompanying prospectus is not complete and may be changed. A registration statement relating to the notes has become effective under the Securities Act of 1933, as amended. This preliminary prospectus supplement is not an offer to sell the notes and it is not soliciting an offer to buy the notes in any jurisdiction where the offer or sale is not permitted.

Subject to completion, dated December 5, 2012

Preliminary prospectus supplement

(To prospectus dated July 15, 2011)

**\$150,000,000**

## **BOTTOMLINE TECHNOLOGIES (de), INC.**

### **% Convertible Senior Notes due 2017**

We are offering \$150,000,000 principal amount of our % Convertible Senior Notes due 2017. The notes will bear interest at a rate of % per year, payable semiannually in arrears on June 1 and December 1 of each year, beginning on June 1, 2013. The notes will mature on December 1, 2017.

Holders may convert their notes at their option at any time prior to the close of business on the business day immediately preceding June 1, 2017 only under the following circumstances: (1) during any calendar quarter commencing after the calendar quarter ending on March 31, 2013 (and only during such calendar quarter), if the last reported sale price of our common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the conversion price on each applicable trading day; (2) during the five business day period after any five consecutive trading day period, or the measurement period, in which the trading price per \$1,000 principal amount of notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price of our common stock and the conversion rate on each trading day; or (3) upon the occurrence of specified corporate events. On or after June 1, 2017 until the close of business on the second scheduled trading day immediately preceding the maturity date of December 1, 2017, holders may convert their notes at any time, whether or not any of the foregoing circumstances has occurred.

Upon conversion, we will pay cash up to the aggregate principal amount of the notes to be converted and pay or deliver, as the case may be, cash, shares of our common stock or a combination of cash and shares of our common stock, at our election, in respect of the remainder, if any, of our conversion obligation in excess of the aggregate principal amount of the notes being converted, as described in this prospectus supplement, except that prior to our receipt of stockholder approval to increase the authorized shares of our common stock as described herein, we will settle our conversion obligation solely in cash.

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The conversion rate for the notes will initially be \_\_\_\_\_ shares of common stock per \$1,000 principal amount of notes (equivalent to an initial conversion price of approximately \$ \_\_\_\_\_ per share of our common stock). The conversion rate will be subject to adjustment upon the occurrence of certain events but will not be adjusted for any accrued and unpaid interest. In addition, following certain corporate events that occur prior to the maturity date, we will increase the conversion rate for a holder who elects to convert its notes in connection with such a corporate event in certain circumstances.

We may not redeem the notes prior to the maturity date of December 1, 2017, and no sinking fund is provided for the notes.

If we undergo a fundamental change, as described herein, holders may require us to repurchase for cash all or part of their notes at a repurchase price equal to 100% of the principal amount of the notes to be repurchased, plus accrued and unpaid interest to, but excluding, the fundamental change repurchase date.

The notes will be our senior unsecured obligations and will rank senior in right of payment to any of our future indebtedness that is expressly subordinated in right of payment to the notes; equal in right of payment to any of our existing or future unsecured indebtedness that is not so subordinated; effectively junior in right of payment to any of our secured indebtedness to the extent of the value of the assets securing such indebtedness; and structurally junior to all existing and future indebtedness and other liabilities (including trade payables) of our subsidiaries.

We do not intend to apply to list the notes on any securities exchange or any automated dealer quotation system. Our common stock is listed on The NASDAQ Global Select Market under the symbol EPAY. The last reported sale price of our common stock on The NASDAQ Global Select Market on December 4, 2012 was \$25.03 per share.

**Investing in the notes involves a high degree of risk. See Risk Factors beginning on page S-11 of this prospectus supplement.**

	<b>Per Note</b>	<b>Total</b>
Public offering price(1)	\$	\$
Underwriting discounts and commissions	\$	\$
Proceeds, before expenses, to us	\$	\$

(1) Plus accrued interest, if any, from December \_\_\_\_\_, 2012.

We have granted the underwriters the right to purchase, exercisable for 30 days from the date of this prospectus supplement, up to an additional \$22,500,000 principal amount of notes, solely to cover over-allotments, if any.

**Neither the U.S. Securities and Exchange Commission nor any state securities commission has approved or disapproved of the notes or determined if this prospectus supplement or the accompanying prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

We expect that delivery of the notes will be made to investors in book-entry form through The Depository Trust Company on or about December \_\_\_\_\_, 2012.

### *Joint Book-Running Managers*

**RBC CAPITAL MARKETS**  
*Sole Coordinator*

**RBS**

December \_\_\_\_\_, 2012

**Table of Contents**

**TABLE OF CONTENTS**

**Prospectus Supplement**

<u>ABOUT THIS PROSPECTUS SUPPLEMENT</u>	S-ii
<u>FORWARD-LOOKING STATEMENTS</u>	S-ii
<u>PROSPECTUS SUPPLEMENT SUMMARY</u>	S-1
<u>THE OFFERING</u>	S-5
<u>RISK FACTORS</u>	S-11
<u>USE OF PROCEEDS</u>	S-23
<u>CAPITALIZATION</u>	S-24
<u>RATIO OF EARNINGS TO FIXED CHARGES</u>	S-26
<u>PRICE RANGE OF COMMON STOCK</u>	S-27
<u>DIVIDEND POLICY</u>	S-28
<u>DESCRIPTION OF NOTES</u>	S-29
<u>DESCRIPTION OF CONVERTIBLE NOTE HEDGE AND WARRANT TRANSACTIONS</u>	S-58
<u>UNDERWRITING</u>	S-60
<u>CERTAIN MATERIAL U.S. FEDERAL INCOME TAX CONSIDERATIONS</u>	S-66
<u>LEGAL MATTERS</u>	S-74
<u>EXPERTS</u>	S-74
<u>WHERE YOU CAN FIND MORE INFORMATION</u>	S-75
<u>INCORPORATION BY REFERENCE</u>	S-75

**Prospectus**

<u>ABOUT THIS PROSPECTUS</u>	1
<u>WHERE YOU CAN FIND MORE INFORMATION</u>	2
<u>INCORPORATION BY REFERENCE</u>	2
<u>FORWARD-LOOKING STATEMENTS</u>	3
<u>BOTTOMLINE</u>	4
<u>CONSOLIDATED RATIOS OF EARNINGS TO FIXED CHARGES AND RATIOS OF EARNINGS TO COMBINED FIXED CHARGES AND PREFERRED STOCK DIVIDENDS</u>	5
<u>USE OF PROCEEDS</u>	6
<u>DESCRIPTION OF DEBT SECURITIES</u>	7
<u>DESCRIPTION OF CAPITAL STOCK</u>	16
<u>DESCRIPTION OF DEPOSITARY SHARES</u>	22
<u>DESCRIPTION OF STOCK PURCHASE CONTRACTS AND STOCK PURCHASE UNITS</u>	25
<u>DESCRIPTION OF WARRANTS</u>	26
<u>FORMS OF SECURITIES</u>	27
<u>SELLING STOCKHOLDERS</u>	29
<u>PLAN OF DISTRIBUTION</u>	30
<u>LEGAL MATTERS</u>	33
<u>EXPERTS</u>	33

**Table of Contents**

**ABOUT THIS PROSPECTUS SUPPLEMENT**

We are providing information to you about this offering of our notes in two separate documents: (1) this prospectus supplement, which describes the specific details regarding this offering; and (2) the accompanying prospectus, which provides general information about us, some of which may not apply to this offering. Generally, when we refer to this prospectus, we are referring to both this prospectus supplement and the accompanying prospectus combined. If information in this prospectus supplement is inconsistent with the accompanying prospectus, you should rely on this prospectus supplement.

We have not authorized anyone to provide any information related to this offering of our notes or us other than that contained or incorporated by reference in this prospectus supplement, the accompanying prospectus or in any related free writing prospectus filed by us with the U.S. Securities and Exchange Commission, which we refer to as the SEC. We take no responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you with respect to this offering of our notes or us. This prospectus does not constitute an offer to sell or the solicitation of an offer to buy any securities other than the securities described in this prospectus or an offer to sell or the solicitation of an offer to buy such securities in any circumstances in which such offer or solicitation is unlawful. You should assume that the information appearing in this prospectus supplement, the accompanying prospectus, the documents incorporated by reference in this prospectus supplement and the accompanying prospectus and any related free writing prospectus is accurate only as of their respective dates. Our business, financial condition, results of operations and prospects may have changed materially since those dates.

We further note that the representations, warranties and covenants made by us in any agreement that is filed as an exhibit to any document that is incorporated by reference in this prospectus supplement and the accompanying prospectus were made solely for the benefit of the parties to such agreement, including, in some cases, for the purpose of allocating risk among the parties to such agreements, and should not be deemed to be a representation, warranty or covenant to you. Moreover, such representations, warranties or covenants were accurate only as of the date when made. Accordingly, such representations, warranties and covenants should not be relied on as accurately representing the current state of our affairs.

Unless otherwise specified or unless the context requires otherwise, references in this prospectus supplement to Bottomline, we, us, our, and the Company refer collectively to Bottomline Technologies (de), Inc. and its consolidated subsidiaries. Bottomline Technologies, Paymode-X, WebSeries, C-Series, Transform, Logical Ink, Inprotica and the BT logo are trademarks of Bottomline Technologies (de), Inc., which may be registered in certain jurisdictions. All other brand/product names are trademarks of their respective holders.

**FORWARD-LOOKING STATEMENTS**

This prospectus supplement, the accompanying prospectus and the information incorporated by reference in this prospectus supplement may include forward-looking statements within the meaning of the securities laws. Words such as expects, anticipates, targets, projects, intends, plans, believes, seeks, estimates, continues and may and variations of such words and similar expressions are intended to identify such forward-looking statements. Actual results may differ materially from those indicated by such forward-looking statements as a result of various important factors. Among the important factors that could cause actual results to differ materially from those indicated by such forward-looking statements are competition, market demand, technological change, strategic relationships, recent acquisitions, international operations and general economic conditions, among other factors. For additional discussion of factors that could impact our financial results, refer to the section of this prospectus

**Table of Contents**

supplement entitled Risk Factors. You should also carefully review the risk factors and cautionary statements described in this prospectus supplement and the other documents we file from time to time with the SEC, specifically our Annual Report on Form 10-K for the year ended June 30, 2012 and our Quarterly Report on Form 10-Q for the three month period ended September 30, 2012. Any forward-looking statements represent our views only as of the time they were made and should not be relied upon as representing our views as of any subsequent date. We do not assume any obligation to update any forward-looking statement, except to the extent required by law.

S-iii

**Table of Contents**

**PROSPECTUS SUPPLEMENT SUMMARY**

*This summary highlights only some of the information included or incorporated by reference in this prospectus supplement and the accompanying prospectus and does not contain all of the information that may be important to you. You should read the entire prospectus supplement, the accompanying prospectus and the documents incorporated by reference carefully, including the section entitled Risk Factors, beginning on page S-11 of this prospectus supplement, regarding our company and the notes being sold in this offering.*

**Company Overview**

**Bottomline Technologies (de), Inc.**

We provide cloud-based payment, invoice and banking solutions to corporations, insurance companies, financial institutions and banks around the world. Our solutions are used to streamline, automate and manage processes and transactions involving global payments, invoice receipt and approval, collections, cash management, document management, reporting and document archive. We offer hosted or Software as a Service ( SaaS ) solutions, as well as software designed to run on-site at the customer s location. A growing portion of our offerings are being sold as SaaS-based solutions and paid for on a subscription and transaction basis. Historically, however, our software has been sold predominantly on a perpetual license basis.

Our corporate customers rely on our solutions to automate their payment and accounts payable processes and to streamline and manage the production and retention of electronic documents. We offer legal spend management solutions that automate receipt and review of legal invoices for insurance companies and other large corporate consumers of outside legal services. We operate a cloud-based network that facilitates the exchange of electronic payments and invoices between buyers and their suppliers. We also offer solutions that banks use to provide cash management and treasury capabilities to their business customers. Our document automation solutions are used by organizations to automate paper-intensive processes for the generation of transactional and supply chain documents.

Our solutions complement, leverage and extend our customers existing information systems, accounting applications and banking relationships and can be deployed quickly and efficiently. To help our customers receive the maximum value from our products and meet their specific business requirements, we also provide professional services for installation, training, consulting and product enhancement.

**Our Strategy**

Our objective is to be the leading global provider of business-to-business payment, invoice and document automation software solutions and services. Key elements of our strategy include the following:

moving, over time, more of our solutions to a cloud-based model which provides ease of deployment and efficiency for our customers and increased recurring revenue to us;

providing solutions which enable banks of all sizes to offer their business customers leading cash management and treasury capabilities;

continuing to add customers, vendors and functionality to our growing Paymode-X and legal spend management networks;

providing technology that is innovative, feature-rich and market leading that provides an optimal user experience;

## **Table of Contents**

attracting and retaining exceptional industry and management talent who have experience in our markets and the capability to grow our business;

continuing to develop and broaden strategic relationships that enhance our global position; and

pursuing strategic acquisitions that expand our geographical footprint or extend our product functionality.

### **Our Products and Services**

#### *Banking Solutions*

Our cash management and treasury platforms enable banks of all sizes to offer their customers a host of capabilities including ACH and BACS payments, wires, international payments, check production, balance and information reporting and other features that facilitate enterprise wide cash management. Our solutions allow our bank customers to compete across a full range of client segments from small business to multi-nationals. These solutions feature an intuitive user interface designed to simplify all aspects of cash management for customers of all sizes and sophistication.

#### *Legal Spend Management*

Our legal spend management solutions integrate with claims management and time and billing systems to automate legal invoice management processes and to provide insight into all areas of a corporation's outside legal spend. The combination of automated invoice routing and a sophisticated rules engine allows corporate legal and insurance claims departments to create more efficient processes for managing invoices generated by outside law firms and other service providers, while offering insight into important legal spend factors including expense monitoring and outside counsel performance.

#### *Settlement Network Solution*

Paymode-X is a leading business-to-business electronic settlement network. The solution accelerates corporations' transition from paper to electronic transactions, helping them streamline processes, reduce costs and optimize working capital. With more than 200,000 enrolled vendors, new Paymode-X customers gain immediate benefits because many of their suppliers are already part of the Paymode-X network. Paymode-X functionality includes electronic payments, online access to purchase orders, invoices, remittance detail, comprehensive workflow, and turnkey vendor enrollment and support.

#### *Payment and Document Automation*

The payments automation capabilities inherent in our WebSeries and C-Series solutions can generate a wide variety of domestic and international payment instructions along with consolidated bank reporting of cash activity. Our solutions can reduce administrative expenses and strengthen compliance and anti-fraud controls. Users are able to gather and access data via the Web on payment and bank account information, including account totals and detailed transaction data, providing improved workflow, financial reporting and bank communications.

To help augment financial document workflow and delivery, we also offer a number of solutions built on our Transform platform for automating a wide variety of business documents and supply chain processes as well as related Web-based delivery and document archive. Our products offer advanced design, output formatting and delivery capabilities to replace paper-based forms.

## **Table of Contents**

### *Healthcare Solutions*

Our solutions for advanced forms management (Transform for Healthcare and MedEx), mobile documentation (Logical Ink), workflow automation and payments allow healthcare organizations to improve business efficiencies, reduce costs and improve care quality. Leveraging our extensive experience optimizing document-driven processes, our solutions are applied across the acute care hospital enterprise, accelerating the paper-to-electronic transition while helping our customers streamline data flows and, ultimately, capture more revenue. Our products integrate with a customer's other critical information systems helping to fill process gaps between financial, clinical and administrative systems.

### *SWIFT Solutions*

Our SWIFT Access Service makes it easy to connect to the SWIFT network where corporations can exchange financial information including payment instructions, cash reporting and other messages related to financial transactions with their banks and counterparties around the world. Our SaaS-based SWIFT solutions allow banks and corporations to achieve lower costs, rapid implementation, greater security and improved risk management while avoiding costly internal infrastructure.

### *Professional Services*

Our teams of service professionals draw on extensive experience to provide consulting, project implementation and training services to our clients. By easing the implementation of our products, these services help our customers accelerate the time to value. By improving the overall customer experience, these services help us retain customers and drive future revenue generating arrangements from existing customers.

## **Our Customers**

Our customers are in diverse industries including financial services, insurance, healthcare, technology, retail, communications, education, media, manufacturing and government. We provide our products and services to approximately 75 of the Fortune 100 companies and approximately 75 of the FTSE (Financial Times) 100 companies. Our customers include leading organizations such as AIG, American Express, the Australia and New Zealand Banking Group (ANZ), Bank of America Merrill Lynch, British Airways, Cigna Corporation, Deere and Company, Johnson Controls, Liberty Mutual, Partners Healthcare, Target Corporation, The Hartford Insurance Group and Vodafone.

## **Recent Developments**

### *Acquisitions*

Part of our operating strategy is to identify and pursue strategic acquisitions that can expand our geographical footprint or complement our existing product functionality. On September 11, 2012, we completed the acquisition of Albany Software Ltd., one of the UK's leading BACS solution providers, whose solutions are used by more than 5,000 businesses to streamline, automate and manage processes involving the collection of direct debits and electronic payments. In March 2012, we acquired substantially all of the assets and related operations of Intuit Inc.'s commercial banking business and in connection with that acquisition entered into a strategic partnership with Intuit in which we and Intuit are using our individual core expertise and combined market strength to deliver innovative products and services for businesses to the banking and financial services industry. In November 2011, we acquired IDT, Ltd., with operations in the UK. In fiscal year 2011, we acquired Allegiant, with operations in the United States and



## **Table of Contents**

Canada, SMA Financial Limited and Direct Debit Limited, which are both UK-based businesses, and substantially all of the assets of Business Information Technology Group, with locations in Australia and New Zealand. We may in the future acquire or make investments in other businesses, products or technologies.

### *Special Meeting of Our Stockholders*

We plan to hold a special meeting of our stockholders for the purpose of amending our certificate of incorporation to increase the number of authorized shares of our common stock from 50 million shares to 100 million shares. We currently expect the special meeting of stockholders to be held on January 17, 2013 at 4:00 p.m. (EST). The completion of this offering is not conditioned on stockholder approval of such increase in the number of authorized shares of our common stock, and stockholder approval of such increase will not be conditioned on completion of this offering.

### **Our Corporate Information**

Bottomline was originally organized as a New Hampshire corporation in 1989 and was reincorporated as a Delaware corporation in August 1997. We maintain our corporate headquarters at 325 Corporate Drive, Portsmouth, New Hampshire 03801 and our international headquarters in Reading, England. Our telephone number at our corporate headquarters in Portsmouth, New Hampshire is (603) 436-0700. We maintain a website at [www.bottomline.com](http://www.bottomline.com). We are not including the information contained in our website as part of, or incorporating it by reference into, this prospectus supplement or the accompanying prospectus.

**Table of Contents**

**THE OFFERING**

*The summary below describes the principal terms of this offering and our notes. Certain of the terms and conditions described below are subject to important limitations and exceptions. The Description of Notes section of this prospectus supplement contains a more detailed description of the terms and conditions of the notes. As used in this section, we, our, and us refer to Bottomline Technologies (de), Inc. and not to its consolidated subsidiaries.*

<b>Issuer</b>	Bottomline Technologies (de), Inc., a Delaware corporation.
<b>Securities</b>	\$150,000,000 principal amount of % Convertible Senior Notes due 2017 (plus up to an additional \$22,500,000 principal amount of notes if the underwriters exercise their option to purchase additional notes to cover over-allotments).
<b>Maturity</b>	December 1, 2017, unless earlier repurchased or converted.
<b>Interest</b>	% per year. Interest will accrue from December , 2012 and will be payable semiannually in arrears on June 1 and December 1 of each year, beginning on June 1, 2013. We will pay additional interest, if any, at our election as the sole remedy relating to the failure to comply with our reporting obligations as described under Description of Notes Events of Default.
<b>Conversion Rights</b>	<p>Holders may convert their notes at their option prior to the close of business on the business day immediately preceding June 1, 2017, in multiples of \$1,000 principal amount, only under the following circumstances:</p> <ul style="list-style-type: none"> <li>during any calendar quarter commencing after the calendar quarter ending on March 31, 2013 (and only during such calendar quarter), if the last reported sale price of our common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the conversion price on each applicable trading day;</li> <li>during the five business day period after any five consecutive trading day period (which we refer to as the measurement period ) in which the trading price (as defined under Description of Notes Conversion Rights Conversion Upon Satisfaction of Trading Price Condition ) per \$1,000 principal amount of notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price of our common stock and the conversion rate on each trading day; or</li> <li>upon the occurrence of specified corporate events described under Description of Notes Conversion Rights Conversion Upon Specified Corporate Events.</li> </ul>



**Table of Contents**

On or after June 1, 2017 until the close of business on the second scheduled trading day immediately preceding the maturity date of December 1, 2017, holders may convert their notes, in multiples of \$1,000 principal amount, at the option of the holder regardless of the foregoing circumstances.

The conversion rate for the notes is initially \_\_\_\_\_ shares per \$1,000 principal amount of notes (equivalent to an initial conversion price of approximately \$ \_\_\_\_\_ per share of our common stock), subject to adjustment as described in this prospectus supplement. See Description of Notes Conversion Rights Conversion Rate Adjustments.

We plan to hold a special meeting of our stockholders at which we will seek to obtain stockholder approval for an amendment to our amended and restated certificate of incorporation to increase the number of authorized shares of our common stock by an amount at least equal to (i) the aggregate conversion rate, plus the maximum \_\_\_\_\_ additional shares as defined in Description of Notes Conversion Rights Adjustment to Shares Delivered Upon Conversion Upon a Make-whole Fundamental Change, for each \$1,000 principal amount of notes then outstanding plus (ii) two times the maximum number of shares of common stock issuable upon exercise of the warrants issued in the warrant transactions (as described below) which we refer to as the stockholder approval. Prior to obtaining such stockholder approval, we will satisfy our conversion obligation solely in cash. At any time following our receipt of such stockholder approval (if such approval is obtained), upon conversion, we will pay cash up to the aggregate principal amount of the notes to be converted and pay or deliver, as the case may be, cash, shares of our common stock or a combination of cash and shares of our common stock, at our election, in respect of the remainder, if any, of our conversion obligation in excess of the aggregate principal amount of the notes being converted.

In addition, following certain corporate events that occur prior to the maturity date, we will increase the conversion rate for a holder who elects to convert its notes in connection with such a corporate event in certain circumstances as described under Description of Notes Conversion Rights Adjustment to Shares Delivered Upon Conversion Upon a Make-whole Fundamental Change.

You will not receive any additional cash payment or additional shares representing accrued and unpaid interest, if any, upon conversion of a note, except in limited circumstances. Instead, interest will be deemed to be paid by the cash and shares of our common stock, if any, paid or delivered, as the case may be, to you upon conversion of a note.

## **Table of Contents**

### **No Redemption**

We may not redeem the notes prior to the maturity date and no sinking fund is provided for the notes, which means that we are not required to redeem or retire the notes periodically.

### **Fundamental Change**

If we undergo a fundamental change (as defined in this prospectus supplement under Description of Notes Fundamental Change Permits Holders to Require Us to Repurchase Notes ), subject to certain conditions, holders may require us to repurchase for cash all or part of their notes in principal amounts of \$1,000 or an integral multiple thereof. The fundamental change repurchase price will be equal to 100% of the principal amount of the notes to be repurchased, plus accrued and unpaid interest to, but excluding, the fundamental change repurchase date. See Description of Notes Fundamental Change Permits Holders to Require Us to Repurchase Notes.

### **Ranking**

The notes will be our senior unsecured obligations and will rank:

senior in right of payment to any of our future indebtedness that is expressly subordinated in right of payment to the notes;

equal in right of payment to any of our existing and future unsecured indebtedness that is not so subordinated;

effectively junior in right of payment to any of our secured indebtedness to the extent of the value of the assets securing such indebtedness; and

structurally junior to all existing and future indebtedness and other liabilities (including trade payables) of our subsidiaries.

Prior to this offering, neither we nor our subsidiaries had any outstanding indebtedness for borrowed money. As of September 30, 2012, after giving effect to the issuance of the notes (assuming no exercise of the underwriters' over-allotment option) and the use of proceeds therefrom, our total consolidated indebtedness would have been \$150 million.

The indenture governing the notes does not limit the amount of debt that we or our subsidiaries may incur.

### **Use of Proceeds**

We estimate that the proceeds from this offering will be approximately \$ million (or \$ million if the underwriters exercise their option to purchase additional notes in full to cover over-allotments), after deducting fees and estimated offering expenses payable by us. We expect to enter into convertible note hedge transactions with one or more counterparties, one or more of which may be one of the underwriters or its respective affiliates (which we refer to as the option counterparties ). We also intend to enter into warrant transactions with the option counterparties. We intend to use approximately \$ million of the net proceeds

S-7

**Table of Contents**

from this offering to pay the cost of the convertible note hedge transactions (after such cost is partially offset by the proceeds to us from the warrant transactions). We intend to use the remainder of the net proceeds from this offering for general corporate purposes, which may include the acquisition of companies, businesses or assets, or working capital. See Use of Proceeds.

If the underwriters exercise their over-allotment option, we may sell additional warrants and use a portion of the net proceeds from the sale of the additional notes, together with the proceeds from the additional warrants, to enter into additional convertible note hedge transactions and for general corporate purposes as described above.

**Book-entry Form**

The notes will be issued in book-entry form and will be represented by permanent global certificates deposited with, or on behalf of, The Depository Trust Company ( DTC ) and registered in the name of a nominee of DTC. Beneficial interests in any of the notes will be shown on, and transfers will be effected only through, records maintained by DTC or its nominee and any such interest may not be exchanged for certificated securities, except in limited circumstances.

**Absence of a Public Market for the Notes**

The notes are new securities and there is currently no established market for the notes. Accordingly, no market for the notes may develop. The underwriters have advised us that they currently intend to make a market in the notes. However, they are not obligated to do so, and they may discontinue any market making with respect to the notes at any time without notice. We do not intend to apply for a listing of the notes on any securities exchange or any automated dealer quotation system.

**U.S. Federal Income Tax Consequences**

For the U.S. federal income tax consequences of the holding, disposition and conversion of the notes, and the holding and disposition of shares of our common stock, see Certain Material U.S. Federal Income Tax Considerations.

**Convertible Note Hedge and Warrant Transactions** In connection with the pricing of the notes, we expect to enter into convertible note hedge transactions with the option counterparties. We also expect to enter into warrant transactions with the option counterparties.

The convertible note hedge transactions are expected to reduce:

our exposure to potential cash payments we will be required to make upon conversion of the notes prior to, or if we do not receive, the stockholder approval as described in the Description of Notes section of this prospectus supplement; or

**Table of Contents**

if we have received such stockholder approval, our exposure to potential dilution to our common stock upon any conversion of notes, if we elect to deliver common stock, or our exposure to cash payments, upon conversion of the notes, if we elect to make cash payments.

The warrant transactions are intended to reduce the cost of the convertible note hedge transactions, but they could separately have a dilutive effect to the extent that the market value per share of our common stock exceeds the applicable strike price of the warrants. However, subject to certain conditions, we may elect to settle the warrants in cash. If the underwriters exercise their over-allotment option, we may enter into additional convertible note hedge and warrant transactions.

In connection with establishing their initial hedges of the convertible note hedge and warrant transactions, the option counterparties or affiliates thereof expect to enter into various derivative transactions with respect to our common stock concurrently with or shortly after the pricing of the notes. This activity could increase (or reduce the size of any decrease in) the market price of our common stock or the notes at that time.

In addition, the option counterparties or affiliates thereof may modify their respective hedge positions by entering into or unwinding various derivatives with respect to our common stock and/or purchasing or selling our common stock or other securities of ours in secondary market transactions following the pricing of the notes and prior to the maturity of the notes (and are likely to do so during any observation period related to a conversion of notes). This activity could also cause or avoid an increase or a decrease in the market price of our common stock or the notes, which could affect your ability to convert the notes and, to the extent the activity occurs during any observation period related to a conversion of notes, it could affect the amount and value of the consideration that you will receive upon conversion of the notes.

For a discussion of the potential impact of any market or other activity by the option counterparties or their affiliates in connection with these convertible note hedge and warrant transactions, see Risk Factors Risks Related to the Notes The convertible note hedge and warrant transactions may affect the value of the notes and our common stock and Underwriting.

**NASDAQ Global Select Market Symbol for Our Common Stock**

Our common stock is listed on The NASDAQ Global Select Market under the symbol EPAY.



**Table of Contents**

**Trustee, Paying Agent and Conversion Agent**

The Bank of New York Mellon Trust Company, N.A.

**Risk Factors**

Investing in the notes involves a high degree of risk. You should review the section entitled "Risk Factors" in this prospectus supplement and all other information included in this prospectus supplement, the accompanying prospectus and our SEC filings for a discussion of factors you should carefully consider before investing in the notes.

S-10

**Table of Contents**

**RISK FACTORS**

*An investment in the notes involves significant risks. Prior to making a decision about investing in the notes, and in consultation with your own financial and legal advisors, you should carefully consider, among other matters, the following risk factors as well as those incorporated by reference in this prospectus supplement and the accompanying prospectus from Item 1A. Risk Factors of our Annual Report on Form 10-K for the year ended June 30, 2012 and in Part II, Item 1A. Risk Factors of our Quarterly Report on Form 10-Q for the quarter ended September 30, 2012 and under the heading Management's Discussion and Analysis of Financial Condition and Results of Operations therein, as well as other filings we may make from time to time with the SEC. The risks and uncertainties incorporated by reference herein and described below are not the only ones facing us. Additional risks and uncertainties may also impair our business operations. The trading price of the notes and our common stock issuable upon conversion of the notes could decline due to the materialization of any of these risks, and you may lose all or part of your investment in the notes.*

**Risks Related to the Notes**

*The notes are effectively subordinated to any future secured debt we may incur and to any liabilities of our subsidiaries.*

The notes will rank senior in right of payment to any of our future indebtedness that is expressly subordinated in right of payment to the notes; equal in right of payment to any of our existing and future liabilities that are not so subordinated; effectively junior in right of payment to any of our secured indebtedness to the extent of the value of the assets securing such indebtedness; and structurally junior to all existing and future indebtedness and other liabilities (including trade payables) of our subsidiaries. In the event of our bankruptcy, liquidation, reorganization or other winding up, our assets that secure other debt will be available to pay obligations on the notes only after the secured debt has been repaid in full from these assets. There may not be sufficient assets remaining to pay amounts due on any or all of the notes then outstanding. The indenture governing the notes does not prohibit us from incurring additional senior debt or secured debt, nor does it prohibit any of our subsidiaries from incurring additional liabilities.

Prior to this offering, neither we nor our subsidiaries had any outstanding indebtedness for borrowed money. After giving effect to the issuance of the notes (assuming no exercise of the underwriters' over-allotment option) and the use of proceeds therefrom, our total consolidated indebtedness would have been approximately \$150 million as of September 30, 2012.

*The notes are our obligations only and a portion of our operations are conducted through, and a substantial portion of our consolidated assets are held by, our subsidiaries.*

The notes are our obligations exclusively and are not guaranteed by any of our operating subsidiaries. A substantial portion of our consolidated assets is held by our subsidiaries. Accordingly, our ability to service our debt, including the notes, depends on the results of operations of our subsidiaries and upon the ability of such subsidiaries to provide us with cash, whether in the form of dividends, loans or otherwise, to pay amounts due on our obligations, including the notes. Our subsidiaries are separate and distinct legal entities and have no obligation, contingent or otherwise, to make payments on the notes or to make any funds available for that purpose. In addition, dividends, loans or other distributions to us from such subsidiaries may be subject to contractual and other restrictions and are subject to other business considerations. Transferring cash from our foreign subsidiaries may result in adverse tax consequences to us and, therefore, we do not intend to repatriate funds from our foreign subsidiaries to repay the notes.

## **Table of Contents**

*Servicing the notes will require a significant amount of cash, and we may not have sufficient cash flow from our business to pay our obligations under the notes.*

Our ability to make scheduled payments of the principal of, to pay interest on or to refinance the notes, depends on our future performance, which is subject to economic, financial, competitive and other factors beyond our control. Our business may not continue to generate cash flow from operations in the future sufficient to service our debt and make necessary capital expenditures. If we are unable to generate such cash flow, we may be required to adopt one or more alternatives, such as selling assets, restructuring debt or obtaining additional equity capital on terms that may be onerous or highly dilutive. Our ability to refinance the notes will depend on the capital markets and our financial condition at such time. We may not be able to engage in any of these activities or engage in these activities on desirable terms, which could result in a default on our debt obligations or future indebtedness.

*Recent regulatory actions may adversely affect the trading price and liquidity of the notes.*

We expect that certain investors in, and potential purchasers of, the notes will employ, or seek to employ, a convertible arbitrage strategy with respect to the notes. Investors that employ a convertible arbitrage strategy with respect to convertible debt instruments typically implement that strategy by selling short the common stock underlying the convertible notes and dynamically adjusting their short position while they hold the notes. Investors may also implement this strategy by entering into swaps on our common stock in lieu of or in addition to short selling the common stock. As a result, any specific rules regulating equity swaps or short selling of securities or other governmental actions that interfere with the ability of market participants to effect short sales or equity swaps with respect to our common stock could adversely affect the ability of investors in, or potential purchasers of, the notes to conduct the convertible arbitrage strategy that we believe they will employ, or seek to employ, with respect to the notes. This could, in turn, adversely affect the trading price and liquidity of the notes.

The SEC and other regulatory and self-regulatory authorities have implemented various rules and may adopt additional rules in the future that may impact those engaging in short selling activity involving equity securities (including our common stock). In particular, Rule 201 of SEC Regulation SHO generally restricts short selling when the price of a covered security triggers a circuit breaker by falling 10% or more from the security's closing price as of the end of regular trading hours on the prior day. If this circuit breaker is triggered, short sale orders can be displayed or executed for the remainder of that day and the following day only if the order price is above the current national best bid, subject to certain limited exceptions. Because our common stock is a covered security, these Rule 201 restrictions, if triggered, may interfere with the ability of investors in, and potential purchasers of, the notes, to effect short sales in our common stock and conduct a convertible arbitrage strategy.

The SEC has also approved a pilot program allowing securities exchanges and the Financial Industry Regulatory Authority, Inc., or FINRA, to halt trading in securities included in the S&P 500 Index, Russell 1000 Index and certain exchange traded funds and notes if the price of any such security moves 10% or more from a sale price in a five-minute period (the single stock circuit breaker program). Beginning on August 8, 2011, the single stock circuit breaker program was expanded to include all other NMS stocks, and imposes a trading halt in these additional stocks in the event of any price movement of 30% or 50% (or more), depending upon the trading price of the stock. The single stock circuit breaker program is currently set to expire on February 4, 2013. The SEC also recently approved two proposals submitted by national securities exchanges and FINRA. One initiative is the Limit Up-Limit Down plan, which will replace the single stock circuit breaker program and require securities exchanges, alternative trading systems, broker-dealers and other trading centers to establish policies and procedures that prevent the execution of trades and the display of offers from occurring outside of a specified price band. If bid or offer quotations are at

## **Table of Contents**

the far limit of the price band for more than 15 seconds, trading in that security will be subject to a five-minute trading pause. The Limit Up-Limit Down plan is scheduled to go into effect on a one-year pilot basis on February 4, 2013 and is intended to replace the pilot program.

The second initiative will change existing stock exchange and FINRA rules that establish a market-wide circuit breaker system. The existing market-wide circuit breaker system provides for specified market-wide halts in trading of stock for certain periods following specified market declines. The changes will lower the percentage-decline thresholds for triggering a market-wide trading halt and shorten the amount of time that trading is halted. Market declines under the new system will be measured by reference to the S&P 500 Index rather than the Dow Jones Industrial Average, and the trigger thresholds will be calculated daily rather than quarterly. The changes to the market-wide circuit breaker system are scheduled to go into effect on a one-year pilot basis on February 4, 2013.

The restrictions on trading imposed by the single stock circuit breaker program, the market-wide circuit breaker system and, when effective, the Limit Up-Limit Down plan may interfere with the ability of investors in, and potential purchasers of, the notes to effect short sales in our common stock and conduct a convertible arbitrage strategy.

The enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or the Dodd-Frank Act, on July 21, 2010 also introduced regulatory uncertainty that may impact trading activities relevant to the notes. This legislation will require many over-the-counter swaps and security-based swaps to be centrally cleared through regulated clearinghouses and traded on exchanges or comparable trading facilities. In addition, swap dealers, security-based swap dealers, major swap participants and major security-based swap participants will be required to comply with margin and capital requirements as well as public reporting requirements to provide transaction and pricing data on both cleared and uncleared swaps. These requirements could adversely affect the ability of investors in, or potential purchasers of, the notes to maintain a convertible arbitrage strategy with respect to the notes (including increasing the costs incurred by such investors in implementing such strategy). This could, in turn, adversely affect the trading price and liquidity of the notes. We cannot predict how the SEC and other regulators will ultimately implement this legislation or the magnitude of the effect that this legislation will have on the trading price or liquidity of the notes. Although the direction and magnitude of the effect that the amendments to Regulation SHO, FINRA and securities exchange rule changes and/or implementation of the Dodd-Frank Act may have on the trading price and the liquidity of the notes will depend on a variety of factors, many of which cannot be determined at this time, past regulatory actions have had a significant impact on the trading prices and liquidity of convertible debt instruments. For example, between July 2008 and September 2008, the SEC issued a series of emergency orders placing restrictions on the short sale of the common stock of certain financial services companies. The orders made the convertible arbitrage strategy that many convertible debt investors employ difficult to execute and adversely affected both the liquidity and trading price of convertible debt instruments issued by many of the financial services companies subject to the prohibition. Any governmental action that similarly restricts the ability of investors in, or potential purchasers of, the notes to effect short sales of our common stock, including the amendments to Regulation SHO, FINRA and exchange rule changes and the implementation of the Dodd-Frank Act, could similarly adversely affect the trading price and the liquidity of the notes.

### ***Volatility in the market price and trading volume of our common stock could adversely impact the trading price of the notes.***

The stock market in recent years has experienced significant price and volume fluctuations that have often been unrelated to the operating performance of companies. The market price of our common stock could fluctuate significantly for many reasons, including in response to the risks described in this section, elsewhere in this prospectus supplement and the accompanying prospectus or the documents we have

## **Table of Contents**

incorporated by reference in this prospectus supplement and the accompanying prospectus or for reasons unrelated to our operations, such as reports by industry analysts, investor perceptions or negative announcements by our customers, competitors or suppliers regarding their own performance, as well as industry conditions and general financial, economic and political instability. A decrease in the market price of our common stock would likely adversely impact the trading price of the notes. The market price of our common stock could also be affected by possible sales of our common stock by investors who view the notes as a more attractive means of equity participation in us and by hedging or arbitrage trading activity that we expect to develop involving our common stock. This trading activity could, in turn, affect the trading prices of the notes.

***We may still incur substantially more debt or take other actions which would intensify the risks discussed above.***

We and our subsidiaries may be able to incur substantial additional debt in the future, some of which may be secured debt. We and our subsidiaries will not be restricted under the terms of the indenture governing the notes from incurring additional debt, securing existing or future debt, recapitalizing our debt or taking a number of other actions that are not limited by the terms of the indenture governing the notes that could have the effect of diminishing our ability to make payments on the notes when due.

***Our management will have broad discretion over the use of the proceeds we receive in this offering and might not apply the proceeds in ways that increase the value of your investment.***

We intend to use the net proceeds from this offering for general corporate purposes, which may include the acquisition of companies, businesses or assets, or working capital. Our management will have broad discretion to use the net proceeds from this offering, and you will be relying on their judgment regarding the application of these proceeds. Our management might not apply our net proceeds from this offering in ways that increase the value of your investment. Our management might not be able to yield a significant return, if any, on any investment of these net proceeds. You will have no opportunity to influence our decisions on how to use our net proceeds from this offering.

***We may not have the ability to raise the funds necessary to settle conversions of the notes or to repurchase the notes upon a fundamental change, and our future debt may contain limitations on our ability to pay cash upon conversion or repurchase of the notes.***

Holders of the notes will have the right to require us to repurchase their notes upon the occurrence of a fundamental change at a repurchase price equal to 100% of the principal amount of the notes to be repurchased, *plus* accrued and unpaid interest, if any, as described under [Description of Notes](#) [Fundamental Change Permits Holders to Require Us to Repurchase Notes](#). In addition, upon conversion of the notes, we will be required to make cash payments for each \$1,000 in principal amount of notes converted of at least the lesser of \$1,000 and the sum of the daily conversion values as described under [Description of Notes](#) [Conversion Rights](#) [Settlement Upon Conversion](#). However, we may not have enough available cash or be able to obtain financing at the time we are required to make repurchases of notes surrendered therefor or notes being converted. In addition, our ability to repurchase the notes or to pay cash upon conversions of the notes may be limited by law, by regulatory authority or by agreements governing our future indebtedness. Our failure to repurchase notes at a time when the repurchase is required by the indenture or to pay any cash payable on future conversions of the notes as required by the indenture would constitute a default under the indenture. A default under the indenture or the fundamental change itself could also lead to a default under agreements governing our future indebtedness. If the repayment of the related indebtedness were to be accelerated after any applicable notice or grace periods, we may not have sufficient funds to repay the indebtedness and repurchase the notes or make cash payments upon conversions thereof.

## **Table of Contents**

*The conditional conversion feature of the notes, if triggered, may adversely affect our financial condition and operating results.*

In the event the conditional conversion feature of the notes is triggered, holders of notes will be entitled to convert the notes at any time during specified periods at their option. See Description of Notes Conversion Rights. If one or more holders elect to convert their notes, we would be required to settle a portion or all of our conversion obligation through the payment of cash, which could adversely affect our liquidity. In addition, even if holders do not elect to convert their notes, we could be required under applicable accounting rules to reclassify all or a portion of the outstanding principal of the notes as a current rather than long-term liability, which would result in a material reduction of our net working capital.

*The accounting for the notes will result in our having to recognize interest expense significantly more than the stated interest rate of the notes and may result in volatility to our consolidated statement of operations. Also, the accounting method for instruments that must be settled in cash, such as the note conversion option and the convertible note hedge transactions, could have a material effect on our reported financial results.*

Unless we obtain the stockholder approval to increase our authorized shares of our common stock as described herein, we will settle any conversions of the notes entirely in cash as described under Description of the Notes Conversion Rights Settlement Upon Conversion. Until we obtain such stockholder approval, the ability of holders of the notes to convert the notes at their option in certain circumstances, which we refer to as the conversion option, will be accounted for as a derivative under ASC 815 Derivatives and Hedging (which we refer to as ASC 815). In general, this will require us to establish a separate initial valuation of the conversion option and to bifurcate this value from the value attributable to the balance of the notes, or the debt component. As a result, for accounting purposes, we will be required to treat the notes as having been issued with a discount to their face principal amount, which is referred to as an original issue discount. We will be required to accrete the original issue discount to interest expense ratably over the term of the notes, which will require us to report an effective interest rate for the notes in our consolidated statement of operations that is in excess of the stated coupon rate of the notes. This will reduce our earnings and could adversely affect the price at which our common stock trades, but will have no effect on the amount of cash interest paid to holders or on our cash flows.

For each financial statement period over the term of the notes, a gain (or loss) will be reported in our consolidated statement of operations to the extent the valuation of the conversion option changes from the previous period. The convertible note hedge transactions described in this prospectus supplement will also be accounted for as derivatives under ASC 815. The convertible note hedge will not perfectly offset the conversion option. We expect gains and losses on the convertible note hedge to partially, but not entirely offset the gain (or loss) associated with changes to the valuation of the conversion option. Changes in the price of our common stock and changes in our credit risk, or the credit risk of the option counterparties, can cause variability in the value of these instruments. Should there be significant changes in the price of our common stock, our credit risk, or the credit risk of the option counterparties, such changes will result in volatility that could materially affect our consolidated statement of operations.

If we receive the stockholder approval as described herein, then, assuming all of the other requirements for equity classification under ASC 815-40 are met, both the derivative liability and derivative asset related to the conversion option and the convertible note hedge transactions may be reclassified to equity and subsequently, provided all of the requirements for equity classification are met prospectively, no additional gain (or loss) from these derivatives will be reported in our consolidated statement of operations. However, the original issue discount on the notes will continue to be accreted to interest expense over the remaining term of the notes.

## **Table of Contents**

Even if we obtain the stockholder approval as described herein, we may not meet all of the other equity classification requirements at that point in time or thereafter. If we do not continue to satisfy all of the criteria required for equity classification under ASC 815-40, the conversion option and the convertible note hedge transactions will continue not to be classified as equity or may be reclassified out of equity and be subject to re-measurement. Similarly, while we expect to meet the equity classification guidance with regards to the warrants at the inception of the arrangement, if we do not continue to satisfy all of the criteria required for equity classification, the warrants too may be reclassified out of equity and become subject to re-measurement. Changes in fair value resulting from any such re-measurement will be reflected in our consolidated statement of operations.

In addition, under certain circumstances, convertible debt instruments (such as the notes) that may be settled entirely or partially in cash are accounted for utilizing the treasury stock method, the effect of which is that the shares issuable upon conversion of the notes are not included in the calculation of diluted earnings per share except to the extent that the conversion value of the notes exceeds their principal amount. Under the treasury stock method, for diluted earnings per share purposes, the transaction is accounted for as if the number of shares of our common stock that would be necessary to settle such excess, if we elected to settle such excess in such shares, are issued. Prior to obtaining the stockholder approval, as described herein, we must settle the conversion option in cash, and therefore during this time we expect the conversion option will not impact earnings per share. However, if such stockholder approval is obtained, we will have the ability to settle conversion obligations for amounts in excess of the aggregate principal amount of the notes being converted in cash, shares, or a combination thereof. Therefore, the impact to earnings per share will depend on how we intend to settle the convertible notes. If we are unable to use the treasury stock method in accounting for the shares issuable upon conversion of the notes, then our diluted earnings per share would be adversely affected.

***We may be subject to significant future write-offs with respect to intangible assets or deferred tax assets.***

Certain of our assets, such as intangible assets and deferred tax assets, are subject to periodic tests of recoverability based on a variety of factors. These factors typically include, at a minimum, projections of future income levels and cash flows. The accounting for the notes will result in our recognition of a significant level of interest expense through the maturity date. We will also recognize additional expense as the carrying value of debt is accreted to par and as we amortize our debt issuance costs, including the underwriters' discount. Further, until we obtain the stockholder approval, we are subject to mark-to-market accounting on the conversion option of the notes and the convertible note hedge transactions, which we anticipate will result in volatility to our income levels. If our cash flows or income levels were to meaningfully decline, we could be subject to impairment charges with respect to these assets, which would have a material adverse effect on our consolidated statement of operations.

***Future sales of our common stock in the public market could lower the market price for our common stock and adversely impact the trading price of the notes.***

In the future, we may sell additional shares of our common stock to raise capital. In addition, a substantial number of shares of our common stock are reserved for issuance upon the exercise of stock options and the warrants and, if we receive the stockholder approval prior to the relevant settlement method election date, upon conversion of the notes. We cannot predict the size of future issuances of our common stock or the effect, if any, that they may have on the market price for our common stock. The issuance and sale of substantial amounts of our common stock, or the perception that such issuances and sales may occur, could adversely affect the trading price of the notes and the market price of our common stock and impair our ability to raise capital through the sale of additional equity securities.

## **Table of Contents**

***We will not be permitted to satisfy any portion of our conversion obligation in shares of our common stock or any of our other securities unless we receive the stockholder approval. In addition, holders of notes will not be entitled to any rights with respect to our common stock, but will be subject to all changes made with respect to them to the extent our conversion obligation includes shares of our common stock.***

We plan to hold a meeting of our stockholders at which we will seek to obtain the stockholder approval, however, such approval may not be obtained. We will not be permitted to satisfy our conversion obligation in respect of the remainder, if any, of our conversion obligation in excess of the aggregate principal amount of the notes being converted in shares of our common stock, and we will satisfy our conversion obligation solely in cash, unless we receive the stockholder approval.

If we receive the stockholder approval prior to the relevant settlement method election date, we will satisfy our conversion obligation in cash up to the aggregate principal amount of the notes to be converted and cash, shares of our common stock or a combination of cash and shares of our common stock, at our election, in respect of the remainder, if any, of our conversion obligation in excess of the aggregate principal amount of the notes being converted. If we receive the stockholder approval and elect to settle our conversion obligation in excess of the aggregate principal amount of the notes being converted, if any, wholly or partially in shares of our common stock, holders of notes will not be entitled to any rights with respect to our common stock (including, without limitation, voting rights and rights to receive any dividends or other distributions on our common stock) prior to the last trading day of the observation period, but holders of notes will be subject to all changes affecting our common stock. For example, if an amendment is proposed to our amended and restated certificate of incorporation or our amended and restated bylaws requiring stockholder approval and the record date for determining the stockholders of record entitled to vote on the amendment occurs prior to the last trading day of the relevant observation period, then, to the extent our conversion obligation includes shares of our common stock, such holder will not be entitled to vote on the amendment, although such holder will nevertheless be subject to any changes affecting our common stock as a result of such amendment.

***Upon conversion of the your notes, you may receive consideration that is less than the value of the shares of our common stock into which the notes would otherwise be convertible because of the conditional conversion feature of the notes.***

Prior to the close of business on the business day immediately preceding June 1, 2017, you may convert your notes only if specified conditions are met. If the specific conditions for conversion are not met, you will not be able to convert your notes, and you may not be able to receive the value of the cash or, if we have received the stockholder approval, the cash and shares of our common stock, if any, into which the notes would otherwise be convertible.

***Upon conversion of the notes, you may receive less valuable consideration than expected because the value of our common stock may decline after you exercise your conversion right but before we settle our conversion obligation.***

Under the notes, a converting holder will be exposed to fluctuations in the value of our common stock during the period from the date such holder surrenders notes for conversion until the date we settle our conversion obligation.

If, prior to the relevant settlement method election date, we have not received the stockholder approval, we will satisfy our conversion obligation solely in cash. If we have received the stockholder approval by the relevant settlement method election date, under the notes, the amount of consideration that you will receive upon conversion of your notes will be determined by reference to the volume weighted average prices of



**Table of Contents**

our common stock for each trading day in a 40 trading day observation period. As described under Description of Notes Settlement Upon Conversion, this period would be (i) if the relevant conversion date occurs prior to June 1, 2017, the 40 consecutive trading day period beginning on, and including, the second trading day immediately succeeding such conversion date; and (ii) if the relevant conversion date occurs on or after June 1, 2017, the 40 consecutive trading days beginning on, and including, the 42nd scheduled trading day immediately preceding the maturity date. Accordingly, if the price of our common stock decreases during this period, the amount and/or value of consideration you receive will be adversely affected. In addition, if the market price of our common stock at the end of such period is below the average of the volume weighted average price of our common stock during such period, the value of any shares of our common stock that you will receive in satisfaction of our conversion obligation will be less than the value used to determine the number of such shares that you will receive.

***The notes are not protected by restrictive covenants.***

The indenture governing the notes does not contain any financial or operating covenants, restrictions on the payments of dividends, the incurrence of indebtedness or the issuance or repurchase of securities by us or any of our subsidiaries or other restrictive covenants. The indenture contains no covenants or other provisions that afford protection to holders of the notes in the event of a fundamental change or other corporate transaction involving us except to the extent described under Description of Notes Fundamental Change Permits Holders to Require Us to Repurchase Notes, Description of Notes Conversion Rights Adjustment to Shares Delivered Upon Conversion Upon a Make-whole Fundamental Change and Description of Notes Consolidation, Merger and Sale of Assets.

***The adjustment to the conversion rate for notes converted in connection with a make-whole fundamental change may not adequately compensate you for any lost value of your notes as a result of such transaction.***

If a make-whole fundamental change occurs prior to the maturity date, under certain circumstances, we will increase the conversion rate by a number of additional shares of our common stock for notes converted in connection with such make-whole fundamental change. The increase in the conversion rate will be determined based on the date on which the specified corporate transaction becomes effective and the price paid (or deemed to be paid) per share of our common stock in such transaction, as described below under Description of Notes Conversion Rights Adjustment to Shares Delivered Upon Conversion Upon a Make-whole Fundamental Change. The adjustment to the conversion rate for notes converted in connection with a make-whole fundamental change may not adequately compensate you for any lost value of your notes as a result of such transaction. In addition, if the price of our common stock in the transaction is greater than \$ per share or less than \$ per share (in each case, subject to adjustment), no additional shares will be added to the conversion rate. Moreover, in no event will the conversion rate per \$1,000 principal amount of notes as a result of this adjustment exceed shares of our common stock, subject to adjustments in the same manner as the conversion rate as set forth under Description of Notes Conversion Rights Conversion Rate Adjustments.

Our obligation to increase the conversion rate upon the occurrence of a make-whole fundamental change could be considered a penalty, in which case the enforceability thereof would be subject to general principles of reasonableness, fairness and equitable remedies.

***The conversion rate of the notes may not be adjusted for all dilutive events.***

The conversion rate of the notes is subject to adjustment for certain events, including, but not limited to, the issuance of certain stock dividends on our common stock, the issuance of certain rights, options or warrants, share subdivisions or combinations, distributions of our capital stock, indebtedness or assets, the

## **Table of Contents**

issuance of cash dividends on our common stock and certain issuer tender or exchange offers as described under Description of Notes Conversion Rights Conversion Rate Adjustments. However, the conversion rate will not be adjusted for other events, such as a third-party tender or exchange offer or an issuance of our common stock for cash, that may adversely affect the trading price of the notes or our common stock. An event that adversely affects the value of the notes may occur, and that event may not result in an adjustment to the conversion rate.

***Certain significant restructuring transactions may not constitute a fundamental change for purposes of the notes, in which case we would not be obligated to offer to repurchase the notes.***

Upon the occurrence of a fundamental change, you have the right to require us to repurchase your notes. However, the fundamental change provisions will not afford protection to holders of notes in the event of other transactions that could adversely affect the notes. For example, transactions such as leveraged recapitalizations, refinancings, restructurings, or acquisitions initiated by us may not constitute a fundamental change requiring us to repurchase the notes. In the event of any such transaction, the holders would not have the right to require us to repurchase the notes, even though each of these transactions could increase the amount of our indebtedness, or otherwise adversely affect our capital structure or any credit ratings, thereby adversely affecting the holders of notes.

***An active trading market may not develop for the notes.***

Prior to this offering, there has been no trading market for the notes, and we do not intend to apply to list the notes on any securities exchange or to arrange for quotation on any automated dealer quotation system. We have been informed by the underwriters that they intend to make a market in the notes after the offering is completed. However, the underwriters may cease their market-making at any time without notice. In addition, the liquidity of the trading market in the notes, and the market price quoted for the notes, may be adversely affected by changes in the overall market for this type of security, by changes in our financial performance or prospects or by changes in the prospects for companies in our industry generally. As a result, an active trading market for the notes may not develop and if such a market develops, the market may provide you with limited liquidity. If an active trading market does not develop or is not maintained, the market price and liquidity of the notes may be adversely affected. In that case you may not be able to sell your notes at a particular time or you may not be able to sell your notes at a favorable price.

***Any adverse rating of the notes may cause their trading price to fall.***

We do not intend to seek a rating on the notes. However, if a rating service were to rate the notes and if such rating service either provided a low initial rating or were to lower its rating on the notes below the rating initially assigned to the notes or otherwise announces its intention to put the notes on credit watch, the trading price of the notes could decline.

***You may be subject to tax if we make or fail to make certain adjustments to the conversion rate of the notes even though you do not receive a corresponding cash distribution.***

The conversion rate of the notes is subject to adjustment in certain circumstances, including the payment of cash dividends. If the conversion rate is adjusted as a result of a distribution that is taxable to our common stockholders, such as a cash dividend, you may be deemed to have received a dividend subject to U.S. federal income tax without the receipt of any cash. In addition, a failure to adjust (or to adjust adequately) the conversion rate after an event that increases your proportionate interest in us could be treated as a deemed taxable dividend to you. If a make-whole fundamental change occurs on or prior to the maturity date, under some circumstances, we will increase the conversion rate for notes converted in connection with the make-whole fundamental change. Such increase may also be treated as a distribution

## **Table of Contents**

subject to U.S. federal income tax as a dividend. See Certain Material U.S. Federal Income Tax Considerations. If you are a Non-U.S. Holder (as defined in Certain Material U.S. Federal Income Tax Considerations ), any deemed dividend would be subject to U.S. federal withholding tax at a 30% rate, or such lower rate as may be specified by an applicable treaty, which may be withheld from subsequent payments on the notes. See Certain Material U.S. Federal Income Tax Considerations.

### ***The convertible note hedge and warrant transactions may affect the value of the notes and our common stock.***

In connection with the pricing of the notes, we expect to enter into convertible note hedge transactions with the option counterparties. We also expect to enter into warrant transactions with the option counterparties which will be exercisable for shares of our common stock.

The convertible note hedge transactions are expected to reduce:

our exposure to the potential cash payments we will be required to make upon any conversion of the notes prior to, or if we do not receive, the stockholder approval; or

if we have received the stockholder approval, our exposure to potential dilution to our common stock upon any conversion of notes, if we elect to deliver common stock, or our exposure to cash payments, upon conversion of the notes, if we elect to make cash payments. The warrant transactions could separately have a dilutive effect on our earnings per share to the extent that the market price per share of our common stock exceeds the applicable strike price of the warrants. However, subject to certain conditions, we may elect to settle the warrants in cash. If the underwriters exercise their over-allotment option, we may enter into additional convertible note hedge transactions and additional warrant transactions.

In connection with establishing their initial hedges of the convertible note hedge and warrant transactions, the option counterparties or affiliates thereof expect to enter into various derivative transactions with respect to our common stock concurrently with or shortly after the pricing of the notes. This activity could increase (or reduce the size of any decrease in) the market price of our common stock or the notes at that time.

In addition, the option counterparties or affiliates thereof may modify their respective hedge positions by entering into or unwinding various derivatives with respect to our common stock and/or purchasing or selling our common stock or other securities of ours in secondary market transactions following the pricing of the notes and prior to the maturity of the notes (and are likely to do so during any observation period related to a conversion of notes). This activity could also cause or avoid an increase or a decrease in the market price of our common stock or the notes, which could affect your ability to convert the notes and, to the extent the activity occurs during any observation period related to a conversion of notes, it could affect the amount and value of the consideration that you will receive upon conversion of the notes.

In addition, if any such convertible note hedge and warrant transactions fail to become effective, whether or not this offering of the notes is completed, the option counterparties or affiliates thereof may unwind their respective hedge positions with respect to our common stock, which could adversely affect the value of our common stock and, if the notes have been issued, the value of the notes.

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## **Table of Contents**

### **Risks Related to Our Common Stock**

*The price of our common stock historically has been volatile. This volatility may affect the price at which you could sell the common stock you receive upon conversion of your notes, if any, and the sale of substantial amounts of our common stock could adversely affect the price of our common stock.*

The market price for our common stock has varied between a high of \$29.90 on March 14, 2012 and a low of \$16.96 on June 4, 2012 in the twelve month period ending on December 4, 2012. This volatility may affect the price at which you could sell the common stock, if any, you receive upon conversion of your notes, and the sale of substantial amounts of our common stock could adversely affect the price of our common stock. Our stock price is likely to continue to be volatile and subject to significant price and volume fluctuations in response to market and other factors, including the other factors discussed in our Annual Report on Form 10-K for the fiscal year ended June 30, 2012, which is incorporated into this prospectus supplement by reference; variations in our quarterly operating results from our expectations or those of securities analysts or investors; downward revisions in securities analysts' estimates; and announcement by us or our competitors of significant acquisitions, strategic partnerships, joint ventures or capital commitments.

In addition, the sale of substantial amounts of our common stock could adversely impact its price. As of September 30, 2012, we had outstanding approximately 37.4 million shares of our common stock and options to purchase approximately 0.9 million shares of our common stock (of which approximately 0.7 million were exercisable as of that date). The sale or the availability for sale of a large number of shares of our common stock in the public market could cause the price of our common stock to decline.

*Delaware law and our charter documents may impede or discourage a takeover, which could cause the market price of our common stock to decline.*

We are a Delaware corporation, and the anti-takeover provisions of Delaware law impose various impediments to the ability of a third party to acquire control of us, even if a change in control would be beneficial to our existing stockholders. In addition, our board of directors or a committee thereof has the power, without stockholder approval, to designate the terms of one or more series of preferred stock and issue shares of preferred stock. The ability of our board of directors or a committee thereof to create and issue a new series of preferred stock and certain provisions of Delaware law and our certificate of incorporation and bylaws could impede a merger, takeover or other business combination involving us or discourage a potential acquirer from making a tender offer for our common stock, which, under certain circumstances, could reduce the market price of our common stock and the value of your notes.

### **Other Risks**

*Our level of indebtedness may limit our financial flexibility.*

Upon the completion of this offering (and assuming the underwriters do not exercise their option to purchase additional notes), we will have total consolidated indebtedness of approximately \$150 million and unrestricted cash of \$257 million (before deducting the underwriters' discount and related fees and estimated offering expenses payable by us). Our level of indebtedness affects our operations in several ways, including the following:

a portion of our cash flows from operating activities must be used to service our indebtedness and is not available for other purposes;

we may be at a competitive disadvantage as compared to similar companies that have less debt; and

additional financing in the future for working capital, capital expenditures, acquisitions, general corporate or other purposes may have higher costs and contain restrictive covenants, or may not be available to us.

**Table of Contents**

The factors that will affect our ability to obtain additional financing may be beyond our control and include financial market conditions, the value of our assets and our performance at the time we need financing.

S-22

**Table of Contents**

**USE OF PROCEEDS**

We estimate that the proceeds from this offering will be approximately \$       million (or \$       million if the underwriters exercise their option to purchase additional notes in full), after deducting fees and estimated offering expenses payable by us. We expect to enter into convertible note hedge transactions with one or more counterparties, one or more of which may be one of the underwriters or its respective affiliates (which we refer to as the option counterparties ). We also intend to enter into warrant transactions with the option counterparties. We intend to use approximately \$       million of the net proceeds from this offering to pay the cost of the convertible note hedge transactions (after such cost is partially offset by the proceeds to us from the warrant transactions). We intend to use the remainder of the net proceeds from this offering for general corporate purposes, which may include the acquisition of companies, businesses or assets, or working capital. Our management will have broad discretion as to the application of the net offering proceeds.

If the underwriters exercise their over-allotment option, we may sell additional warrants and use a portion of the net proceeds from the sale of the additional notes, together with the proceeds from the additional warrants, to enter into additional convertible note hedge transactions and for general corporate purposes as described above.

The foregoing represents our intentions for the use of the net proceeds from this offering based upon our present plans and current business and market conditions. The occurrence of unforeseen events or changes in business or market conditions, however, could result in the application of the net proceeds of this offering in a manner other than as described in this prospectus supplement.

**Table of Contents****CAPITALIZATION**

The table below sets forth our cash and capitalization as of September 30, 2012 on an actual basis and on an as adjusted basis, to give effect to this offering (before deducting the underwriters' discount and related fees and offering expenses payable by us).

The following table does not give effect to the convertible note hedge transactions or the warrant transactions.

You should read the information in this table together with our consolidated financial statements and the related notes and the other information contained in the documents incorporated by reference in this prospectus supplement and the accompanying prospectus.

	<b>As of September 30, 2012</b>	
	<b>Actual</b>	<b>As Adjusted</b>
	<b>(in thousands)</b>	
Cash and cash equivalents	\$ 107,073	\$ 257,073
Long-term debt:		
% Convertible Senior Notes due 2017 offered hereby(1)		150,000
Stockholders' Equity:		
Preferred Stock, \$.001 par value:		
Authorized shares 4,000; issued and outstanding shares none		
Common Stock, \$.001 par value:		
Authorized shares 50,000; issued shares 36,972 at September 30, 2012; outstanding shares 35,057 at September 30, 2012	37	37
Additional paid-in capital(1)	443,933	443,933
Accumulated other comprehensive loss	(4,171)	(4,171)
Treasury stock: 1,915 shares at September 30, 2012, at cost	(22,558)	(22,558)
Accumulated deficit	(95,710)	(95,710)
<b>Total stockholders' equity</b>	<b>321,531</b>	<b>321,531</b>
<b>Total capitalization</b>	<b>\$ 321,531</b>	<b>\$ 471,531</b>

- (1) In accordance with ASC 470-20, convertible debt that may be wholly or partially settled in cash is required to be separated into a liability and a conversion option. The conversion option is valued separately from the balance attributable to the notes (i.e., the debt component). We will record interest expense that reflects our non-convertible debt interest rate. Upon issuance, a debt discount will be recognized and the debt component will accrete up to the principal amount over the expected term of the debt. ASC 470-20 does not affect the actual amount that we are required to repay, and the amount shown in the table above for the notes is the aggregate principal amount of the notes and does not reflect the debt discount or any fees and expenses that we will be required to recognize. However, if we have not received the stockholder approval as described under Description of Notes Conversion Rights Settlement Upon Conversion, the conversion option that is part of the notes will be accounted for as a derivative and will be subject to mark-to-market accounting. If we have received the stockholder approval, and assuming all other requirements to obtain equity accounting are achieved

**Table of Contents**

and maintained, the conversion option will be accounted for as equity and will be included in the additional paid-in capital section of stockholders' equity on our consolidated balance sheet. In either case, the value of the conversion option will be treated as original issue discount for purposes of accounting for the debt component of the notes.

This table assumes no exercise of the underwriters' option to purchase additional notes to cover over-allotments and excludes the following:

941,508 shares of our common stock issuable upon the exercise of options outstanding as of September 30, 2012, at a weighted average exercise price of \$10.83 per share;

5,728,953 shares of our common stock reserved for future issuance under our stock incentive and employee stock purchase plans as of September 30, 2012;

the shares of our common stock, if any, issuable upon conversion of the notes offered hereby; and

the shares of our common stock, if any, issuable upon exercise of the warrants to be sold in the warrant transactions.



**Table of Contents****RATIO OF EARNINGS TO FIXED CHARGES**

The following table sets forth our ratio of earnings to fixed charges for the periods indicated.

	<b>Three Months Ended</b>		<b>Fiscal Year Ended</b>			
	<b>September 30, 2012</b>	<b>June 30, 2012</b>	<b>June 30, 2011</b>	<b>June 30, 2010</b>	<b>June 30, 2009</b>	<b>June 30, 2008</b>
Ratios of earnings to fixed charges	0.7x	5.5x	8.7x	6.1x	n/a	n/a

For purposes of calculating the ratios above, earnings consist of income (loss) before provision for (benefit from) income taxes plus fixed charges. Fixed charges include interest expense and the interest portion of rental expense which is deemed to be representative of the interest factor. The estimate of interest within rental expense is estimated to be one-third of rental expense. The dollar amount of the deficiency in earnings available for fixed charges for a one-to-one ratio for the fiscal years ended June 30, 2009 and 2008 was \$11.5 million and \$4.8 million, respectively.

**Table of Contents****PRICE RANGE OF COMMON STOCK**

Our common stock is traded on The NASDAQ Global Select Market under the symbol EPAY. High and low stock prices for shares of our common stock as reported on the NASDAQ Global Select Market are presented below:

	<b>High</b>	<b>Low</b>
<b>Fiscal Year 2013:</b>		
October 1, 2012 through December 4, 2012	\$ 27.06	\$ 22.17
Quarter ended September 30, 2012	25.67	17.75
<b>Fiscal Year 2012:</b>		
Quarter ended June 30, 2012	\$ 28.38	\$ 16.96
Quarter ended March 31, 2012	29.90	22.61
Quarter ended December 31, 2011	25.41	19.00
Quarter ended September 30, 2011	26.57	17.73
<b>Fiscal Year 2011:</b>		
Quarter ended June 30, 2011	\$ 28.26	\$ 21.36
Quarter ended March 31, 2011	25.24	19.65
Quarter ended December 31, 2010	23.10	14.61
Quarter ended September 30, 2010	15.59	12.65

These prices reflect inter-dealer prices, without retail mark-up, mark-down or commission and may not necessarily represent actual transactions.

On December 4, 2012, the last reported sale price of shares of our common stock on the NASDAQ Global Select Market was \$25.03 per share. On November 30, 2012, there were approximately 475 record holders of shares of our common stock.

**Table of Contents**

**DIVIDEND POLICY**

We have never paid dividends on our common stock. We intend to retain our earnings for use in our business and, therefore, do not anticipate paying any cash dividends on our common stock for the foreseeable future.

S-28

**Table of Contents**

**DESCRIPTION OF NOTES**

We will issue the notes under a base indenture to be dated as of December , 2012 between us, as supplemented by a supplemental indenture with respect to the notes. In this section, we refer to the base indenture (the base indenture ), as supplemented by the supplemental indenture (the supplemental indenture ), collectively as the indenture. This description of the notes supplements and, to the extent it is inconsistent, replaces the description of the general provisions of the notes and the base indenture in the accompanying prospectus. The terms of the notes include those expressly set forth in the indenture and those made part of the indenture by reference to the Trust Indenture Act of 1939, as amended (the Trust Indenture Act ).

You may request a copy of the indenture from us as described under Where You Can Find More Information.

The following description is a summary of the material provisions of the notes and the indenture and does not purport to be complete. This summary is subject to and is qualified by reference to all the provisions of the notes and the indenture, including the definitions of certain terms used in the indenture. We urge you to read these documents because they, and not this description, define your rights as a holder of the notes.

For purposes of this description of the notes, references to we, our and us refer only to Bottomline Technologies (de), Inc. and not to its subsidiaries.

**General**

The notes will:

be our general unsecured, senior obligations;

initially be limited to an aggregate principal amount of \$150.0 million (or \$172.5 million if the underwriters over-allotment option to purchase additional notes is exercised in full);

bear cash interest from December , 2012 at an annual rate of % payable on June 1 and December 1 of each year, beginning on June 1, 2013;

not be redeemable prior to maturity;

be subject to repurchase by us at the option of the holders following a fundamental change (as defined below under Fundamental Change Permits Holders to Require Us to Repurchase Notes ), at a repurchase price equal to 100% of the principal amount of the notes to be repurchased, plus accrued and unpaid interest to, but excluding, the fundamental change repurchase date;

mature on December 1, 2017, unless earlier converted or repurchased;

be issued in denominations of \$1,000 and multiples of \$1,000; and

be represented by one or more registered notes in global form, but in certain limited circumstances may be represented by notes in definitive form. See Book-entry, Settlement and Clearance.

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Subject to satisfaction of certain conditions and during the periods described below, the notes may be converted at an initial conversion rate of shares of common stock per \$1,000 principal amount of notes (equivalent to an initial conversion price of approximately \$ per share of common stock). The conversion rate is subject to adjustment if certain events occur.

If we have not received stockholder approval to amend our amended and restated certificate of incorporation to increase the number of authorized shares of our common stock by an amount at least equal

S-29

## **Table of Contents**

to (i) the aggregate conversion rate, plus the maximum additional shares as defined in Conversion Rights Adjustment to Shares Delivered Upon Conversion Upon a Make-whole Fundamental Change, for each \$1,000 principal amount of notes then outstanding plus (ii) two times the maximum number of shares of common stock issuable upon exercise of the warrants issued in the warrant transactions, which we refer to as the stockholder approval, prior to the relevant settlement method election date, we will satisfy our conversion obligation solely in cash. If we have received the stockholder approval by the relevant settlement method election date, upon conversion of a note, we will pay cash and deliver shares of our common stock, if any, based upon a daily conversion value calculated on a proportionate basis for each trading day in the applicable 40 trading day observation period as described below under Conversion Rights Settlement Upon Conversion. You will not receive any separate cash payment for interest, if any, accrued and unpaid to the conversion date except under the limited circumstances described below.

The indenture does not limit the amount of debt that may be issued by us or our subsidiaries under the indenture or otherwise. The indenture does not contain any financial covenants and does not restrict us from paying dividends or issuing or repurchasing our other securities. Other than restrictions described under Fundamental Change Permits Holders to Require Us to Repurchase Notes and Consolidation, Merger and Sale of Assets below and except for the provisions set forth under Conversion Rights Adjustment to Shares Delivered Upon Conversion Upon a Make-whole Fundamental Change, the indenture does not contain any covenants or other provisions designed to afford holders of the notes protection in the event of a highly leveraged transaction involving us or in the event of a decline in our credit rating as the result of a takeover, recapitalization, highly leveraged transaction or similar restructuring involving us that could adversely affect such holders or for any other reason.

We may, without the consent of the holders, reopen the indenture for the notes and issue additional notes under the indenture with the same terms and the same CUSIP number as the notes offered hereby in an unlimited aggregate principal amount; *provided* that if any such additional notes are not fungible with the notes initially offered hereby for U.S. federal income tax purposes, such additional notes will have a separate CUSIP number.

We do not intend to list the notes on any securities exchange or any automated dealer quotation system.

### **Purchase and Cancellation**

We will cause all notes surrendered for payment, repurchase (including as described below), registration of transfer or exchange or conversion, if surrendered to any person other than the trustee (including any of our agents, subsidiaries or affiliates), to be delivered to the trustee for cancellation. All notes delivered to the trustee shall be cancelled promptly by the trustee. No notes shall be authenticated in exchange for any notes cancelled as provided in the indenture.

We may, to the extent permitted by law, and directly or indirectly (regardless of whether such notes are surrendered to us), repurchase notes in the open market or otherwise, whether by us or our subsidiaries or through a private or public tender or exchange offer or through counterparties to private agreements, including by cash-settled swaps or other derivatives. We will cause any notes so repurchased (other than notes repurchased pursuant to cash-settled swaps or other derivatives) to be surrendered to the trustee for cancellation, and they will no longer be considered outstanding under the indenture upon their repurchase.

### **Payments on the Notes; Paying Agent and Registrar; Transfer and Exchange**

We will pay the principal of, and interest on, notes in global form registered in the name of or held by The Depository Trust Company ( DTC ) or its nominee in immediately available funds to DTC or its nominee, as the case may be, as the registered holder of such global note.

## **Table of Contents**

We will pay the principal of any certificated notes at the office or agency designated by us for that purpose. We have initially designated the trustee as our paying agent and registrar and its agency in New York, New York as a place where notes may be presented for payment or for registration of transfer. We may, however, change the paying agent or registrar without prior notice to the holders of the notes, and we may act as paying agent or registrar. Interest on certificated notes will be payable (i) to holders having an aggregate principal amount of \$5,000,000 or less, by check mailed to the holders of these notes and (ii) to holders having an aggregate principal amount of more than \$5,000,000, either by check mailed to each holder or, upon application by such a holder to the registrar not later than the relevant regular record date, by wire transfer in immediately available funds to that holder's account within the United States, which application shall remain in effect until the holder notifies, in writing, the registrar to the contrary.

A holder of notes may transfer or exchange notes at the office of the registrar in accordance with the indenture. The registrar and the trustee may require a holder, among other things, to furnish appropriate endorsements and transfer documents. No service charge will be imposed by us, the trustee or the registrar for any registration of transfer or exchange of notes, but we may require a holder to pay a sum sufficient to cover any transfer tax or other similar governmental charge required by law or permitted by the indenture. We are not required to transfer or exchange any note surrendered for conversion or required repurchase.

The registered holder of a note will be treated as its owner for all purposes.

## **Interest**

The notes will bear cash interest at a rate of % per year until maturity. Interest on the notes will accrue from December , 2012 or from the most recent date on which interest has been paid or duly provided for. Interest will be payable semiannually in arrears on June 1 and December 1 of each year, beginning on June 1, 2013.

Interest will be paid to the person in whose name a note is registered at the close of business on May 15 or November 15, as the case may be, immediately preceding the relevant interest payment date (each, whether or not a business day, a regular record date ). Interest on the notes will be computed on the basis of a 360-day year composed of twelve 30-day months.

If any interest payment date, the maturity date or any earlier required repurchase date upon a fundamental change of a note falls on a day that is not a business day, the required payment will be made on the next succeeding business day and no interest on such payment will accrue in respect of the delay. The term business day means, with respect to any note, any day other than a Saturday, a Sunday or a day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.

Unless the context otherwise requires, all references to interest in this prospectus supplement include additional interest, if any, payable at our election as the sole remedy relating to the failure to comply with our reporting obligations as described under Events of Default.

## **Ranking**

The notes will be our general unsecured obligations that rank senior in right of payment to all of our future indebtedness that is expressly subordinated in right of payment to the notes. The notes will rank equal in right of payment with all of our existing and future liabilities that are not so subordinated. The notes will effectively rank junior to any of our secured indebtedness to the extent of the value of the assets securing such indebtedness. In the event of our bankruptcy, liquidation, reorganization or other winding up, our assets that secure secured debt will be available to pay obligations on the notes only after all indebtedness under such secured debt has been repaid in full from such assets. The notes will rank structurally junior to

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## **Table of Contents**

all existing and future indebtedness and other liabilities of our subsidiaries (including trade payables but excluding intercompany obligations and liabilities of a type not required to be reflected on a balance sheet of such subsidiaries in accordance with GAAP). We advise you that there may not be sufficient assets remaining to pay amounts due on any or all the notes then outstanding.

Prior to this offering, neither we nor our subsidiaries had any outstanding indebtedness for borrowed money. After giving effect to the issuance of the notes (assuming no exercise of the underwriters' over-allotment option) and the use of proceeds therefrom, our total consolidated indebtedness would have been \$150 million.

### **No Optional Redemption**

We may not redeem the notes prior to maturity and no sinking fund is provided for the notes.

### **Conversion Rights**

#### *General*

Prior to the close of business on the business day immediately preceding June 1, 2017, the notes will be convertible only upon satisfaction of one or more of the conditions described under the headings Conversion Upon Satisfaction of Sale Price Condition, Conversion Upon Satisfaction of Trading Price Condition, and Conversion Upon Specified Corporate Events. On or after June 1, 2017 until the close of business on the second scheduled trading day immediately preceding the maturity date, holders may convert their notes at the conversion rate at any time irrespective of the foregoing conditions.

The conversion rate will initially be \_\_\_\_\_ shares of common stock per \$1,000 principal amount of notes (equivalent to an initial conversion price of approximately \$ \_\_\_\_\_ per share of common stock). If we have not received stockholder approval to amend our amended and restated certificate of incorporation to increase the number of shares of our common stock that we are authorized to issue by an amount at least equal to (i) the aggregate conversion rate, plus the maximum additional shares as defined in Conversion Rights Adjustment to Shares Delivered Upon Conversion Upon a Make-whole Fundamental Change, for each \$1,000 principal amount of notes then outstanding plus (ii) two times the maximum number of shares of common stock issuable upon exercise of the warrants issued in the warrant transactions, which we refer to as the stockholder approval, by the relevant settlement method election date (as defined below), we will satisfy our conversion obligation solely in cash. If we have received the stockholder approval by the relevant settlement method election date, upon conversion of a note, we will pay cash and deliver shares of our common stock, if any, based on a daily conversion value (as defined below) calculated on a proportionate basis for each trading day in a 40 trading day observation period (as defined below under Settlement Upon Conversion ). The trustee will initially act as the conversion agent.

A holder may convert fewer than all of such holder's notes so long as the notes converted are a multiple of \$1,000 principal amount.

If a holder of notes has submitted notes for repurchase upon a fundamental change, the holder may convert those notes only if that holder first withdraws its repurchase notice with respect to such notes.

Upon conversion, you will not receive any separate cash payment for accrued and unpaid interest, if any, except as described below. We will not issue fractional shares of our common stock upon conversion of notes. Instead, we will pay cash in lieu of any fractional share as described under Settlement Upon Conversion. Our payment and delivery, as the case may be, to you of the full amount of cash and the full number of shares of our common stock, if any, together with a cash payment for any fractional share, into which a note is convertible will be deemed to satisfy in full our obligation to pay:

the principal amount of the note; and



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**Table of Contents**

accrued and unpaid interest, if any, to, but not including, the relevant conversion date.

As a result, accrued and unpaid interest, if any, to, but not including, the relevant conversion date will be deemed to be paid in full rather than cancelled, extinguished or forfeited. Upon a conversion of notes, accrued and unpaid interest will be deemed to be paid first out of the cash paid upon such conversion.

Notwithstanding the immediately preceding paragraph, if notes are converted after 5:00 p.m., New York City time, on a regular record date for the payment of interest, holders of such notes at 5:00 p.m., New York City time, on such regular record date will receive the full amount of interest payable on such notes on the corresponding interest payment date notwithstanding the conversion. Notes surrendered for conversion during the period from 5:00 p.m., New York City time, on any regular record date to 9:00 a.m., New York City time, on the immediately following interest payment date must be accompanied by funds equal to the amount of interest payable on the notes so converted; *provided* that no such payment need be made:

for conversions following the regular record date immediately preceding the maturity date;

if we have specified a fundamental change repurchase date that is after a regular record date and on or prior to the corresponding interest payment date; or

to the extent of any overdue interest, if any overdue interest exists at the time of conversion with respect to such note.

If a holder converts notes, we will pay any documentary, stamp or similar issue or transfer tax due on any issuance of any shares of our common stock upon the conversion, unless the tax is due because the holder requests such shares to be issued in a name other than the holder's name, in which case the holder will pay that tax.

Holders may surrender their notes for conversion under the following circumstances:

*Conversion Upon Satisfaction of Sale Price Condition*

Prior to the close of business on the business day immediately preceding June 1, 2017, a holder may surrender all or a portion of its notes for conversion during any calendar quarter commencing after the calendar quarter ending on March 31, 2013 (and only during such calendar quarter), if the last reported sale price of our common stock for at least 20 trading days (whether or not consecutive) during the period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the conversion price on each applicable trading day.

The last reported sale price of our common stock on any date means the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the principal U.S. national or regional securities exchange on which our common stock is traded. If our common stock is not listed for trading on a U.S. national or regional securities exchange on the relevant date, the last reported sale price will be the last quoted bid price for our common stock in the over-the-counter market on the relevant date as reported by OTC Markets Group Inc. or a similar organization. If our common stock is not so quoted, the last reported sale price will be the average of the mid-point of the last bid and ask prices for our common stock on the relevant date from each of at least three nationally recognized independent investment banking firms selected by us for this purpose.

Trading day means a day on which (i) trading in our common stock (or other security for which a closing sale price must be determined) generally occurs on The NASDAQ Global Select Market or, if our common stock (or such other security) is not then listed on The NASDAQ Global Select Market, on the principal other U.S. national or regional securities exchange on which our common stock (or such other security) is then listed or, if our common stock (or such other security) is not then listed on a U.S. national

## **Table of Contents**

or regional securities exchange, on the principal other market on which our common stock (or such other security) is then traded, and (ii) a last reported sale price for our common stock (or closing sale price for such other security) is available on such securities exchange or market. If our common stock (or such other security) is not so listed or traded, trading day means a business day.

### *Conversion Upon Satisfaction of Trading Price Condition*

Prior to the close of business on the business day immediately preceding June 1, 2017, a holder of notes may surrender its notes for conversion during the five business day period after any five consecutive trading day period (the measurement period) in which the trading price per \$1,000 principal amount of notes, as determined following a request by a holder of notes in accordance with the procedures described below, for each trading day of the measurement period was less than 98% of the product of the last reported sale price of our common stock and the conversion rate on each such trading day.

The trading price of the notes on any date of determination means the average of the secondary market bid quotations obtained by the bid solicitation agent for \$5 million principal amount of notes at approximately 3:30 p.m., New York City time, on such determination date from three independent nationally recognized securities dealers we select; provided that if three such bids cannot reasonably be obtained by the bid solicitation agent but two such bids are obtained, then the average of the two bids shall be used, and if only one such bid can reasonably be obtained by the bid solicitation agent, that one bid shall be used. If the bid solicitation agent cannot reasonably obtain at least one bid for \$5 million principal amount of notes from a nationally recognized securities dealer, then the trading price per \$1,000 principal amount of notes will be deemed to be less than 98% of the product of the last reported sale price of our common stock and the conversion rate. If we do not, when we are required to, instruct the bid solicitation agent to obtain bids, or if we give such instruction to the bid solicitation agent, and the bid solicitation agent fails to make such determination, then, in either case, the trading price per \$1,000 principal amount of notes will be deemed to be less than 98% of the product of the last reported sale price of our common stock and the conversion rate on each trading day of such failure.

The bid solicitation agent (if other than us) shall have no obligation to determine the trading price per \$1,000 principal amount of notes unless we have requested such determination; and we shall have no obligation to make such request (or, if we are acting as bid solicitation agent, we shall have no obligation to determine the trading price) unless a holder of a note provides us with reasonable evidence that the trading price per \$1,000 principal amount of notes would be less than 98% of the product of the last reported sale price of our common stock and the conversion rate. At such time, we shall instruct the bid solicitation agent (if other than us) to determine, or, if we are acting as bid solicitation agent, we shall determine, the trading price per \$1,000 principal amount of notes beginning on the next trading day and on each successive trading day until the trading price per \$1,000 principal amount of notes is greater than or equal to 98% of the product of the last reported sale price of our common stock and the conversion rate. If the trading price condition has been met, we will so notify the holders, the trustee and the conversion agent (if other than the trustee). If, at any time after the trading price condition has been met, the trading price per \$1,000 principal amount of notes is greater than or equal to 98% of the product of the last reported sale price of our common stock and the conversion rate for such date, we will so notify the holders, the trustee and the conversion agent (if other than the trustee).

We will initially act as the bid solicitation agent.

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**Table of Contents**

*Conversion Upon Specified Corporate Events*

*Certain Distributions*

If, prior to the close of business on the business day immediately preceding June 1, 2017, we elect to:

issue to all or substantially all holders of our common stock any rights, options or warrants entitling them, for a period of not more than 45 calendar days after the announcement date of such issuance, to subscribe for or purchase shares of our common stock at a price per share that is less than the average of the last reported sale prices of our common stock for the 10 consecutive trading day period ending on, and including, the trading day immediately preceding the date of announcement of such issuance; or

distribute to all or substantially all holders of our common stock our assets, debt securities or rights to purchase our securities, which distribution has a per share value, as reasonably determined by our board of directors or a committee thereof, exceeding 10% of the last reported sale price of our common stock on the trading day preceding the date of announcement for such distribution, then, in either case, we must notify the holders of the notes at least 50 scheduled trading days prior to the ex-dividend date for such issuance or distribution. Once we have given such notice, holders may surrender their notes for conversion at any time until the earlier of 5:00 p.m., New York City time, on the business day immediately preceding the ex-dividend date for such issuance or distribution and our announcement that such issuance or distribution will not take place, even if the notes are not otherwise convertible at such time.

Notwithstanding the immediately preceding paragraph, holders of the notes will not be permitted to so surrender their notes for conversion if such holders are entitled to participate (solely as a result of holding the notes), at the same time and on the same terms as holders of our common stock, in such issuance or distribution without having to convert their notes as if they held a number of shares of common stock equal to the conversion rate, multiplied by the principal amount (expressed in thousands) of notes held by such holder.

*Certain Corporate Events*

If a transaction or event that constitutes a fundamental change (as defined under Fundamental Change Permits Holders to Require Us to Repurchase Notes ) or a make-whole fundamental change (as defined under Adjustment to Shares Delivered Upon Conversion Upon a Make-whole Fundamental Change ) occurs prior to the close of business on the business day immediately preceding June 1, 2017, regardless of whether a holder has the right to require us to repurchase the notes as described under Fundamental Change Permits Holders to Require Us to Repurchase Notes, or if we are a party to a consolidation, merger, binding share exchange, or transfer or lease of all or substantially all of our assets, pursuant to which our common stock would be converted into cash, securities or other assets, the notes may be surrendered for conversion at any time from or after the date that is 50 scheduled trading days prior to the anticipated effective date of the transaction (or, if later, the business day after we give notice of such transaction) until 35 trading days after the actual effective date of such transaction or, if such transaction also constitutes a fundamental change, until the related fundamental change repurchase date. We will notify holders, the trustee and the conversion agent (if other than the trustee) (i) as promptly as practicable following the date we publicly announce such transaction but in no event less than 50 scheduled trading days prior to the anticipated effective date of such transaction; or (ii) if we do not have knowledge of such transaction at least 50 scheduled trading days prior to the anticipated effective date of such transaction, within one business day of the date upon which we receive notice, or otherwise become aware, of such transaction, but in no event later than the actual effective date of such transaction.

## **Table of Contents**

### *Conversions On or After June 1, 2017*

On or after June 1, 2017, a holder may convert any of its notes at any time prior to the close of business on the second scheduled trading day immediately preceding the maturity date regardless of the foregoing conditions.

### *Conversion Procedures*

If you hold a beneficial interest in a global note, to convert you must comply with DTC's procedures for converting a beneficial interest in a global note and, if required, pay funds equal to interest payable on the next interest payment date to which you are not entitled.

If you hold a certificated note, to convert you must:

complete and manually sign the conversion notice on the back of the note, or a facsimile of the conversion notice;

deliver the conversion notice, which is irrevocable, and the note to the conversion agent;

if required, furnish appropriate endorsements and transfer documents; and

if required, pay funds equal to interest payable on the next interest payment date to which you are not entitled.

We will pay any documentary, stamp or similar issue or transfer tax on the issuance of any shares of our common stock upon conversion of the notes, unless the tax is due because the holder requests such shares to be issued in a name other than the holder's name, in which case the holder will pay the tax.

We refer to the date you comply with the relevant procedures for conversion described above as the conversion date.

If a holder has already delivered a repurchase notice as described under Fundamental Change Permits holders to require us to repurchase notes with respect to a note, the holder may not surrender that note for conversion until the holder has withdrawn the repurchase notice in accordance with the relevant provisions of the indenture. If a holder submits its notes for required repurchase, the holder's right to withdraw the repurchase notice and convert the notes that are subject to repurchase will terminate at the close of business on the business day immediately preceding the relevant fundamental change repurchase date.

### *Settlement Upon Conversion*

We plan to hold a meeting of our stockholders at which we will seek to obtain stockholder approval to amend our amended and restated certificate of incorporation to increase the number of authorized shares of our common stock by an amount at least equal to (i) the aggregate conversion rate, plus the maximum additional shares as defined in below under Adjustment to Shares Delivered Upon Conversion Upon a Make-whole Fundamental Change, for each \$1,000 principal amount of notes then outstanding plus (ii) two times the maximum number of shares of common stock issuable upon exercise of the warrants issued in the warrant transactions, which we refer to as the stockholder approval. However, however we may not obtain the stockholder approval and, if we do not, we will settle all conversions of notes in cash as described below. See Risk Factors Risks Related to the Notes The accounting for the notes will result in our having to recognize interest expense significantly more than the stated interest rate of the notes and may result in volatility to our consolidated statement of operations. Also, the accounting method for instruments that must be settled in cash, such as the note conversion option and the convertible note hedge transactions, could have a material effect on our reported financial results.

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**Table of Contents**

Upon conversion of any notes, if we have not received the stockholder approval prior to the relevant settlement method election date, we will settle conversion of such notes entirely in cash. If we have received the stockholder approval prior to the relevant settlement method election date, upon conversion of such notes, we will pay cash up to the aggregate principal amount of the notes to be converted and pay or deliver, as the case may be, cash, shares of our common stock or a combination of cash and shares of our common stock, at our election, in respect of the remainder, if any, of our conversion obligation in excess of the aggregate principal amount of the notes being converted, all as described below.

Upon conversion, we will pay or deliver, as the case may be, to holders in respect of each \$1,000 principal amount of notes being converted a settlement amount equal to the sum of the daily settlement amounts (as defined below) for each of the 40 trading days during the relevant observation period (as defined below).

All conversions occurring on or after June 1, 2017 will be settled using the same forms and proportionate amounts of consideration. Except for any conversions that occur on or after June 1, 2017, we will use the same forms and proportionate amounts of consideration for all conversions occurring on the same conversion date, but we will not have any obligation to use the same forms and proportionate amounts of consideration with respect to conversions that occur on different conversion dates, subject to our obligation to settle all conversions entirely in cash if we have not received the stockholder approval prior to the relevant settlement method election date as described above. That is, if we have received the stockholder approval, we may choose for notes converted on one conversion date to settle conversions entirely in cash, and choose for notes converted on another conversion date to settle conversions by paying cash in respect of the principal portion of the converted notes and delivering shares of our common stock in respect of the remainder, if any, of our conversion obligation in excess of the aggregate principal portion of the notes being converted.

If we elect to settle all or a portion of our conversion obligation in excess of the principal portion of the notes being converted in cash, we will inform holders so converting through the trustee of such election no later than (x) in the case of conversions occurring prior to June 1, 2017, the close of business on the trading day immediately following the related conversion date or (y) in the case of any conversions occurring on or after June 1, 2017, no later than June 1, 2017 (which, in either case, we refer to as the settlement method election date), and we will indicate in such notice the percentage of each share issuable upon conversion in excess of the principal portion of the notes being converted that will be paid in cash (which we refer to as the cash percentage). If we have received the stockholder approval prior to the relevant settlement method election date but we do not timely make such an election, we will no longer have the right to elect a cash percentage and we will settle our conversion obligation by paying cash in respect of the principal portion of the converted notes and delivering shares of our common stock in respect of the remainder, if any, of our conversion obligation in excess of the aggregate principal portion of the notes being converted, as described below.

The daily settlement amount, for each of the 40 consecutive trading days during the observation period, shall consist of:

cash equal to the lesser of (i) \$25 and (ii) the daily conversion value; and

if the daily conversion value exceeds \$25, the daily net settlement amount.

The daily net settlement amount for each of the 40 consecutive trading days during the relevant observation period, means:

if we do not elect a cash percentage, a number of shares of our common stock equal to (i) the difference between the daily conversion value and \$25, divided by (ii) the daily VWAP for such trading day;

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**Table of Contents**

if we elect a cash percentage of 100%, cash in an amount equal to the difference between the daily conversion value and \$25; or

if we elect a cash percentage of less than 100%, (i) cash equal to the product of (x) the difference between the daily conversion value and \$25 and (y) the cash percentage, plus (ii) a number of shares of our common stock equal to the product of (x) (A) the difference between the daily conversion value and \$25, divided by (B) the daily VWAP for such trading day and (y) 100% minus the cash percentage.

The daily conversion value means, for each of the 40 consecutive trading days during the observation period, 2.5% of the product of (1) the conversion rate on such trading day and (2) the daily VWAP for such trading day.

The daily VWAP means, for each of the 40 consecutive trading days during the applicable observation period, the per share volume-weighted average price as displayed under the heading Bloomberg VWAP on Bloomberg page EPAY <equity> AQR (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such trading day (or if such volume-weighted average price is unavailable, the market value of one share of our common stock on such trading day determined, using a volume-weighted average method, by a nationally recognized independent investment banking firm retained for this purpose by us). The daily VWAP will be determined without regard to after hours trading or any other trading outside of the regular trading session trading hours.

The observation period with respect to any note surrendered for conversion means:

if the relevant conversion date occurs prior to June 1, 2017, the 40 consecutive trading day period beginning on, and including, the second trading day immediately succeeding such conversion date; and

if the relevant conversion date occurs on or after June 1, 2017, the 40 consecutive trading days beginning on, and including, the 42nd scheduled trading day immediately preceding the maturity date.

For the purposes of determining amounts due upon conversion only, trading day means a day on which (i) there is no market disruption event (as defined below) and (ii) trading in our common stock generally occurs on The NASDAQ Global Select Market or, if our common stock is not then listed on The NASDAQ Global Select Market, on the principal other U.S. national or regional securities exchange on which our common stock is then listed or, if our common stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which our common stock is then listed or admitted for trading. If our common stock is not so listed or admitted for trading, trading day means a business day.

Scheduled trading day means a day that is scheduled to be a trading day on the principal U.S. national or regional securities exchange or market on which our common stock is listed or admitted for trading. If our common stock is not so listed or admitted for trading, scheduled trading day means a business day.

For the purposes of determining amounts due upon conversion, market disruption event means (i) a failure by the primary U.S. national or regional securities exchange or market on which our common stock is listed or admitted for trading to open for trading during its regular trading session or (ii) the occurrence or existence prior to 1:00 p.m., New York City time, on any scheduled trading day for our common stock for more than one half-hour period in the aggregate during regular trading hours of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant stock exchange or otherwise) in our common stock or in any options contracts or futures contracts relating to our common stock.

**Table of Contents**

Except as described under Adjustment to Shares Delivered Upon Conversion Upon a Make-whole Fundamental Change and Recapitalizations, Reclassifications and Changes of Our Common Stock, we will pay or deliver, as the case may be, the consideration due in respect of conversion on the third business day immediately following the last trading day of the relevant observation period.

We will deliver cash in lieu of any fractional share of common stock issuable upon conversion based on the daily VWAP on the last trading day of the relevant observation period.

Each conversion will be deemed to have been effected as to any notes surrendered for conversion on the conversion date; *provided, however*, that the person in whose name any shares of our common stock shall be issuable upon such conversion will become the holder of record of such shares as of the close of business on the last trading day of the relevant observation period.

*Conversion Rate Adjustments*

The conversion rate will be adjusted as described below, except that we will not make any adjustments to the conversion rate if holders of the notes participate (other than in the case of a share split or share combination), at the same time and upon the same terms as holders of our common stock and solely as a result of holding the notes, in any of the transactions described below without having to convert their notes as if they held a number of shares of common stock equal to the conversion rate, *multiplied by* the principal amount (expressed in thousands) of notes held by such holder.

- (1) If we exclusively issue shares of our common stock as a dividend or distribution on shares of our common stock, or if we effect a share split or share combination, the conversion rate will be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where,

- $CR_0$  = the conversion rate in effect immediately prior to the open of business on the ex-dividend date of such dividend or distribution, or immediately prior to the open of business on the effective date of such share split or share combination, as applicable;
- $CR_1$  = the conversion rate in effect immediately after the open of business on such ex-dividend date or effective date;
- $OS_0$  = the number of shares of our common stock outstanding immediately prior to the open of business on such ex-dividend date or effective date; and
- $OS_1$  = the number of shares of our common stock outstanding immediately after giving effect to such dividend, distribution, share split or share combination.

Any adjustment made under this clause (1) shall become effective immediately after the open of business on the ex-dividend date for such dividend or distribution, or immediately after the open of business on the effective date for such share split or share combination, as applicable. If any dividend or distribution of the type described in this clause (1) is declared but not so paid or made, the conversion rate shall be immediately readjusted, effective as of the date our board of directors or a committee thereof determines not to pay such dividend or distribution, to the conversion rate that would then be in effect if such dividend or distribution had not been declared.

- (2) If we issue to all or substantially all holders of our common stock any rights, options or warrants entitling them, for a period of not more than 45 calendar days after the announcement date of such issuance, to subscribe for or purchase shares of our common stock at a price per share that is less than

**Table of Contents**

the average of the last reported sale prices of our common stock for the 10 consecutive trading day period ending on, and including, the trading day immediately preceding the date of announcement of such issuance, the conversion rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CR<sub>0</sub> = the conversion rate in effect immediately prior to the open of business on the ex-dividend date for such issuance;

CR<sub>1</sub> = the conversion rate in effect immediately after the open of business on such ex-dividend date;

OS<sub>0</sub> = the number of shares of our common stock outstanding immediately prior to the open of business on such ex-dividend date;

X = the total number of shares of our common stock issuable pursuant to such rights, options or warrants; and

Y = the number of shares of our common stock equal to the aggregate price payable to exercise such rights, options or warrants, *divided by* the average of the last reported sale prices of our common stock over the 10 consecutive trading day period ending on, and including, the trading day immediately preceding the date of announcement of the issuance of such rights, options or warrants.

Any increase made under this clause (2) will be made successively whenever any such rights, options or warrants are issued and shall become effective immediately after the open of business on the ex-dividend date for such issuance. To the extent that shares of common stock are not delivered after the expiration of such rights, options or warrants, the conversion rate shall be readjusted to the conversion rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of common stock actually delivered. If such rights, options or warrants are not so issued, the conversion rate shall be decreased to the conversion rate that would then be in effect if such ex-dividend date for such issuance had not occurred.

For the purpose of this clause (2) and for the purpose of the first bullet point under **Conversion Upon Specified Corporate Events** **Certain Distributions**, in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of the common stock at less than such average of the last reported sale prices for the 10 consecutive trading day period ending on, and including, the trading day immediately preceding the date of announcement of such issuance, and in determining the aggregate offering price of such shares of common stock, there shall be taken into account any consideration received by us for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by our board of directors or a committee thereof.

(3) If we distribute shares of our capital stock, evidences of our indebtedness, other assets or property of ours or rights, options or warrants to acquire our capital stock or other securities, to all or substantially all holders of our common stock, excluding:

dividends, distributions or issuances as to which an adjustment was effected pursuant to clause (1) or (2) above;

dividends or distributions paid exclusively in cash as to which an adjustment was effected pursuant to clause (4) below; and

spin-offs as to which the provisions set forth below in this clause (3) shall apply;



**Table of Contents**

then the conversion rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where,

$CR_0$  = the conversion rate in effect immediately prior to the open of business on the ex-dividend date for such distribution;

$CR_1$  = the conversion rate in effect immediately after the open of business on such ex-dividend date;

$SP_0$  = the average of the last reported sale prices of our common stock over the 10 consecutive trading day period ending on, and including, the trading day immediately preceding the ex-dividend date for such distribution; and

$FMV$  = the fair market value (as determined by our board of directors or a committee thereof) of the shares of capital stock, evidences of indebtedness, assets, property, rights, options or warrants distributed with respect to each outstanding share of our common stock on the ex-dividend date for such distribution.

Any increase made under the portion of this clause (3) above will become effective immediately after the open of business on the ex-dividend date for such distribution. If such distribution is not so paid or made, the conversion rate shall be decreased to be the conversion rate that would then be in effect if such distribution had not been declared. Notwithstanding the foregoing, if  $FMV$  (as defined above) is equal to or greater than  $SP_0$  (as defined above), in lieu of the foregoing increase, each holder of a note shall receive, in respect of each \$1,000 principal amount thereof, at the same time and upon the same terms as holders of our common stock, the amount and kind of our capital stock, evidences of our indebtedness, other assets or property of ours or rights, options or warrants to acquire our capital stock or other securities that such holder would have received if such holder owned a number of shares of common stock equal to the conversion rate in effect on the ex-dividend date for the distribution.

With respect to an adjustment pursuant to this clause (3) where there has been a payment of a dividend or other distribution on our common stock of shares of capital stock of any class or series, or similar equity interest, of or relating to a subsidiary or other business unit, that are, or, when issued, will be, listed or admitted for trading on a U.S. national securities exchange, which we refer to as a spin-off, the conversion rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

where,

$CR_0$  = the conversion rate in effect immediately prior to the end of the valuation period (as defined below);

$CR_1$  = the conversion rate in effect immediately after the end of the valuation period;

$FMV_0$  = the average of the last reported sale prices of the capital stock or similar equity interest distributed to holders of our common stock applicable to one share of our common stock (determined by reference to the definition of last reported sale price set forth under Conversion Upon Satisfaction of Sale Price Condition as if references therein to our common stock were to such capital stock or similar equity interest) over the first 10 consecutive trading day period after, and including, the ex-dividend date of the spin-off (the valuation period); and

$MP_0$  = the average of the last reported sale prices of our common stock over the valuation period.

**Table of Contents**

The adjustment to the conversion rate under the preceding paragraph will occur on the last trading day of the valuation period; *provided* that in respect of any conversion during the valuation period, references in the preceding paragraph with respect to 10 trading days shall be deemed to be replaced with such lesser number of trading days as have elapsed between the ex-dividend date of such spin-off and the conversion date in determining the conversion rate.

- (4) If any cash dividend or distribution is made to all or substantially all holders of our common stock (other than a distribution as to which an adjustment is effected pursuant to clause (5) below), the conversion rate will be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

$CR_0$  = the conversion rate in effect immediately prior to the open of business on the ex-dividend date for such dividend or distribution;

$CR_1$  = the conversion rate in effect immediately after the open of business on the ex-dividend date for such dividend or distribution;

$SP_0$  = the last reported sale price of our common stock on the trading day immediately preceding the ex-dividend date for such dividend or distribution; and

$C$  = the amount in cash per share we distribute to all or substantially all holders of our common stock.

Any increase made under this clause (4) shall become effective immediately after the open of business on the ex-dividend date for such dividend or distribution. If such dividend or distribution is not so paid, the conversion rate shall be decreased, effective as of the date our board of directors or a committee thereof determines not to make or pay such dividend or distribution, to be the conversion rate that would then be in effect if such dividend or distribution had not been declared. Notwithstanding the foregoing, if  $C$  (as defined above) is equal to or greater than  $SP_0$  (as defined above), in lieu of the foregoing increase, each holder of a note shall receive, for each \$1,000 principal amount of notes, at the same time and upon the same terms as holders of shares of our common stock, the amount of cash that such holder would have received if such holder owned a number of shares of our common stock equal to the conversion rate on the ex-dividend date for such cash dividend or distribution.

- (5) If we or any of our subsidiaries make a payment in respect of a tender or exchange offer for our common stock, to the extent that the cash and value of any other consideration included in the payment per share of common stock exceeds the last reported sale price of our common stock on the trading day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer, the conversion rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + (SP_1 \times OS_1)}{OS_0 \times SP_1}$$

where,

$CR_0$  = the conversion rate in effect immediately prior to the close of business on the 10th trading day immediately following, and including, the trading day next succeeding the date such tender or exchange offer expires;

$CR_1$  = the conversion rate in effect immediately after the close of business on the 10th trading day immediately following, and including, the trading day next succeeding the date such tender or exchange offer expires;

**Table of Contents**

- AC = the aggregate value of all cash and any other consideration (as determined by our board of directors or a committee thereof) paid or payable for shares purchased in such tender or exchange offer;
- OS<sub>0</sub> = the number of shares of our common stock outstanding immediately prior to the date such tender or exchange offer expires (prior to giving effect to the purchase of all shares accepted for purchase or exchange in such tender or exchange offer);
- OS<sub>1</sub> = the number of shares of our common stock outstanding immediately after the date such tender or exchange offer expires (after giving effect to the purchase of all shares accepted for purchase or exchange in such tender or exchange offer); and
- SP<sub>1</sub> = the average of the last reported sale prices of our common stock over the 10 consecutive trading day period commencing on, and including, the trading day next succeeding the date such tender or exchange offer expires.

The adjustment to the conversion rate under the preceding paragraph will occur at the close of business on the 10th trading day immediately following, and including, the trading day next succeeding the date such tender or exchange offer expires; *provided* that in respect of any conversion within the 10 trading days immediately following, and including, the trading day next succeeding the expiration date of any tender or exchange offer, references with respect to 10 trading days shall be deemed replaced with such lesser number of trading days as have elapsed between the expiration date of such tender or exchange offer and the conversion date in determining the conversion rate.

Except as stated herein, we will not adjust the conversion rate for the issuance of shares of our common stock or any securities convertible into or exchangeable for shares of our common stock or the right to purchase shares of our common stock or such convertible or exchangeable securities.

As used in this section, *ex-dividend date* means the first date on which the shares of our common stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question, from us or, if applicable, from the seller of our common stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market, and *effective date* means the first date on which the shares of our common stock trade on the applicable exchange or in the applicable market, regular way, reflecting the relevant share split or share combination, as applicable.

We are permitted to increase the conversion rate of the notes by any amount for a period of at least 20 business days if our board of directors or a committee thereof determines that such increase would be in our best interest. We may also (but are not required to) increase the conversion rate to avoid or diminish income tax to holders of our common stock or rights to purchase shares of our common stock in connection with a dividend or distribution of shares (or rights to acquire shares) or similar event.

A holder may, in some circumstances, including a distribution of cash dividends to holders of our shares of common stock, be deemed to have received a distribution subject to U.S. federal income tax as a result of an adjustment or the nonoccurrence of an adjustment to the conversion rate. For a discussion of the U.S. federal income tax treatment of an adjustment to the conversion rate, see *Certain Material United States Federal Income Tax Considerations*.

If we have a rights plan in effect upon conversion of the notes into common stock, you will receive, in addition to any shares of common stock received in connection with such conversion, the rights under the rights plan. However, if, prior to any conversion, the rights have separated from the shares of common stock in accordance with the provisions of the applicable rights plan, the conversion rate will be adjusted at the time of separation as if we distributed to all holders of our common stock, shares of our capital stock, evidences of indebtedness, assets, property, rights, options or warrants as described in clause (3) above, subject to readjustment in the event of the expiration, termination or redemption of such rights.

## Table of Contents

Notwithstanding any of the foregoing, the conversion rate will not be adjusted:

upon the issuance of any shares of our common stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on our securities and the investment of additional optional amounts in shares of our common stock under any plan;

upon the issuance of any shares of our common stock or options or rights to purchase those shares pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by us or any of our subsidiaries;

upon the issuance of any shares of our common stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in the preceding bullet and outstanding as of the date the notes were first issued;

solely for a change in the par value of our common stock; or

for accrued and unpaid interest, if any.

Adjustments to the conversion rate will be calculated to the nearest 1/10,000th of a share.

### *Recapitalizations, Reclassifications and Changes of Our Common Stock*

In the case of:

any recapitalization, reclassification or change of our common stock (other than changes resulting from a subdivision or combination),

any consolidation, merger or combination involving us,

any sale, lease or other transfer to a third party of the consolidated assets of ours and our subsidiaries substantially as an entirety, or

any statutory share exchange,

in each case, as a result of which our common stock would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof), then, at and after the effective time of the transaction, the right to convert each \$1,000 principal amount of notes will be changed into a right to convert such principal amount of notes into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of shares of common stock equal to the conversion rate immediately prior to such transaction would have owned or been entitled to receive (the reference property) upon such transaction. However, at and after the effective time of the transaction, if we have received the stockholder approval prior to the relevant settlement method election date, (i) the amount otherwise payable in cash upon conversion of the notes as set forth under Settlement Upon Conversion above will continue to be payable in cash; (ii) we will continue to have the right to elect to determine the form of consideration to be paid or delivered, as the case may be, in respect of the remainder, if any, of our conversion obligation in excess of the principal amount of the notes being converted as set forth under Settlement Upon Conversion; (iii) the number of shares of our common stock, if any, otherwise deliverable upon conversion of the notes as set forth under Settlement Upon Conversion above will instead be deliverable in the amount and type of reference property that a holder of that number of shares of our common stock would have received in such transaction; and (iv) the daily VWAP will be calculated based on the value of a unit of reference property that a holder of one share of our common stock would have received in such transaction. If the transaction causes our common stock to be converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), the reference property



**Table of Contents**

into which the notes will be convertible will be deemed to be (i) the weighted average of the types and amounts of consideration received by the holders of our common stock that affirmatively make such an election or (ii) if no holders of our common stock affirmatively make such an election, the types and amounts of consideration actually received by the holders of our common stock. If the holders receive only cash in such transaction, then for all conversions that occur after the effective date of such transaction (i) the consideration due upon conversion of each \$1,000 principal amount of notes shall be solely cash in an amount equal to the conversion rate in effect on the conversion date (as may be increased by any additional shares as described under *Adjustment to Shares Delivered Upon Conversion Upon a Make-whole Fundamental Change* ), *multiplied* by the price paid per share of common stock in such transaction and (ii) we will satisfy our conversion obligation by paying cash to converting holders on the third business day immediately following the conversion date. We will notify holders, the trustee and the conversion agent (if other than the trustee) of the weighted average as soon as practicable after such determination is made. We will agree in the indenture not to become a party to any such transaction unless its terms are consistent with the foregoing.

*Adjustments of Prices*

Whenever any provision of the indenture requires us to calculate the last reported sale prices, the daily VWAPs, the daily conversion values or the daily settlement amounts over a span of multiple days (including an observation period and the *stock price* for purposes of a make-whole fundamental change), our board of directors or a committee thereof will make appropriate adjustments to each to account for any adjustment to the conversion rate that becomes effective, or any event requiring an adjustment to the conversion rate where the ex-dividend date of the event occurs, at any time during the period when the last reported sale prices, the daily VWAPs, the daily conversion values or the daily settlement amounts are to be calculated.

*Adjustment to Shares Delivered Upon Conversion Upon a Make-whole Fundamental Change*

If the *effective date* (as defined below) of a *fundamental change* (as defined below and determined after giving effect to any exceptions to or exclusions from such definition, but without regard to the *proviso* in clause (2) of the definition thereof, a *make-whole fundamental change* ) occurs prior to the maturity date of the notes and a holder elects to convert its notes in connection with such make-whole fundamental change, we will, under certain circumstances, increase the conversion rate for the notes so surrendered for conversion by a number of additional shares of common stock (the *additional shares* ), as described below. A conversion of notes will be deemed for these purposes to be in connection with such make-whole fundamental change if the notice of conversion of the notes is received by the conversion agent from, and including, the effective date of the make-whole fundamental change up to, and including, the business day immediately prior to the related fundamental change repurchase date (or, in the case of a make-whole fundamental change that would have been a fundamental change but for the *proviso* in clause (2) of the definition thereof, the 35th trading day immediately following the effective date of such make-whole fundamental change).

If we have not received the stockholder approval prior to the surrender of notes for conversion in connection with a make-whole fundamental change, we will satisfy our conversion obligation solely in cash. If we have received the stockholder approval prior to the surrender of notes for conversion in connection with a make-whole fundamental change, we will, pay or deliver, as the case may be, the consideration due in respect of such converted notes, based on the conversion rate as increased to reflect the additional shares pursuant to the table set forth below, as described under *Conversion rights Settlement Upon Conversion*. However, if the consideration for our common stock in any make-whole fundamental change

**Table of Contents**

described in clause (2) of the definition of fundamental change is composed entirely of cash, for any conversion of notes following the effective date of such make-whole fundamental change, the conversion obligation will be calculated based solely on the stock price (as defined below) for the transaction and will be deemed to be an amount of cash per \$1,000 principal amount of converted notes equal to the conversion rate (including any adjustment as described in this section), *multiplied by* such stock price. In such event, the conversion obligation will be determined and paid to holders in cash on the third business day following the conversion date. We will notify holders of the effective date of any make-whole fundamental change and issue a press release announcing such effective date no later than five business days after such effective date.

The number of additional shares, if any, by which the conversion rate will be increased will be determined by reference to the table below, based on the date on which the make-whole fundamental change occurs or becomes effective (the effective date) and the price (the stock price) paid (or deemed to be paid) per share of our common stock in the make-whole fundamental change. If the holders of our common stock receive in exchange for their common stock only cash in a make-whole fundamental change described in clause (2) of the definition of fundamental change, the stock price shall be the cash amount paid per share. Otherwise, the stock price shall be the average of the last reported sale prices of our common stock over the five trading day period ending on, and including, the trading day immediately preceding the effective date of the make-whole fundamental change.

The stock prices set forth in the column headings of the table below will be adjusted as of any date on which the conversion rate of the notes is otherwise adjusted. The adjusted stock prices will equal the stock prices immediately prior to such adjustment, *multiplied by* a fraction, the numerator of which is the conversion rate immediately prior to the adjustment giving rise to the stock price adjustment and the denominator of which is the conversion rate as so adjusted. The number of additional shares will be adjusted in the same manner and at the same time as the conversion rate as set forth under Conversion Rate Adjustments.

The following table sets forth the number of additional shares to be received per \$1,000 principal amount of notes for each stock price and effective date set forth below:

Effective Date	Stock Price												
	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
December , 2012													
December 1, 2013													
December 1, 2014													
December 1, 2015													
December 1, 2016													
December 1, 2017													

The exact stock prices and effective dates may not be set forth in the table above, in which case

If the stock price is between two stock prices in the table or the effective date is between two effective dates in the table, the number of additional shares will be determined by a straight-line interpolation between the number of additional shares set forth for the higher and lower stock prices and the earlier and later effective dates, as applicable, based on a 365-day year.

If the stock price is greater than \$ per share (subject to adjustment in the same manner as the stock prices set forth in the column headings of the table above), no additional shares will be added to the conversion rate.

## **Table of Contents**

If the stock price is less than \$ \_\_\_\_\_ per share (subject to adjustment in the same manner as the stock prices set forth in the column headings of the table above), no additional shares will be added to the conversion rate. Notwithstanding the foregoing, in no event will the conversion rate per \$1,000 principal amount of notes exceed \_\_\_\_\_ shares, subject to adjustment in the same manner as the conversion rate as set forth under \_\_\_\_\_ Conversion Rate Adjustments.

Our obligation to satisfy the additional shares requirement could be considered a penalty, in which case the enforceability thereof would be subject to general principles of reasonableness and equitable remedies.

### **Fundamental Change Permits Holders to Require Us to Repurchase Notes**

If a fundamental change (as defined below in this section) occurs at any time, holders will have the right, at their option, to require us to repurchase for cash all of their notes, or any portion of the principal thereof that is equal to \$1,000 or a multiple of \$1,000. The fundamental change repurchase date will be a date specified by us that is not less than 20 or more than 35 calendar days following the date of our fundamental change notice as described below.

The fundamental change repurchase price we are required to pay will be equal to 100% of the principal amount of the notes to be repurchased, *plus* accrued and unpaid interest to, but excluding, the fundamental change repurchase date (unless the fundamental change repurchase date falls after a regular record date but on or prior to the interest payment date to which such regular record date relates, in which case we will instead pay the full amount of accrued and unpaid interest to the holder of record on such regular record date, and the fundamental change repurchase price will be equal to 100% of the principal amount of the notes to be repurchased).

A fundamental change will be deemed to have occurred at the time after the notes are originally issued if any of the following occurs:

- (1) a person or group within the meaning of Section 13(d) of the Exchange Act, other than us, our subsidiaries and our and their employee benefit plans, has become the direct or indirect beneficial owner, as defined in Rule 13d-3 under the Exchange Act, of our common equity representing more than 50% of the voting power of our common equity;
- (2) the consummation of (A) any recapitalization, reclassification or change of our common stock (other than changes resulting from a subdivision or combination) as a result of which our common stock would be converted into, or exchanged for, stock, other securities, other property or assets; (B) any share exchange, consolidation or merger of us pursuant to which our common stock will be converted into cash, securities or other property; or (C) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of us and our subsidiaries, taken as a whole, to any person other than one of our subsidiaries; *provided, however,* that a transaction described in clause (B) in which the holders of all classes of our common equity immediately prior to such transaction own, directly or indirectly, more than 50% of all classes of common equity of the continuing or surviving corporation or transferee or the parent thereof immediately after such transaction in substantially the same proportions as such ownership immediately prior to such transaction shall not be a fundamental change pursuant to this clause (2);
- (3) our stockholders approve any plan or proposal for the liquidation or dissolution of us; or
- (4) our common stock (or other common stock underlying the notes) ceases to be listed or quoted on any of The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors).



**Table of Contents**

A transaction or transactions described in clauses (1) or (2) above will not constitute a fundamental change, however, if at least 90% of the consideration received or to be received by our common stockholders, excluding cash payments for fractional shares, in connection with such transaction or transactions consists of shares of common stock that are listed or quoted on any of The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors) or will be so listed or quoted when issued or exchanged in connection with such transaction or transactions and as a result of such transaction or transactions the notes become convertible into such consideration, excluding cash payments for fractional shares (subject to the provisions set forth above under Conversion Rights Settlement Upon Conversion ).

On or before the 20th day after the occurrence of a fundamental change, we will provide to all holders of the notes and the trustee and paying agent a notice of the occurrence of the fundamental change and of the resulting repurchase right. Such notice shall state, among other things:

the events causing a fundamental change;

the date of the fundamental change;

the last date on which a holder may exercise the repurchase right;

the fundamental change repurchase price;

the fundamental change repurchase date;

the name and address of the paying agent and the conversion agent, if applicable;

if applicable, the conversion rate and any adjustments to the conversion rate;

that the notes with respect to which a fundamental change repurchase notice has been delivered by a holder may be converted only if the holder withdraws the fundamental change repurchase notice in accordance with the terms of the indenture; and

the procedures that holders must follow to require us to repurchase their notes.

Simultaneously with providing such notice, we will publish a notice containing this information in a newspaper of general circulation in The City of New York or publish the information on our website or through such other public medium as we may use at that time.

To exercise the fundamental change repurchase right, you must deliver, on or before the business day immediately preceding the fundamental change repurchase date, the notes to be repurchased, duly endorsed for transfer, together with a written repurchase notice, to the paying agent. Each repurchase notice must state:

if certificated, the certificate numbers of your notes to be delivered for repurchase or if not certificated, the notice must comply with appropriate DTC procedures;

the portion of the principal amount of notes to be repurchased, which must be \$1,000 or an integral multiple thereof; and

that the notes are to be repurchased by us pursuant to the applicable provisions of the notes and the indenture.

S-48

## Table of Contents

Holders may withdraw any repurchase notice (in whole or in part) by a written notice of withdrawal delivered to the paying agent prior to the close of business on the business day immediately preceding the fundamental change repurchase date. The notice of withdrawal shall state:

the principal amount of the withdrawn notes;

if certificated notes have been issued, the certificate numbers of the withdrawn notes or, if not certificated, the notice must comply with appropriate DTC procedures; and

the principal amount, if any, which remains subject to the repurchase notice.

We will be required to repurchase the notes on the fundamental change repurchase date. Holders who have exercised the repurchase right will receive payment of the fundamental change repurchase price on the later of (i) the fundamental change repurchase date and (ii) the time of book-entry transfer or the delivery of the notes. If the paying agent holds money sufficient to pay the fundamental change repurchase price of the notes on the fundamental change repurchase date, then, with respect to the notes that have been properly surrendered for repurchase and not validly withdrawn:

the notes will cease to be outstanding and interest will cease to accrue (whether or not book-entry transfer of the notes is made or whether or not the notes are delivered to the paying agent); and

all other rights of the holder will terminate (other than the right to receive the fundamental change repurchase price). In connection with any repurchase offer pursuant to a fundamental change repurchase notice, we will, if required:

comply with the provisions of Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act that may then be applicable;

file a Schedule TO or any other required schedule under the Exchange Act; and

otherwise comply with all federal and state securities laws in connection with any offer by us to repurchase the notes; in each case, so as to permit the rights and obligations under this Fundamental Change Permits Holders to Require Us to Repurchase Notes to be exercised in the time and in the manner specified in the indenture.

No notes may be repurchased on any date at the option of holders upon a fundamental change if the principal amount of the notes has been accelerated, and such acceleration has not been rescinded, on or prior to such date (except in the case of an acceleration resulting from a default by us in the payment of the fundamental change repurchase price with respect to such notes).

The repurchase rights of the holders could discourage a potential acquirer of us. The fundamental change repurchase feature, however, is not the result of management's knowledge of any specific effort to obtain control of us by any means or part of a plan by management to adopt a series of anti-takeover provisions.

The term fundamental change is limited to specified transactions and may not include other events that might adversely affect our financial condition. In addition, the requirement that we offer to repurchase the notes upon a fundamental change may not protect holders in the event of a highly leveraged transaction, reorganization, merger or similar transaction involving us.



## **Table of Contents**

We will not be required to make an offer to purchase the notes upon a fundamental change if a third party makes such an offer in the manner, at the times and otherwise in compliance with the requirements for an offer made by us and such third party purchases all notes properly tendered and not validly withdrawn under its offer.

To the extent that the provisions of any securities laws or regulations conflict with the provisions of the indenture relating to our obligations to purchase the notes upon a fundamental change, we will comply with the applicable securities laws and regulations and will not be deemed to have breached our obligations under such provisions of the indenture by virtue of such conflict.

Furthermore, holders may not be entitled to require us to repurchase their notes upon a fundamental change or entitled to an increase in the conversion rate upon conversion as described under Adjustment to Shares Delivered Upon Conversion Upon a Make-whole Fundamental Change in certain circumstances involving a significant change in the composition of our board.

The definition of fundamental change includes a phrase relating to the sale, lease or other transfer of all or substantially all of our consolidated assets. There is no precise, established definition of the phrase substantially all under applicable law. Accordingly, the ability of a holder of the notes to require us to repurchase its notes as a result of the sale, lease or other transfer of less than all of our assets may be uncertain.

If a fundamental change were to occur, we may not have enough funds to pay the fundamental change repurchase price. Our ability to repurchase the notes for cash may be limited by restrictions on our ability to obtain funds for such repurchase through dividends from our subsidiaries, the terms of our then existing borrowing arrangements or otherwise. See Risk factors Risks Related to the Notes We may not have the ability to raise the funds necessary to settle conversions of the notes or to repurchase the notes upon a fundamental change, and our future debt may contain limitations on our ability to pay cash upon conversion or repurchase of the notes. If we fail to repurchase the notes when required following a fundamental change, we will be in default under the indenture. In addition, we have, and may in the future incur, other indebtedness with similar change in control provisions permitting our holders to accelerate or to require us to repurchase our indebtedness upon the occurrence of similar events or on some specific dates.

### **Consolidation, Merger and Sale of Assets**

The indenture provides that we shall not consolidate with or merge with or into, or sell, convey, transfer or lease all or substantially all of our properties and assets to, another person, unless (i) the resulting, surviving or transferee person (if not us) is a corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia, and such corporation (if not us) expressly assumes by supplemental indenture all of our obligations under the notes and the indenture; and (ii) immediately after giving effect to such transaction, no default or event of default has occurred and is continuing under the indenture. Upon any such consolidation, merger or sale, conveyance, transfer or lease, the resulting, surviving or transferee person (if not us) shall succeed to, and may exercise every right and power of, ours under the indenture, and we shall be discharged from our obligations under the notes and the indenture except in the case of any such lease.

Although these types of transactions are permitted under the indenture, certain of the foregoing transactions could constitute a fundamental change permitting each holder to require us to repurchase the notes of such holder as described above.

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## **Table of Contents**

### **Events of Default**

Each of the following is an event of default with respect to the notes:

- (1) default in any payment of interest on any note when due and payable and the default continues for a period of 30 days;
- (2) default in the payment of principal of any note when due and payable at its stated maturity, upon any required repurchase, upon declaration of acceleration or otherwise;
- (3) our failure to comply with our obligation to convert the notes in accordance with the indenture upon exercise of a holder's conversion right and such failure continues for a period of two business days;
- (4) our failure to give a fundamental change notice as described under Fundamental Change Permits Holders to Require Us to Repurchase Notes or notice of a specified corporate transaction as described under Conversion Upon Specified Corporate Events, in each case when due;
- (5) our failure to comply with our obligations under Consolidation, merger and sale of assets ;
- (6) our failure for 60 days after written notice from the trustee or the holders of at least 25% in principal amount of the notes then outstanding has been received to comply with any of our other agreements contained in the notes or indenture;
- (7) default by us or any of our subsidiaries with respect to any mortgage, agreement or other instrument under which there may be outstanding, or by which there may be secured or evidenced, any indebtedness for money borrowed in excess of \$25 million in the aggregate of us and/or any such subsidiary, whether such indebtedness now exists or shall hereafter be created (i) resulting in such indebtedness becoming or being declared due and payable or (ii) constituting a failure to pay the principal or interest of any such debt when due and payable at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise;
- (8) certain events of bankruptcy, insolvency, or reorganization of us or any of our significant subsidiaries, as defined in Article 1, Rule 1-02 of Regulation S-X; or
- (9) a final judgment for the payment of \$25 million or more (excluding any amounts covered by insurance) rendered against us or any of our subsidiaries, which judgment is not discharged or stayed within 60 days after (i) the date on which the right to appeal thereof has expired if no such appeal has commenced, or (ii) the date on which all rights to appeal have been extinguished.

If an event of default occurs and is continuing, the trustee by notice to us, or the holders of at least 25% in principal amount of the outstanding notes by notice to us and the trustee, may, and the trustee at the request of such holders shall, declare 100% of the principal of and accrued and unpaid interest, if any, on all the notes to be due and payable. In case of certain events of bankruptcy, insolvency or reorganization, involving us or a significant subsidiary, 100% of the principal of and accrued and unpaid interest on the notes will automatically become due and payable. Upon such a declaration of acceleration, such principal and accrued and unpaid interest, if any, will be due and payable immediately.

Notwithstanding the foregoing, the indenture will provide that, to the extent we elect, the sole remedy for an event of default relating to (i) our failure to file with the trustee pursuant to Section 314(a)(1) of the Trust Indenture Act any documents or reports that we are required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act or (ii) our failure to comply with our obligations as set forth under Reports below, will after the occurrence of such an event of default consist exclusively of the right to receive additional interest on the notes at a rate equal to 0.25% per annum of the principal amount of the notes outstanding for each day during the 90-day period on which such event of default is

continuing beginning on, and including, the date on which such an event of default first occurs.

S-51

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**Table of Contents**

If we so elect, such additional interest will be payable in the same manner and on the same dates as the stated interest payable on the notes. On the 91st day after such event of default (if the event of default relating to the reporting obligations is not cured or waived prior to such 91st day), the notes will be subject to acceleration as provided above. The provisions of the indenture described in this paragraph will not affect the rights of holders of notes in the event of the occurrence of any other event of default. In the event we do not elect to pay the additional interest following an event of default in accordance with this paragraph or we elected to make such payment but do not pay the additional interest when due, the notes will be immediately subject to acceleration as provided above.

In order to elect to pay the additional interest as the sole remedy during the first 90 days after the occurrence of an event of default relating to the failure to comply with the reporting obligations in accordance with the immediately preceding paragraph, we must notify all holders of notes, the trustee and the paying agent of such election prior to the beginning of such 90-day period. Upon our failure to timely give such notice, the notes will be immediately subject to acceleration as provided above.

If any portion of the amount payable on the notes upon acceleration is considered by a court to be unearned interest (through the allocation of the value of the instrument to the embedded warrant or otherwise), the court could disallow recovery of any such portion.

The holders of a majority in principal amount of the outstanding notes may waive all past defaults (except with respect to nonpayment of principal or interest or with respect to the failure to deliver the consideration due upon conversion) and rescind any such acceleration with respect to the notes and its consequences if (i) rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (ii) all existing events of default, other than the nonpayment of the principal of and interest on the notes that have become due solely by such declaration of acceleration, have been cured or waived.

Each holder shall have the right to receive payment or delivery, as the case may be, of:

the principal (including the fundamental change repurchase price, if applicable) of;

accrued and unpaid interest, if any, on; and

the consideration due upon conversion of, its notes, on or after the respective due dates expressed or provided for in the indenture, or to institute suit for the enforcement of any such payment or delivery, as the case may be, and such right to receive such payment or delivery, as the case may be, on or after such respective dates shall not be impaired or affected without the consent of such holder.

Subject to the provisions of the indenture relating to the duties of the trustee, if an event of default occurs and is continuing, the trustee will be under no obligation to exercise any of the rights or powers under the indenture at the request or direction of any of the holders unless such holders have offered to the trustee indemnity or security reasonably satisfactory to it against any loss, liability or expense. Except to enforce the right to receive payment of principal or interest when due, or the right to receive payment or delivery of the consideration due upon conversion, no holder may pursue any remedy with respect to the indenture or the notes unless:

- (1) such holder has previously given the trustee notice that an event of default is continuing;
- (2) holders of at least 25% in principal amount of the outstanding notes have requested the trustee to pursue the remedy;
- (3) such holders have offered the trustee security or indemnity reasonably satisfactory to it against any loss, liability or expense;



## **Table of Contents**

- (4) the trustee has not complied with such request within 60 days after the receipt of the request and the offer of security or indemnity; and
- (5) the holders of a majority in principal amount of the outstanding notes have not given the trustee a direction that, in the opinion of the trustee, is inconsistent with such request within such 60-day period.

Subject to certain restrictions, the holders of a majority in principal amount of the outstanding notes are given the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee or of exercising any trust or power conferred on the trustee.

The indenture provides that in the event an event of default has occurred and is continuing, the trustee will be required in the exercise of its powers to use the degree of care that a prudent person would use in the conduct of its own affairs under the circumstances. The trustee, however, may refuse to follow any direction that conflicts with law or the indenture or that the trustee determines is unduly prejudicial to the rights of any other holder or that would involve the trustee in personal liability. Prior to taking any action under the indenture, the trustee will be entitled to indemnification satisfactory to it in its sole discretion against all losses and expenses caused by taking or not taking such action.

The indenture provides that if a default occurs and is continuing and is known to the trustee, the trustee must mail to each holder notice of the default within 90 days after it occurs. Except in the case of a default in the payment of principal of or interest on any note or a default in the payment or delivery of the consideration due upon conversion, the trustee may withhold notice if and so long as a committee of trust officers of the trustee in good faith determines that withholding notice is in the interests of the holders. In addition, we are required to deliver to the trustee, within 120 days after the end of each fiscal year, a certificate indicating whether the signers thereof know of any default that occurred during the previous year. We are also required to deliver to the trustee, within 30 days after the occurrence thereof, written notice of any events which would constitute certain defaults, their status and what action we are taking or proposing to take in respect thereof.

Payments of the fundamental change repurchase price, principal and interest that are not made when due will accrue interest per annum at the then-applicable interest rate from the required payment date.

## **Modification and Amendment**

Subject to certain exceptions, the indenture or the notes may be amended with the consent of the holders of at least a majority in principal amount of the notes then outstanding (including without limitation, consents obtained in connection with a repurchase of, or tender or exchange offer for, notes) and, subject to certain exceptions, any past default or compliance with any provisions may be waived with the consent of the holders of a majority in principal amount of the notes then outstanding (including, without limitation, consents obtained in connection with a repurchase of, or tender or exchange offer for, notes). However, without the consent of each holder of an outstanding note affected, no amendment may, among other things:

- (1) reduce the amount of notes whose holders must consent to an amendment;
- (2) reduce the rate of or extend the stated time for payment of interest on any note;
- (3) reduce the principal of or extend the stated maturity of any note;
- (4) make any change that adversely affects the conversion rights of any notes;
- (5) reduce the fundamental change repurchase price of any note or amend or modify in any manner adverse to the holders of notes our obligation to make such payments, whether through an amendment or waiver of provisions in the covenants, definitions or otherwise;



**Table of Contents**

- (6) make any note payable in money other than that stated in the note;
  - (7) change the ranking of the notes in a manner adverse to holders;
  - (8) impair the right of any holder to receive payment of principal and interest on such holder's notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such holder's notes; or
  - (9) make any change in the amendment provisions that require each holder's consent or in the waiver provisions.
- Without the consent of any holder, we and the trustee may amend the indenture to:
- (1) cure any ambiguity, omission, defect or inconsistency that does not adversely affect holders of the notes;
  - (2) provide for the assumption by a successor corporation of our obligations under the indenture;
  - (3) add guarantees with respect to the notes;
  - (4) secure the notes;
  - (5) add to our covenants or events of default for the benefit of the holders or surrender any right or power conferred upon us;
  - (6) make any change that does not adversely affect the rights of any holder;
  - (7) comply with any requirement of the SEC in connection with the qualification of the indenture under the Trust Indenture Act;
  - (8) evidence any change in the trustee as permitted by the indenture; or
  - (9) conform the provisions of the indenture to the "Description of Notes" section in the preliminary prospectus supplement, as supplemented by the related pricing term sheet.

Holders do not need to approve the particular form of any proposed amendment. It will be sufficient if such holders approve the substance of the proposed amendment. After an amendment under the indenture becomes effective, we are required to mail to the holders a notice briefly describing such amendment. However, the failure to give such notice to all the holders, or any defect in the notice, will not impair or affect the validity of the amendment.

**Discharge**

We may satisfy and discharge our obligations under the indenture by delivering to the securities registrar for cancellation all outstanding notes or by depositing with the trustee or delivering to the holders, as applicable, after the notes have become due and payable, whether at maturity, at any fundamental change repurchase date, upon conversion or otherwise, cash and/or (in the case of conversion) shares of our common stock sufficient to pay all of the outstanding notes and paying all other sums payable under the indenture by us. Such discharge is subject to terms

contained in the indenture. The legal defeasance and covenant defeasance provisions of the indenture will not apply to the notes.

**Calculations in Respect of Notes**

Except as otherwise provided above, we will be responsible for making all calculations called for under the notes. These calculations include, but are not limited to, determinations of the last reported sale prices of our common stock, accrued interest payable on the notes and the conversion rate of the notes. We will make

## **Table of Contents**

all these calculations in good faith and, absent manifest error, our calculations will be final and binding on holders of notes. We will provide a schedule of our calculations to each of the trustee and the conversion agent, and each of the trustee and the conversion agent is entitled to rely conclusively upon the accuracy of our calculations without independent verification. The trustee will forward our calculations to any holder of notes upon the request of that holder.

### **Inapplicable Provisions of the Base Indenture**

The provisions of the base indenture described under Description of Debt Securities Certain Terms of the Senior Debt Securities Defeasance of the accompanying prospectus will not apply with respect to the notes.

### **Reports**

The indenture provides that any documents or reports that we are required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act must be filed by us with the trustee within 15 days after the same are required to be filed with the SEC (giving effect to any grace period provided by Rule 12b-25 under the Exchange Act). Documents filed by us with the SEC via the EDGAR system will be deemed to be filed with the trustee as of the time such documents are filed via EDGAR.

### **Trustee**

The Bank of New York Mellon Trust Company, N.A. is the trustee, security registrar, paying agent and conversion agent. The Bank of New York Mellon Trust Company, N.A., in each of its capacities, including without limitation as trustee, security registrar, paying agent and conversion agent, assumes no responsibility for the accuracy or completeness of the information concerning us or our affiliates or any other party contained in this document or the related documents or for any failure by us or any other party to disclose events that may have occurred and may affect the significance or accuracy of such information.

We maintain banking relationships in the ordinary course of business with the trustee and its affiliates.

### **Governing Law**

The indenture provides that it and the notes, and any claim, controversy or dispute arising under or related to the indenture or the notes, will be governed by and construed in accordance with the laws of the State of New York without regard to any principle of conflict of laws that would require or permit the application of the laws of any other jurisdiction, except as may otherwise be required by mandatory provisions of law.

### **Book-entry, Settlement and Clearance**

#### *The Global Notes*

The notes will be initially issued in the form of one or more registered notes in global form, without interest coupons (which we refer to as the global notes ). Upon issuance, each of the global notes will be deposited with the trustee as custodian for DTC and registered in the name of Cede & Co., as nominee of DTC.

Ownership of beneficial interests in a global note will be limited to persons who have accounts with DTC (which we refer to as DTC participants ) or persons who hold interests through DTC participants. We expect that under procedures established by DTC:

upon deposit of a global note with DTC s custodian, DTC will credit portions of the principal amount of the global note to the accounts of the DTC participants designated by the underwriters; and

## Table of Contents

ownership of beneficial interests in a global note will be shown on, and transfer of ownership of those interests will be effected only through, records maintained by DTC (with respect to interests of DTC participants) and the records of DTC participants (with respect to other owners of beneficial interests in the global note).

Beneficial interests in global notes may not be exchanged for notes in physical, certificated form except in the limited circumstances described below.

### *Book-entry Procedures for the Global Notes*

All interests in the global notes will be subject to the operations and procedures of DTC. We provide the following summary of those operations and procedures solely for the convenience of investors. The operations and procedures of DTC are controlled by that settlement system and may be changed at any time. Neither we nor the underwriters are responsible for those operations or procedures.

DTC has advised us that it is:

a limited purpose trust company organized under the laws of the State of New York;

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

a member of the Federal Reserve System;

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

a clearing agency registered under Section 17A of the Exchange Act.

DTC was created to hold securities for its participants and to facilitate the clearance and settlement of securities transactions between its participants through electronic book-entry changes to the accounts of its participants. DTC's participants include securities brokers and dealers, including the underwriters; banks and trust companies; clearing corporations and other organizations. Indirect access to DTC's system is also available to others such as banks, brokers, dealers and trust companies; these indirect participants clear through or maintain a custodial relationship with a DTC participant, either directly or indirectly. Investors who are not DTC participants may beneficially own securities held by or on behalf of DTC only through DTC participants or indirect participants in DTC.

So long as DTC's nominee is the registered owner of a global note, that nominee will be considered the sole owner or holder of the notes represented by that global note for all purposes under the indenture. Except as provided below, owners of beneficial interests in a global note:

will not be entitled to have notes represented by the global note registered in their names;

will not receive or be entitled to receive physical, certificated notes; and

will not be considered the owners or holders of the notes under the indenture for any purpose, including with respect to the giving of any direction, instruction or approval to the trustee under the indenture.

As a result, each investor who owns a beneficial interest in a global note must rely on the procedures of DTC to exercise any rights of a holder of notes under the indenture (and, if the investor is not a participant or an indirect participant in DTC, on the procedures of the DTC participant through which the investor owns its interest).

Payments of principal and interest with respect to the notes represented by a global note will be made by the trustee to DTC's nominee as the registered holder of the global note. Neither we nor the trustee will have any responsibility or liability for the payment of amounts to owners of beneficial interests in a global note, for any aspect of the records relating to or payments made on account of those interests by DTC, or for maintaining, supervising or reviewing any records of DTC relating to those interests.

S-56

**Table of Contents**

Payments by participants and indirect participants in DTC to the owners of beneficial interests in a global note will be governed by standing instructions and customary industry practice and will be the responsibility of those participants or indirect participants and DTC.

Transfers between participants in DTC will be effected under DTC's procedures and will be settled in same-day funds.

*Certificated Notes*

Notes in physical, certificated form will be issued and delivered to each person that DTC identifies as a beneficial owner of the related notes only if:

DTC notifies us at any time that it is unwilling or unable to continue as depositary for the global notes and a successor depositary is not appointed within 90 days;

DTC ceases to be registered as a clearing agency under the Exchange Act and a successor depositary is not appointed within 90 days; or

an event of default with respect to the notes has occurred and is continuing and such beneficial owner requests that its notes be issued in physical, certificated form.



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**Table of Contents**

**DESCRIPTION OF CONVERTIBLE NOTE HEDGE AND WARRANT TRANSACTIONS**

In connection with the pricing of the notes, we expect to enter into convertible note hedge transactions with one or more counterparties, one or more of which may be one of the underwriters or its respective affiliates (the option counterparties). The convertible note hedge transactions will cover, subject to anti-dilution adjustments substantially similar to those applicable to the notes, the number of shares of our common stock underlying the notes. Concurrently with entering into the convertible note hedge transactions, we also expect to enter into warrant transactions with the option counterparties whereby we will sell to the option counterparties warrants to purchase, subject to customary anti-dilution adjustments, up to the same number of shares of our common stock, subject to the settlement terms contained therein.

We intend to use approximately \$ million of the net proceeds from this offering to pay the cost of the convertible note hedge transactions (after such cost is partially offset by the proceeds to us from the sale of the warrants). If the underwriters exercise their over-allotment option, we may sell additional warrants and use a portion of the proceeds from the sale of the additional notes, together with the proceeds from the sale of the additional warrants, to enter into additional convertible note hedge transactions.

The convertible note hedge transactions are expected generally to reduce:

our exposure to potential cash payments that we will be required to make upon any conversion of the notes prior to receipt of the stockholder approval; or

if we have received the stockholder approval, our exposure to potential dilution to our common stock upon any conversion of notes, if we elect to deliver common stock, or our exposure to cash payments, upon conversion of the notes, if we elect to make cash payments, in each case, upon conversion of the notes in the event that the market price per share of our common stock, as measured under the terms of the convertible note hedge transactions, is greater than the strike price of the convertible note hedge transactions, which initially corresponds to the conversion price of the notes and is subject to anti-dilution adjustments substantially similar to those applicable to the conversion rate of the notes.

If, however, the market price per share of our common stock, as measured under the terms of the warrant transactions, exceeds the strike price of the warrants, there would nevertheless be dilution to holders of our common stock to the extent that such market price exceeds the strike price of the warrants, subject to our ability to elect cash settlement of the warrants under certain conditions.

We will not be required to make any cash payments to the option counterparties upon the exercise of the options that are a part of the convertible note hedge transactions, but will be entitled to receive from them a number of shares of our common stock and/or an amount of cash generally based on the amount by which the market price per share of our common stock, as measured under the terms of the convertible note hedge transactions, is greater than the strike price of the convertible note hedge transactions during the relevant valuation period under the convertible note hedge transactions. Additionally, if the market price per share of our common stock, as measured under the terms of the warrant transactions, exceeds the strike price of the warrants during the measurement period at the maturity of the warrants, we will owe the option counterparties a number of shares of our common stock in an amount based on the excess of such market price per share of our common stock over the strike price of the warrants. However, as specified under the terms of the warrant transactions, we may elect to settle the warrants in cash.

The convertible note hedge transactions and the warrant transactions are separate transactions entered into by us with the option counterparties, are not part of the terms of the notes and will not change the holders' rights under the notes. As a holder of the notes, you will not have any rights with respect to the convertible note hedge transactions or the warrant transactions.

**Table of Contents**

For a discussion of the potential impact of any market or other activity by the option counterparties or their affiliates in connection with these convertible note hedge and warrant transactions, see [Underwriting Convertible Note Hedge and Warrant Transactions](#) and [Risk Factors Risks Related to the Notes](#). The convertible note hedge and warrant transactions may affect the value of the notes and our common stock and [Underwriting Convertible Note Hedge and Warrant Transactions](#).

S-59

**Table of Contents****UNDERWRITING**

Subject to the terms and conditions in the underwriting agreement between us and RBC Capital Markets, LLC, as the representative of the underwriters, we have agreed to sell to the underwriters, and the underwriters have agreed to purchase from us, the principal amount of the notes set forth below.

<b>Underwriter</b>	<b>Principal amount</b>
RBC Capital Markets, LLC	\$
RBS Securities Inc.	\$
<b>Total</b>	<b>\$ 150,000,000</b>

The underwriters are offering the notes subject to acceptance of the notes from us and subject to prior sale. The underwriting agreement provides that the obligations of the underwriters to purchase the notes offered by this prospectus supplement and the accompanying prospectus are subject to certain conditions. The underwriters are obligated to purchase all of the notes offered by this prospectus supplement if any such notes are purchased. If an underwriter defaults, the underwriting agreement provides that the purchase commitments of the non-defaulting underwriters may be increased or the underwriting agreement may be terminated. However, the underwriters are not required to purchase the notes covered by the over-allotment option described below, except to the extent that the over-allotment option is exercised.

The underwriters initially propose to offer the notes directly to the public at the public offering price listed on the cover page of this prospectus supplement. After the initial offering of the notes, the offering price and other selling terms may from time to time be varied by the underwriters.

We have granted the underwriters the option to purchase, for up to 30 days from the date of this prospectus supplement, up to an additional \$22,500,000 aggregate principal amount of notes from us to cover sales of notes that exceed the principal amount of notes specified above. If any additional notes are purchased with this over-allotment option, the underwriters will offer such additional notes on the same terms as those on which notes are being offered. To the extent that the over-allotment option is exercised, each underwriter will purchase an aggregate principal amount of notes approximately proportionate to that underwriter's initial commitment.

The following table shows the public offering price, underwriting discounts and commissions and proceeds, before estimated offering expenses, to us. The information assumes either no exercise or full exercise by the underwriters of the over-allotment option.

	<b>Per note</b>	<b>Without over-allotment exercise</b>	<b>With over-allotment exercise</b>
Public Offering price	%	\$	\$
Underwriting discounts and commissions	%	\$	\$
Proceeds, before expenses, to us	%	\$	\$

We estimate that the total expenses of this offering payable by us, other than underwriting discounts and commissions, will be approximately \$ . The underwriters have agreed to reimburse us for certain of these expenses.

**Table of Contents**

We have agreed that we will indemnify the underwriters of the notes against certain liabilities, including liabilities under the Securities Act, or contribute to payments that the underwriters may be required to make in respect of those liabilities.

We and certain of our executive officers have agreed that, for a period of 60 days from the date of this prospectus supplement, none of us or any such officers will, without the prior consent of RBC Capital Markets, LLC:

offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any shares of our common stock or any securities convertible into or exercisable or exchangeable for shares of our common stock, or publicly disclose the intention to make any offer, sale, pledge or disposition thereof;

enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of our common stock or such other securities, regardless of whether any of the transactions described in this bullet point or the immediately preceding bullet point is to be settled by delivery of common stock or such other securities, in cash or otherwise;

make any demand for or exercise any right with respect to, the registration of any shares of our common stock or any security convertible into or exercisable or exchangeable for our common stock.

Notwithstanding the above, we may, without the consent of RBC Capital Markets, LLC:

issue and sell the notes offered by this prospectus supplement;

issue the common stock, if any, issuable upon conversion of the notes;

enter into the concurrent convertible note hedge transaction and warrant transaction described in this prospectus supplement;

deliver shares of our common stock upon settlement or termination of the warrant transactions described in this prospectus supplement;

issue the common stock issuable upon exercise of warrants, options, or other equity awards outstanding on the date hereof;

issue any options and other awards granted under our company stock plans or the grant of common stock under an employee stock purchase plan; and

issue our common stock or other securities in connection with any strategic transaction involving a commercial relationship; or the issuance of our common stock or other securities in connection with any strategic transaction involving any acquisition of assets or equity of another entity, whether by merger, purchase or otherwise; provided that the amount of shares to be received by any such third party pursuant to this bullet is less than 10% of the outstanding shares of our common stock, and any such shares of our common stock and securities issued pursuant to this bullet during the 60-day restricted period shall be subject to the restrictions described above for the remainder of the restricted period.

With respect to our executive officers, the restrictions described above do not apply, subject to certain conditions, to the transfer or disposition of shares of our common stock or any securities convertible into or exercisable or exchangeable for our common stock:

as a bona fide gift or gifts;

to the immediate family of such person;

S-61

**Table of Contents**

to any trust for the direct or indirect benefit of such person or the immediate family of such person in a transaction not involving a disposition for value;

to any corporation, partnership, limited liability company or other entity all of the beneficial ownership interests of which are held by such person or the immediate family of such person in a transaction not involving a disposition for value; or

by will, other testamentary document or intestate succession.

Furthermore, notwithstanding the restrictions described above, such executive officer may, subject to certain conditions:

exercise an option or warrant to purchase shares of our common stock;

sell a portion of such officer's restricted stock when it vests, where the sale is made automatically upon the vesting of such restricted stock in order to cover minimum tax withholding resulting from the vesting of such restricted stock;

effect transactions pursuant to a trading plan established pursuant to Rule 10b5-1 under the Exchange Act in existence as of the date of this prospectus supplement; and

establish a trading plan pursuant to Rule 10b5-1 under the Exchange Act for the transfer of our common stock, provided that such plan does not provide for any transfers of our common stock during the restricted period.

RBC Capital Markets, LLC, in its sole discretion, may release any of the securities subject to the lock-up agreement at any time without notice.

The notes are a new issue of securities with no established trading market. We do not intend to apply for listing of the notes on any national securities exchange or for inclusion of the notes on any automated dealer quotation system. We have been advised by the underwriters that they presently intend to make a market in the notes after completion of the offering. However, the underwriters are under no obligation to do so and may discontinue any market-making activities at any time without any notice. We cannot assure the liquidity of the trading market for the notes or that an active public market for the notes will develop. If an active public trading market for the notes does not develop, the market price and liquidity of the notes may be adversely affected. If the notes are traded, they may trade at a discount from their initial public offering price, depending on prevailing interest rates, the market for similar securities, our performance and other factors.

In connection with the offering of the notes, the underwriters may engage in over-allotment, stabilizing transactions and syndicate covering transactions in the notes and shares of our common stock. Over-allotment involves sales in excess of the offering size, which creates a short position for the underwriters. Stabilizing transactions involve bids to purchase the notes or shares of our common stock in the open market for the purpose of pegging, fixing or maintaining the price of the notes. Syndicate covering transactions involve purchases of the notes or shares of our common stock in the open market after the distribution has been completed in order to cover short positions. Stabilizing transactions and syndicate covering transactions may cause the price of the notes or our common stock to be higher than it otherwise would be in the absence of those transactions.

Neither we nor the underwriters make any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the prices of the notes or our common stock. In addition, neither we nor the underwriters make any representation that the underwriters will engage in these transactions or that these transactions, once commenced, will not be discontinued without notice.

## Table of Contents

### **Convertible Note Hedge and Warrant Transactions**

In connection with the pricing of the notes, we expect to enter into convertible note hedge transactions with the option counterparties. The convertible note hedge transactions will cover, subject to anti-dilution adjustments substantially similar to those applicable to the notes, the number of shares of our common stock underlying the notes. Concurrently with entering into the convertible note hedge transactions, we also expect to enter into warrant transactions with the option counterparties whereby we will sell to the option counterparties warrants to purchase, subject to customary anti-dilution adjustments, up to the same number of shares of our common stock, subject to the settlement terms contained therein.

We intend to use approximately \$        million of the net proceeds from this offering to pay the cost of the convertible note hedge transactions (after such cost is partially offset by the proceeds to us from the sale of warrants in the warrant transactions). If the underwriters exercise their option to purchase additional notes to cover over-allotments, we may sell additional warrants and use a portion of the proceeds from the sale of the additional notes, together with the proceeds from the sale of the additional warrants, to enter into additional convertible note hedge transactions.

The convertible note hedge transactions are expected generally to reduce:

our exposure to potential cash payments that we will be required to make upon any conversion of the notes prior to, or if we do not receive, the stockholder approval; or

if we have received the stockholder approval, our exposure to potential dilution to our common stock upon any conversion of notes, if we elect to deliver common stock, or our exposure to cash payments, upon conversion of the notes, if we elect to make cash payments, in each case, upon conversion of the notes in the event that the market price per share of our common stock, as measured under the terms of the convertible note hedge transactions, is greater than the strike price of the convertible note hedge transactions, which initially corresponds to the conversion price of the notes and is subject to anti-dilution adjustments substantially similar to those applicable to the conversion rate of the notes.

If, however, the market price per share of our common stock, as measured under the terms of the warrant transactions, exceeds the strike price of the warrants, there would nevertheless be dilution to holders of our common stock to the extent that such market price exceeds the strike price of the warrants, subject to our ability to elect cash settlement of the warrants under certain conditions.

We will not be required to make any cash payments to the option counterparties upon the exercise of the options that are a part of the convertible note hedge transactions, but will be entitled to receive from them a number of shares of our common stock and/or an amount of cash generally based on the amount by which the market price per share of our common stock, as measured under the terms of the convertible note hedge transactions, is greater than the strike price of the convertible note hedge transactions during the relevant valuation period under the convertible note hedge transaction. Additionally, if the market price per share of our common stock, as measured under the terms of the warrant transactions, exceeds the strike price of the warrants during the measurement period at the maturity of the warrants, we will owe the option counterparties a number of shares of our common stock in an amount based on the excess of such market price per share of our common stock over the strike price of the warrants, subject to our ability to elect cash settlement of the warrants under certain conditions.

The convertible note hedge transactions and the warrant transactions are separate transactions entered into by us with the option counterparties, are not part of the terms of the notes and will not change the holders' rights under the notes. As a holder of the notes, you will not have any rights with respect to the convertible note hedge transactions or the warrant transactions.

## **Table of Contents**

For a discussion of the potential impact of any market or other activity by the option counterparties or their affiliates in connection with these convertible note hedge and warrant transactions, see Risk Factors Risks Related to the Notes The convertible note hedge and warrant transactions may affect the value of the notes and our common stock.

### **Other Relationships**

The underwriters and their respective affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, investment research, principal investment, hedging, financing and brokerage activities. Certain of the underwriters and their affiliates have provided, and may in the future provide, various additional financial advisory, investment banking and commercial banking services for us and our affiliates in the ordinary course of business for which they have received or will receive customary fees and commissions.

In the ordinary course of business activities, the underwriters and their respective affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers and such investment and securities activities may involve our securities and/or instruments. The underwriters and their respective affiliates may also make investment recommendations and/or publish or express independent research views in respect of such securities or instruments and may at any time hold, or recommend to customers that they acquire, long and/or short positions in such securities and instruments.

In the ordinary course of our business we sell our software and services to certain of the underwriters and/or their respective affiliates and may sell our products and services to the other underwriters and/or their respective affiliates in the future. Any such transactions will be entered into on terms generally indicative of the terms offered to other third-party customers. In addition, an affiliate of RBS Securities Inc. provides certain back-end services for our Paymode-X product.

### **Selling Restrictions**

Other than in the United States, no action has been taken by us or the underwriters that would permit a public offering of the notes offered by this prospectus supplement and the accompanying prospectus in any jurisdiction where action for that purpose is required. The notes offered by this prospectus supplement may not be offered or sold, directly or indirectly, nor may this prospectus supplement or any other offering material or advertisements in connection with the offer and sale of any such notes be distributed or published in any jurisdiction, except under circumstances that will result in compliance with the applicable rules and regulations of that jurisdiction. Persons into whose possession this prospectus supplement comes are advised to inform themselves about and to observe any restrictions relating to the offering and the distribution of this prospectus supplement. This prospectus supplement does not constitute an offer to sell or a solicitation of an offer to buy any notes offered by this prospectus supplement in any jurisdiction in which such an offer or a solicitation is unlawful.

#### *European Economic Area*

In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a Relevant Member State ), each underwriter has represented and agreed that with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the Relevant Implementation Date ) it has not made and will not make an offer of notes which are the subject of the offering contemplated by this prospectus to the public in that Relevant Member State other than:

to any legal entity which is a qualified investor as defined in the Prospectus Directive;



**Table of Contents**

to fewer than 100 or, if the Relevant Member State has implemented the relevant provision of the 2010 PD Amending Directive, 150, natural or legal persons (other than qualified investors as defined in the Prospectus Directive), as permitted under the Prospectus Directive, subject to obtaining the prior consent of the underwriters for any such offer; or

in any other circumstances falling within Article 3(2) of the Prospectus Directive, provided that no such offer of notes shall require us or any underwriter to publish a prospectus pursuant to Article 3 of the Prospectus Directive.

For the purposes of this provision, the expression an offer of notes to the public in relation to any notes in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the notes to be offered so as to enable an investor to decide to purchase or subscribe for the notes, as the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State, the expression Prospectus Directive means Directive 2003/71/EC (and amendments thereto, including the 2010 PD Amending Directive, to the extent implemented in the Relevant Member State), and includes any relevant implementing measure in the Relevant Member State and the expression 2010 PD Amending Directive means Directive 2010/73/EU.

*United Kingdom*

Each underwriter has represented and agreed that:

it has only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the Financial Services and Markets Act 2000 (the FSMA ) received by it in connection with the issue or sale of the notes in circumstances in which Section 21(1) of the FSMA does not apply to us; and

it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the notes in, from or otherwise involving the United Kingdom.

S-65

**Table of Contents**

**CERTAIN MATERIAL U.S. FEDERAL INCOME TAX CONSIDERATIONS**

The following is a summary of certain material U.S. federal income and estate tax considerations relating to the purchase, ownership and disposition of the notes and our common stock into which the notes may be converted. It is based on the provisions of the Internal Revenue Code of 1986, as amended, or the Code, final, temporary, and proposed Treasury regulations, administrative pronouncements of the Internal Revenue Service, or IRS, and judicial decisions, all as of the date of this offering memorandum. These authorities may be changed, possibly retroactively, so as to result in U.S. federal income tax consequences different from those summarized here.

This summary is limited to beneficial owners who purchase the notes on original issuance at their initial offering price and who will hold the notes and the common stock into which the notes may be converted as capital assets within the meaning of Section 1221 of the Code (generally, for investment). It does not describe all of the tax considerations that may be relevant to a beneficial owner in light of the beneficial owner's particular circumstances or to a beneficial owner subject to special rules, such as:

a dealer in securities or currencies;

a financial institution;

a regulated investment company;

a real estate investment trust;

a tax-exempt organization;

an insurance company;

a person holding the notes or shares of our common stock as part of a hedging, integrated, conversion or constructive sale transaction or straddle;

a trader in securities that has elected the mark-to-market method of tax accounting;

an entity or arrangement treated as a partnership for U.S. federal income tax purposes;

a person who is an investor in a pass-through entity, such as a partnership, that holds notes or our common stock;

a U.S. person whose functional currency is not the U.S. dollar; or

a U.S. expatriate.

Further, this summary does not address the U.S. federal estate or gift (except to the extent set forth below with respect to Non-U.S. Holders) or alternative minimum tax consequences or any state, local, foreign or other tax consequences of, or the potential application of the Medicare

contribution tax to, the purchase, ownership or disposition of the notes or our common stock.

This summary is not binding on the IRS. We have not sought, and will not seek, any ruling from the IRS with respect to the statements made in this summary, and there can be no assurance that the IRS would not take a position contrary to these statements or that a contrary position taken by the IRS would not be sustained by a court.

If a partnership, including an entity or arrangement treated as a partnership for U.S. federal income tax purposes, is a beneficial owner of a note or our common stock, the U.S. federal income tax treatment of a partner in the partnership will generally depend on the status of the partner and the activities of the partnership. Partnerships and their partners should consult their own tax advisors as to the particular U.S. federal income tax consequences applicable to them of the partnership's purchase, ownership or disposition of the notes or our common stock.

S-66

## **Table of Contents**

**Persons considering the purchase of notes should consult their tax advisors with respect to the application of U.S. federal income tax laws and other U.S. tax laws (including estate and gift tax laws) to their particular situations as well as any tax considerations arising under the laws of any state, local or foreign taxing jurisdiction or under any applicable tax treaty.**

### **Tax Considerations for U.S. Holders**

As used here, the term **U.S. Holder** means a beneficial owner of a note or our common stock that is, for U.S. federal income tax purposes:

an individual citizen or resident of the United States;

a corporation (or other entity taxable as a corporation for U.S. federal income tax purposes) that is created or organized in or under the laws of the United States, any state thereof or the District of Columbia;

an estate the income of which is subject to U.S. federal income taxation regardless of its source; or

a trust if (1) it is subject to the primary supervision of a court within the United States and one or more U.S. persons have the authority to control all substantial decisions of the trust or (2) it has a valid election in effect under applicable Treasury regulations to be treated as a U.S. person.

### *Interest*

Subject to the discussion below under **Certain Additional Payments and Other Contingencies**, if you are a U.S. Holder, you will generally be required to include stated interest on the notes in income as ordinary income at the time the interest is received or accrued, in accordance with your method of accounting for U.S. federal income tax purposes. It is anticipated, and this discussion assumes, that the notes will be issued for an amount equal to their principal amount. If notes are issued for an amount less than their principal amount and the difference is more than a de minimis amount (as set forth in the applicable Treasury regulations), you will be required to include the difference in income as original issue discount as it accrues in accordance with a constant-yield method.

### *Certain Additional Payments and Other Contingencies*

Under certain circumstances, we may become obligated to make payments on the notes in addition to their principal and stated interest. In particular, we may pay additional interest at our election as the sole remedy relating to the failure to comply with our reporting obligations as described under **Description of Notes** **Events of Default**. Treasury regulations provide special rules for contingent payment debt instruments which, if applicable, could cause the timing, amount and character of a beneficial owner's income, gain or loss with respect to the notes to be different from the consequences discussed herein. For purposes of determining whether a debt instrument is a contingent payment debt instrument, remote or incidental contingencies are ignored. We intend to treat the possibility of our making any of the above additional payments as remote or to treat such additional payments as incidental. Accordingly, we do not intend to treat the notes as contingent payment debt instruments. Our treatment will be binding on all beneficial owners, except a beneficial owner that discloses its differing treatment in a statement attached to its timely filed U.S. federal income tax return for the taxable year during which the note was acquired. Our treatment is not binding on the IRS. If the IRS were to challenge our treatment, you would be required (i) to accrue income on the notes based on a projected payment schedule and comparable yield, which will be in excess of the stated interest on the notes; (ii) to treat as ordinary income, rather than capital gain, any gain recognized on the disposition of the notes before the resolution of the contingencies; and (iii) to treat the entire amount of recognized gain upon a conversion of notes as taxable. In any event, if we actually make

## **Table of Contents**

any such additional payment, the timing, amount and character of your income, gain or loss with respect to the notes may be affected. The remainder of this discussion assumes that the notes will not be contingent payment debt instruments.

### *Sale, Exchange or Retirement of the Notes*

If you are a U.S. Holder, you will generally recognize gain or loss upon the sale, exchange or retirement of a note (other than upon a conversion of the note, which is discussed below under [Conversion of the Notes](#)) equal to the difference between (1) the amount realized and (2) your adjusted tax basis in the note. The amount realized will equal the amount of cash and the fair market value of any property received in exchange for the notes, other than any amount attributable to accrued but unpaid interest, which amount will be taxable as interest income to the extent not previously included in income. Your adjusted tax basis in a note generally will be equal to your purchase price for the note. Any gain or loss you recognize generally will be capital gain or loss, and will be long-term if your holding period is more than one year at the time of sale, exchange or retirement of the note. Long-term capital gains of individuals and other non-corporate taxpayers are generally eligible for reduced rates of taxation. The deductibility of capital losses is subject to certain limitations.

### *Conversion of the Notes*

If we receive the stockholder approval prior to the relevant settlement method election date, upon conversion of the notes, we may deliver solely cash or a combination of cash and shares of our common stock, as described above under [Description of the Notes](#) [Conversion Rights](#) [Settlement Upon Conversion](#).

In the event that we deliver solely cash upon such a conversion, if you are a U.S. Holder, your gain or loss will be determined in the same manner as if you disposed of the notes in a taxable disposition (as described above under [Tax Considerations for U.S. Holders](#) [Sale, Exchange or Retirement of the Notes](#)).

In the event that we deliver a combination of cash and shares of our common stock upon such a conversion, the tax consequences to U.S. Holders of the conversion are not clear. If you convert a note and we deliver a combination of cash and shares of our common stock in the conversion, then except as otherwise indicated below, you generally should realize gain, but not loss, to the extent that the cash received (other than cash or shares attributable to accrued and unpaid interest) plus the fair market value of the shares at the time of the conversion exceeds your tax basis in the notes, and such gain would be recognized to the extent of the amount of cash received (excluding cash received in lieu of a fractional share and cash attributable to accrued and unpaid interest). Any gain you recognize generally should be capital gain and should be long-term capital gain if your holding period is more than one year at the time of conversion. Your tax basis in the shares of common stock received in the conversion (including any fractional share of our common stock for which cash is paid, but excluding any common stock attributable to accrued but unpaid interest) generally should be equal to your tax basis in the converted note, decreased by the amount of any cash received (other than cash received in lieu of a fractional share of our common stock and any cash attributable to accrued and unpaid interest), and increased by the amount of any gain recognized (other than any gain recognized with respect to cash received in lieu of a fractional share of our common stock). Your holding period for the shares of common stock received on conversion generally should include the holding period for the converted note. Your tax basis in any common stock received that is attributable to accrued and unpaid interest will be equal to the amount of accrued interest with respect to which the common stock was received and your holding period for such common stock will commence on the day after the date of receipt.

## **Table of Contents**

It is possible, however, that you may recognize an amount of gain that is different from the amount described above. For example, the cash received on conversion of a note into a combination of cash and shares of our common stock could be treated as proceeds from a redemption of a portion of the note, and taxed in the manner described above under **Sale, Exchange or Retirement of the Notes**. In such case, you should not recognize gain or loss with respect to our common stock received (other than any gain recognized with respect to cash received in lieu of a fractional share of our common stock as described below), and your holding period for such stock should include the period during which you held the notes. In addition, in such case, your tax basis in the note would have to be allocated between the portion of the note treated as redeemed and the portion of the note treated as converted into common stock. Such allocation generally would be made based on the relative fair market value of our common stock and the amount of cash received upon conversion.

In any case, if you receive cash in lieu of a fractional share of our common stock, you generally will be treated as if the fractional share had been issued and then redeemed for cash, and you generally will recognize capital gain or loss equal to the difference between the amount of cash received and the portion of your tax basis in the notes allocated to the fractional share. Your tax basis in the fractional share will be determined by allocating your tax basis in the common stock between the common stock received upon conversion and the fractional share, in accordance with their respective fair market values.

Any cash received upon a conversion of a note that is attributable to accrued and unpaid interest not previously included in income will be taxable as interest income.

**You should consult your tax advisor with respect to the U.S. federal tax consequences of the conversion of notes into a combination of cash and our common stock.**

### *Constructive Distributions*

If at any time we make a distribution of cash or property to our stockholders that would be taxable to the stockholders as a dividend for U.S. federal income tax purposes and, in accordance with the anti-dilution provisions of the notes, the conversion rate of the notes is increased, such increase will be a constructive distribution, taxable as a dividend to beneficial owners of the notes to the extent of our current and accumulated earnings and profits (and otherwise as discussed below), notwithstanding the fact that the beneficial owners do not receive a cash payment.

If the conversion rate is increased at our discretion or in certain other circumstances (including an adjustment to the conversion rate in connection with a fundamental change), such increase also may be a constructive distribution, taxable as a dividend to beneficial owners of the notes to the extent of our current and accumulated earnings and profits (and otherwise as discussed below), notwithstanding the fact that the beneficial owners do not receive a cash payment. In certain circumstances, the failure to adjust the conversion rate under the indenture may result in a taxable constructive distribution to beneficial owners of notes. Generally, an increase in the conversion rate under the indenture made pursuant to a bona fide reasonable adjustment formula in the event of stock dividends or distributions of rights to subscribe for our common stock will not be a taxable constructive distribution.

If there is a constructive distribution, such distribution will be taxable to you, if you are a U.S. Holder, as a dividend to the extent of our current and accumulated earnings and profits, and thereafter as a return of capital or capital gain in accordance with the tax rules applicable to corporate distributions as described below under **Distributions on Common Stock**, but may not be eligible for the reduced rates of tax applicable to certain dividends paid to non-corporate beneficial owners or the dividends-received deduction applicable to certain dividends paid to corporate beneficial owners.

## **Table of Contents**

Because a constructive distribution received by you would not give rise to any cash from which any applicable withholding tax could be satisfied, if backup withholding is required on your behalf because you failed to establish an exemption from backup withholding as discussed in Backup Withholding and Information Reporting, any such payment may be withheld from payments of cash and common stock payable on the notes.

You should consult your tax advisor with respect to the tax consequences of an adjustment (or failure to make an adjustment) to the conversion rate and any resulting constructive distribution, including whether any taxable constructive distribution would be eligible for the reduced rates of tax applicable to dividends paid to non-corporate beneficial owners or the dividends-received deduction.

### *Distributions on Common Stock*

Distributions paid on our common stock received upon a conversion of a note, other than certain pro rata distributions of common shares, generally will be treated as dividends to the extent paid out of our current or accumulated earnings and profits (as determined under U.S. federal income tax principles) and will be taxable to you as ordinary income when received if you are a U.S. Holder. If a distribution exceeds our current and accumulated earnings and profits, the excess will be treated as a tax-free return of your investment, up to your tax basis in the shares. Any remaining excess generally will be treated as a capital gain. Dividends received by a non-corporate U.S. Holder in taxable years beginning prior to January 1, 2013 generally will be eligible to be taxed at reduced rates if the U.S. Holder meets certain holding period and other applicable requirements. Dividends received by a corporate U.S. Holder generally will be eligible for the dividends-received deduction if the U.S. Holder meets certain holding period and other applicable requirements.

### *Sale or Other Disposition of Common Stock*

If you are a U.S. Holder, you will generally recognize gain or loss upon the sale or other disposition of our common stock received upon conversion of a note equal to the difference between the cash proceeds received plus the fair market value of any property received upon the sale or other disposition and your adjusted tax basis in the common stock. Any gain or loss you recognize generally will be capital gain or loss and will be long-term capital gain or loss if your holding period is more than one year at the time of sale or other disposition. Long-term capital gains of individuals and other non-corporate taxpayers are generally eligible for reduced rates of taxation. The deductibility of capital losses is subject to certain limitations.

### *Backup Withholding and Information Reporting*

Information returns may be filed with the IRS in connection with payments on the notes, dividends on the common stock (including constructive dividends) and proceeds from a sale or other disposition of the notes or the common stock. You will be subject to backup withholding on these payments if you fail to provide your taxpayer identification number to the paying agent and comply with certain certification procedures or otherwise establish an exemption from backup withholding. The amount of any backup withholding from a payment will be allowed as a credit against your U.S. federal income tax liability and may entitle you to a refund, provided that the required information is timely furnished to the IRS.

## **Tax Considerations for Non-U.S. Holders**

We use the term *Non-U.S. Holder* to describe a beneficial owner (other than a partnership or other pass-through entity) of notes or shares of common stock received upon conversion of the notes that is not a U.S. Holder.

### *Payments on the Notes*

Subject to the discussion below concerning backup withholding, constructive distributions and certain recent legislation, if you are a Non-U.S. Holder, payments of principal and interest (including interest

## Table of Contents

deemed to be received upon conversion) on the notes to you will not be subject to U.S. federal withholding tax, provided that, in the case of interest:

you do not own, actually or constructively, 10% or more of the total combined voting power of all classes of our stock entitled to vote;

you are not a controlled foreign corporation related, directly or indirectly, to us through stock ownership; and

you have satisfied the certification requirement described below.

Interest on a note will generally not be exempt from U.S. federal withholding tax unless you certify on IRS Form W-8BEN, under penalties of perjury, that you are not a U.S. person.

If you are not exempt from withholding as discussed above, payments of interest will be subject to a 30% U.S. federal withholding tax, unless you provide a properly executed (i) IRS Form W-8BEN (or other applicable form) claiming an exemption from or reduction in withholding under the benefit of an applicable income tax treaty or (ii) IRS Form W-8ECI (or other applicable form) stating that interest paid on the notes is not subject to withholding tax because it is effectively connected with your conduct of a trade or business in the United States (and, if required by an applicable income tax treaty, is attributable to a permanent establishment or fixed base in the United States).

If interest on a note is effectively connected with your conduct of a trade or business in the United States (and, if required by an applicable income tax treaty, is attributable to a permanent establishment or fixed base maintained by you in the United States), then you will be exempt from the withholding tax discussed above if you provide a properly executed IRS Form W-8ECI, but you will generally be taxed in the same manner as a U.S. Holder (see *Tax Considerations for U.S. Holders* above). If you are engaged in a trade or business in the United States, you should consult your tax advisor with respect to the U.S. tax consequences of the ownership and disposition of notes, including the possible imposition of a branch profits tax at a rate of 30% (or a lower U.S. income tax treaty rate) if you are a corporation.

### *Sale, Exchange or Other Disposition of Notes or Common Stock*

Subject to the discussion below concerning backup withholding, constructive distributions and certain recent legislation, if you are a Non-U.S. Holder, you generally will not be subject to U.S. federal income tax on gain realized on a sale, exchange or other taxable disposition (including conversion) of notes or common stock unless:

the gain is effectively connected with your conduct of a trade or business in the United States (and, if required by an applicable income tax treaty, is attributable to a U.S. permanent establishment or fixed base);

you are an individual who is present in the United States for 183 days or more in the taxable year of that disposition and certain other conditions are met; or

we are or have been within the shorter of the five-year period preceding such sale, exchange or other disposition and your holding period, a U.S. real property holding corporation, as defined in the Code; provided, that as long as our common stock is regularly traded on an established securities market, generally only Non-U.S. Holders (i) who have held more than 5% of such class of stock or, if the notes are regularly traded, more than 5% of the notes at any time during such five-year or shorter period or (ii) if the notes are not regularly traded, who have acquired notes with a fair market value of more than 5% of our common stock on the acquisition date would be subject to taxation under this rule. Although there can be no assurance, we believe that we are not, and we do not anticipate becoming, a U.S. real property holding corporation. No assurance can be provided that our common stock will remain regularly traded on an established securities market for purposes of these rules.





## **Table of Contents**

If gain recognized by you on a sale, exchange or other disposition of notes or common stock is effectively connected with your conduct of a trade or business in the United States, you will generally be taxed in the same manner as a U.S. Holder (see Tax Considerations for U.S. Holders above), subject to an applicable income tax treaty providing otherwise. You should consult your tax advisor with respect to other U.S. tax consequences of the ownership and disposition of notes and common stock, including the possible imposition of a branch profits tax at a rate of 30% (or a lower treaty rate) if you are a corporation. If you are an individual described in the second bullet point above, you will be subject to a flat 30% tax on the gain derived from the sale, exchange or other taxable disposition, which may be offset by U.S.-source capital losses, even though you are not considered a resident of the United States.

Any gain recognized by you upon the conversion of a note as a result of the receipt of cash in lieu of a fractional share of our common stock will be subject to U.S. federal income tax in accordance with the above rules.

### *Taxation of Dividends on Common Stock and Constructive Distributions on the Notes*

If you are a Non-U.S. Holder, you generally will be subject to United States withholding tax at a 30% rate, subject to reduction under an applicable U.S. income tax treaty, on dividends paid on our common stock or constructive distributions deemed paid to you (see Tax Considerations for U.S. Holders Constructive Distributions above). Because a constructive distribution received by you would not give rise to any cash from which any applicable withholding tax could be satisfied, if withholding taxes are paid on your behalf, any such payment may be withheld from payments of cash and common stock payable on the notes.

In order to obtain a reduced rate of withholding, you will be required to provide a properly executed IRS Form W-8BEN certifying your entitlement to benefits under a U.S. income tax treaty. If you are subject to withholding tax under such circumstances, you should consult your tax advisor as to whether a refund can be obtained for all or a portion of the withholding tax.

If dividends (or constructive distributions) are effectively connected with your conduct of a trade or business in the United States (and, if required by an applicable income tax treaty, are attributable to a permanent establishment or fixed base maintained by you in the United States), you will be exempt from U.S. withholding tax if you provide a properly executed IRS Form W-8ECI, but you will generally be taxed in the same manner as a U.S. Holder (see Tax Considerations for U.S. Holders above). If you are engaged in a trade or business in the United States, you should consult your tax advisor with respect to the tax consequences of the ownership of our common stock, including the possible imposition of a branch profits tax at 30% (or at a reduced rate under an applicable U.S. income tax treaty) if you are a corporation.

### *Backup Withholding and Information Reporting*

Information returns will be filed with the IRS in connection with dividend and interest payments on the notes and on the common stock. Unless you comply with certification procedures to establish that you are not a U.S. person, information returns may be filed with the IRS in connection with the proceeds from a sale or other disposition of the notes or common stock, and you may be subject to U.S. backup withholding on payments on the notes and on the common stock or on the proceeds from a sale or other disposition of the notes or common stock. The certification procedures required to claim the exemption from withholding tax on interest described above generally will satisfy the certification requirements necessary to avoid backup withholding as well. The amount of any backup withholding from a payment will be allowed as a credit against your U.S. federal income tax liability and may entitle you to a refund, provided that the required information is timely furnished to the IRS.

## **Table of Contents**

### *Recent Legislation*

Recently enacted legislation that, as enacted, is effective for amounts paid after December 31, 2012, generally will impose a withholding tax of 30% on any interest on the notes or dividends on our common stock and the gross proceeds of a disposition of the notes or our common stock paid to (i) a foreign financial institution, unless such institution enters into an agreement with the U.S. government to, among other things, collect and provide to the U.S. government substantial information regarding U.S. account holders of such institution or (ii) certain non-financial foreign entities unless such entity provides the withholding agent with either certification that such entity does not have any substantial United States owners or identification of the direct and indirect substantial U.S. owners of the entity. Under applicable IRS guidance, the legislation's implementation has been delayed, and any withholding obligation on payments to noncompliant foreign entities is currently set to apply to (1) interest and dividends paid by us starting on January 1, 2014, and (2) proceeds from the disposition of the notes or our common stock starting on January 1, 2017. In addition, under proposed U.S. Treasury regulations, the legislation generally will not apply to debt obligations, such as the notes, outstanding on January 1, 2013, unless the debt obligation undergoes a significant modification, within the meaning of the U.S. Treasury regulations, after that date. The proposed regulations are not effective until finalized, however, and unless and until they are finalized, taxpayers may not be entitled to rely on them. You are encouraged to consult with your tax advisor regarding the possible implications of this legislation on your investment in our notes and common stock.

### **U.S. Federal Estate Taxes**

A note beneficially owned by an individual who is not a citizen or resident of the United States (as specially defined for U.S. federal estate tax purposes) at the time of death generally will not be subject to U.S. federal estate tax as a result of the individual's death, provided that:

the individual does not actually or constructively own 10% or more of the total combined voting power of all classes of our stock entitled to vote within the meaning of section 871(h)(3) of the Code; and

interest payments with respect to such note, if received at the time of the individual's death, would not have been effectively connected with the conduct of a U.S. trade or business.

Common stock owned or treated as owned by an individual who is not a citizen or resident of the United States (as specially defined for U.S. federal estate tax purposes) at the time of death (including stock treated as owned by such individual by reason of a transfer subject to certain retained powers, or by reason of any transfer within three years of death) will be included in the individual's estate for U.S. federal estate tax purposes and thus will be subject to U.S. federal estate tax, unless an applicable estate tax treaty provides otherwise.

**Table of Contents**

**LEGAL MATTERS**

The validity of the notes offered hereby will be passed upon for us by Wilmer Cutler Pickering Hale and Dorr LLP, Boston, Massachusetts. Certain legal matters will be passed upon for the underwriters by Davis Polk & Wardwell LLP, New York, New York.

**EXPERTS**

The consolidated financial statements of Bottomline Technologies (de), Inc. appearing in Bottomline Technologies (de), Inc.'s Annual Report (Form 10-K) for the year ended June 30, 2012, including the schedule appearing therein, and the effectiveness of Bottomline Technologies (de), Inc.'s internal control over financial reporting as of June 30, 2012, have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their reports thereon included therein, and incorporated herein by reference. Those financial statements have not been revised to reflect the adoption of ASU 2011-05, *Presentation of Comprehensive Income*, as amended by ASU 2011-12, *Deferral of the Effective Date for Amendments to the Presentation of Reclassifications of Items Out of Accumulated Other Comprehensive Income in Accounting Standards Update No. 2011-05*. Such financial statements and schedule are, and audited financial statements to be included in subsequently filed documents will be, incorporated herein in reliance upon the reports of Ernst & Young LLP pertaining to such financial statements and schedule and the effectiveness of our internal control over financial reporting as of the respective dates (to the extent covered by consents filed with the Securities and Exchange Commission) given on the authority of such firm as experts in accounting and auditing.

S-74

**Table of Contents**

**WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly and current reports, proxy statements and other information with the SEC. Our SEC filings are available to the public over the Internet at the SEC's website at <http://www.sec.gov>. Copies of certain information filed by us with the SEC are also available on our website at <http://www.bottomline.com>. Our website is not a part of this prospectus supplement. You may also read and copy any document we file at the SEC's Public Reference Room, 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the Public Reference Room.

This prospectus supplement is part of a registration statement we filed with the SEC. This prospectus supplement omits some information contained in the registration statement in accordance with SEC rules and regulations. You should review the information and exhibits in the registration statement for further information on us and our consolidated subsidiaries and the securities we are offering. Statements in this prospectus supplement concerning any document we filed as an exhibit to the registration statement or that we otherwise filed with the SEC are not intended to be comprehensive and are qualified by reference to these filings. You should review the complete document to evaluate these statements.

**INCORPORATION BY REFERENCE**

The SEC allows us to incorporate by reference much of the information we file with the SEC, which means that we can disclose important information to you by referring you to those publicly available documents. The information that we incorporate by reference in this prospectus supplement is considered to be part of this prospectus supplement. Information contained in this prospectus supplement and information that we file with the SEC in the future and incorporate by reference in this prospectus supplement automatically updates and supersedes previously filed information. We incorporate by reference the documents listed below and any future filings we make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 (in each case, other than those documents or the portions of those documents not deemed to be filed), prior to the sale of all the notes covered by this prospectus supplement.

Annual Report on Form 10-K for the fiscal year ended June 30, 2012 filed with the SEC on August 27, 2012;

The information specifically incorporated by reference into our Annual Report on Form 10-K for the fiscal year ended June 30, 2012, from our definitive proxy statement on Schedule 14A filed with the SEC on October 5, 2012;

Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 2010 filed with the SEC on November 8, 2012;

Current Reports on Form 8-K filed with the SEC on September 12, 2012, October 1, 2012, November 19, 2012 and December 5, 2012, including amendments thereto; and

The description of our common stock contained in our Registration Statement on Form 8-A filed with the SEC on January 12, 1999, including any amendments or reports filed for the purpose of updating such description.

You may request a copy of these filings, at no cost, by writing or telephoning us at the following address:

Bottomline Technologies (de), Inc.

Attn: Investor Relations Department

325 Corporate Drive

Portsmouth, New Hampshire 03801

Phone: (603) 501-4899

S-75

Table of Contents

PROSPECTUS

**Bottomline Technologies (de), Inc.**

**Debt Securities**

**Common Stock**

**Preferred Stock**

**Depositary Shares**

**Stock Purchase Contracts**

**Stock Purchase Units**

**Warrants**

We may issue securities from time to time in one or more offerings. This prospectus describes the general terms of these securities and the general manner in which these securities will be offered. We will provide the specific terms of these securities in supplements to this prospectus. The prospectus supplements will also describe the specific manner in which these securities will be offered and may also supplement, update or amend information contained in this document. You should read this prospectus and any applicable prospectus supplement before you invest.

We may offer these securities in amounts, at prices and on terms determined at the time of offering. The securities may be sold directly to you, through agents, or through underwriters and dealers. If agents, underwriters or dealers are used to sell the securities, we will name them and describe their compensation in a prospectus supplement.

In addition, selling stockholders to be named in a prospectus supplement may offer and sell from time to time these securities in such amounts as set forth in a prospectus supplement. Unless otherwise set forth in a prospectus supplement, we will not receive any proceeds from the sale of these securities by any selling stockholders.

Our common stock trades on the Nasdaq Global Select Market under the symbol EPAY.

**Investing in these securities involves a high degree of risk. See Risk Factors included in any accompanying prospectus supplement and in the documents incorporated by reference in this prospectus for a discussion of the factors you should carefully consider before deciding to purchase these securities.**

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

The date of this prospectus is July 15, 2011



**Table of Contents**

**TABLE OF CONTENTS**

<u>ABOUT THIS PROSPECTUS</u>	1
<u>WHERE YOU CAN FIND MORE INFORMATION</u>	2
<u>INCORPORATION BY REFERENCE</u>	2
<u>FORWARD-LOOKING STATEMENTS</u>	3
<u>BOTTOMLINE</u>	4
<u>CONSOLIDATED RATIOS OF EARNINGS TO FIXED CHARGES AND RATIOS OF EARNINGS TO COMBINED FIXED CHARGES AND PREFERRED STOCK DIVIDENDS</u>	5
<u>USE OF PROCEEDS</u>	6
<u>DESCRIPTION OF DEBT SECURITIES</u>	7
<u>DESCRIPTION OF CAPITAL STOCK</u>	16
<u>DESCRIPTION OF DEPOSITARY SHARES</u>	22
<u>DESCRIPTION OF STOCK PURCHASE CONTRACTS AND STOCK PURCHASE UNITS</u>	25
<u>DESCRIPTION OF WARRANTS</u>	26
<u>FORMS OF SECURITIES</u>	27
<u>SELLING STOCKHOLDERS</u>	29
<u>PLAN OF DISTRIBUTION</u>	30
<u>LEGAL MATTERS</u>	33
<u>EXPERTS</u>	33

**Table of Contents**

**ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission, which we refer to as the SEC, utilizing a shelf registration process. Under this shelf registration process, we may from time to time sell any combination of the securities described in this prospectus, and one or more of our stockholders may sell our securities, in one or more offerings.

This prospectus provides you with a general description of the securities we may offer. Each time we or a selling stockholder sells securities, we will provide one or more prospectus supplements that will contain specific information about the terms of the offering. The prospectus supplement may also add, update or change information contained in this prospectus. You should read both this prospectus and the accompanying prospectus supplement together with the additional information described under the heading **Where You Can Find More Information** on page 2 of this prospectus.

You should rely only on the information contained in or incorporated by reference in this prospectus, any accompanying prospectus supplement or in any related free writing prospectus filed by us with the SEC. We have not authorized anyone to provide you with different information. This prospectus and the accompanying prospectus supplement do not constitute an offer to sell or the solicitation of an offer to buy any securities other than the securities described in the accompanying prospectus supplement or an offer to sell or the solicitation of an offer to buy such securities in any circumstances in which such offer or solicitation is unlawful. You should assume that the information appearing in this prospectus, any prospectus supplement, the documents incorporated by reference and any related free writing prospectus is accurate only as of their respective dates. Our business, financial condition, results of operations and prospects may have changed materially since those dates.

Unless the context otherwise indicates, references in this prospectus to **we**, **our**, **Bottomline** and **us** refer, collectively, to Bottomline Technologies (de), Inc., a Delaware corporation, and its consolidated subsidiaries.

**Table of Contents**

**WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly and current reports, proxy statements and other information with the SEC. Our SEC filings are available to the public over the Internet at the SEC's website at <http://www.sec.gov>. Copies of certain information filed by us with the SEC are also available on our website at <http://www.bottomline.com/>. Our website is not a part of this prospectus. You may also read and copy any document we file at the SEC's public reference room, 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference room.

This prospectus is part of a registration statement we filed with the SEC. This prospectus omits some information contained in the registration statement in accordance with SEC rules and regulations. You should review the information and exhibits in the registration statement for further information on us and our consolidated subsidiaries and the securities we are offering. Statements in this prospectus concerning any document we filed as an exhibit to the registration statement or that we otherwise filed with the SEC are not intended to be comprehensive and are qualified by reference to these filings. You should review the complete document to evaluate these statements.

**INCORPORATION BY REFERENCE**

The SEC allows us to incorporate by reference much of the information we file with the SEC, which means that we can disclose important information to you by referring you to those publicly available documents. The information that we incorporate by reference in this prospectus is considered to be part of this prospectus. Because we are incorporating by reference future filings with the SEC, this prospectus is continually updated and those future filings may modify or supersede some of the information included or incorporated in this prospectus. This means that you must look at all of the SEC filings that we incorporate by reference to determine if any of the statements in this prospectus or in any document previously incorporated by reference have been modified or superseded. This prospectus incorporates by reference the documents listed below (File No. 000-25259) and any future filings we make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act) (in each case, other than those documents or the portions of those documents not deemed to be filed) until the offering of the securities under the registration statement is terminated or completed:

Annual Report on Form 10-K for the fiscal year ended June 30, 2010;

Quarterly Reports on Form 10-Q for the fiscal quarters ended September 30, 2010, December 31, 2010 and March 31, 2011, including amendments thereto;

Current Reports on Form 8-K filed July 19, 2010, October 26, 2010, November 19, 2010, February 22, 2011, April 1, 2011 and May 23, 2011, including amendments thereto; and

The description of our common stock contained in our Registration Statement on Form 8-A filed on January 12, 1999, including any amendments or reports filed for the purpose of updating such description.

You may request a copy of these filings, at no cost, by writing or telephoning us at the following address:

Bottomline Technologies (de), Inc.

Attn: Investor Relations Department

325 Corporate Drive

Portsmouth, New Hampshire 03801

Phone: (603) 501-4899



**Table of Contents**

**FORWARD-LOOKING STATEMENTS**

This prospectus and the information incorporated by reference in this prospectus may include forward-looking statements within the meaning of the securities laws. Words such as expects, anticipates, targets, projects, intends, plans, believes, seeks, estimates, continues and variations of such words and similar expressions are intended to identify such forward-looking statements. Actual results may differ materially from those indicated by such forward-looking statements as a result of various important factors. Among the important factors that could cause actual results to differ materially from those indicated by such forward-looking statements are competition, market demand, technological change, strategic relationships, recent acquisitions, international operations and general economic conditions. For additional discussion of factors that could impact our financial results, refer to the section of any accompanying prospectus supplement entitled Risk Factors. You should also carefully review the risk factors and cautionary statements described in the other documents we file from time to time with the SEC, specifically our most recent Annual Report on Form 10-K, our Quarterly Reports on Form 10-Q and our Current Reports on Form 8-K. Any forward-looking statements represent our views only as of the time they are made and should not be relied upon as representing our views as of any subsequent date. We do not assume any obligation to update any forward-looking statements, except to the extent required by law.

**Table of Contents**

**BOTTOMLINE**

We provide electronic payment, invoice and document management solutions to corporations, financial institutions and banks around the world. Our solutions are used to streamline, automate and manage processes and transactions involving global payments, invoice receipt and approval, collections, cash management, risk mitigation, document management, reporting and document archive. We offer software designed to run on-site at the customer's location as well as hosted or Software as a Service (SaaS) solutions. Historically, our software has been sold predominantly on a perpetual license basis. Today, however, a growing portion of our offerings are being sold as SaaS and paid for on a subscription and transaction basis.

Our corporate customers rely on our solutions to automate their payment and accounts payable processes and to streamline and manage the production and retention of electronic documents. We offer Legal eXchange®, a SaaS offering that receives, manages and controls legal invoices and the related spend management for insurance companies and other large consumers of outside legal services. We also offer Paymode-X, a SaaS offering that facilitates the exchange of electronic payments and invoices between organizations and suppliers. Our offerings also include software solutions that banks use to provide web-based payment and reporting capabilities to their corporate customers.

Our solutions complement and leverage our customers' existing information systems, accounting applications and banking relationships. As a result, our solutions can be deployed quickly and efficiently. To help our customers receive the maximum value from our products and meet their own particular needs, we also provide professional services for installation, training, consulting and product enhancement.

During the nine months ended March 31, 2011, we acquired SMA Financial Ltd. (SMA), Direct Debit Limited (DDL) and acquired substantially all of the assets and assumed certain liabilities of Business Information Technology Group (BITG). SMA is a London-based provider of SaaS connectivity to the Society for Worldwide Interbank Financial Telecommunication, which is referred to as SWIFT, for the automation of payments and financial messaging. As a result of the SMA acquisition, we launched a new product offering, SWIFT Access Service, and we now offer next generation treasury and cash management solutions to a range of bank and corporate customers. DDL is a London-based provider of payments automation software for direct debits and receivables management for corporations, banks, financial institutions and government organizations. The addition of DDL extends our global payment capabilities and expands our transaction banking portfolio. BITG is a Bottomline software distributor and channel partner focused on the corporate market with locations in both Australia and New Zealand.

In April 2011, we acquired Allegient Systems, Inc., a provider of advanced capabilities for legal e-billing, bill review and analytics, for a cash payment of approximately \$49.6 million. Allegient's proprietary SaaS platform and value-added turnkey solutions will complement and extend our Legal eXchange portfolio, offering the combined customer base of more than 100 leading insurers capabilities to effectively manage their legal expenses.

Our principal executive offices are located at 325 Corporate Drive, Portsmouth, New Hampshire 03801, and our telephone number is (603) 436-0700.

**Table of Contents**

**CONSOLIDATED RATIOS OF EARNINGS TO FIXED CHARGES AND  
RATIOS OF EARNINGS TO COMBINED FIXED CHARGES AND  
PREFERRED STOCK DIVIDENDS**

The following table sets forth our ratio of earnings to fixed charges. You should read this table in conjunction with the consolidated financial statements and notes incorporated by reference in this prospectus.

	Fiscal Year Ended					
	Nine Months Ended March 31, 2011	June 30, 2010	June 30, 2009	June 30, 2008	June 30, 2007	June 30, 2006
Consolidated ratios of earnings to fixed charges	7.5x	6.1x	n/a	n/a	n/a	n/a

For purposes of calculating the ratios above, earnings consist of income (loss) before provision for (benefit from) income taxes plus fixed charges. Fixed charges include interest expense and the interest portion of rental expense which is deemed to be representative of the interest factor. The estimate of interest within rental expense is estimated to be one-third of rental expense. The dollar amount of the deficiency in earnings available for fixed charges for a one-to-one ratio for the fiscal years ended June 30, 2009, 2008, 2007 and 2006 was \$11.5 million, \$4.8 million, \$7.9 million and \$1.2 million, respectively.

Our ratios of earnings to combined fixed charges and preferred stock dividends for the periods indicated above are the same as our ratios of earnings to fixed charges set forth above because we had no shares of preferred stock outstanding during the periods indicated and currently have no shares of preferred stock outstanding.

**Table of Contents**

**USE OF PROCEEDS**

We intend to use the net proceeds from the sale of any securities offered under this prospectus for general corporate purposes unless otherwise indicated in the applicable prospectus supplement. General corporate purposes may include the acquisition of companies or businesses, repayment and refinancing of debt (if any is outstanding at such time), working capital and capital expenditures. We may temporarily invest the net proceeds in investment-grade, interest-bearing securities until they are used for their stated purpose. We have not determined the amount of net proceeds to be used specifically for such purposes. As a result, management will retain broad discretion over the allocation of net proceeds.

Unless otherwise set forth in a prospectus supplement, we will not receive any proceeds from the sale of securities by any selling stockholders.



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**Table of Contents**

**DESCRIPTION OF DEBT SECURITIES**

We may offer, from time to time, our unsecured general obligations, which may be senior or subordinated. We refer to the senior unsecured general obligations as senior debt securities, the subordinated unsecured general obligations as the subordinated debt securities and the senior debt securities and the subordinated debt securities collectively as debt securities. The following description summarizes the general terms and provisions of the debt securities to which any prospectus supplement may relate. We will describe the specific terms of the debt securities and the extent, if any, to which the general provisions summarized below may apply to any series of debt securities in the prospectus supplement relating to the series and any applicable free writing prospectus that we authorize to be delivered. When we refer to the Company, we, our, and us in this section, we mean Bottomline Technologies (de), Inc., a Delaware corporation, excluding, unless the context otherwise requires or as otherwise expressly stated, our subsidiaries.

We may issue senior debt securities from time to time, in one or more series under a senior indenture to be entered into between us and a senior trustee to be named in a prospectus supplement. We may issue subordinated debt securities from time to time, in one or more series under a subordinated indenture to be entered into between us and a subordinated trustee to be named in a prospectus supplement. The forms of senior indenture and subordinated indenture are filed as exhibits to the registration statement of which this prospectus forms a part. Together, the senior indenture and the subordinated indenture are referred to as the indentures. This prospectus briefly outlines some of the provisions of the indentures. The following summary of the material provisions of the indentures is qualified in its entirety by the provisions of the indentures, including definitions of certain terms used in the indentures. You should review the indentures that are filed as exhibits to the registration statement of which this prospectus forms a part for additional information.

None of the indentures will limit the amount of debt securities that we may issue. The applicable indenture will provide that debt securities may be issued up to an aggregate principal amount authorized from time to time by us and may be payable in any currency designated by us or in amounts determined by reference to an index.

**General**

The senior debt securities will constitute unsecured and unsubordinated obligations and will rank pari passu with our other unsecured and unsubordinated obligations. The subordinated debt securities will constitute our unsecured and subordinated obligations and will be junior in right of payment to our senior indebtedness (including senior debt securities), as described under the heading Certain Terms of the Subordinated Debt Securities Subordination.

The debt securities will be our unsecured obligations. Any secured debt or other secured obligations will be effectively senior to the debt securities to the extent of the value of the assets securing such debt or other obligations.

The applicable prospectus supplement or free writing prospectus will include any additional or different terms of the debt securities being offered, including the following terms:

the title and type of the debt securities;

whether the debt securities will be senior or subordinated debt securities, and, with respect to debt securities issued under the subordinated indenture, as applicable, that the subordination provisions of the indenture shall apply to the securities of that series or that any different subordination provisions, including a different definition of the term senior indebtedness, shall apply to securities of that series;

**Table of Contents**

the aggregate principal amount of the debt securities;

the price or prices at which we will sell the debt securities;

the maturity date or dates of the debt securities and the right, if any, to extend such date or dates;

the rate or rates, if any, per year, at which the debt securities will bear interest, or the method of determining such rate or rates;

the date or dates from which such interest will accrue, the interest payment dates on which such interest will be payable or the manner of determination of such interest payment dates and the related record dates;

the right, if any, to extend the interest payment periods and the duration of that extension;

the manner of paying principal and interest and the place or places where principal and interest will be payable;

provisions for a sinking fund, purchase fund or other analogous fund, if any;

any redemption dates, prices, obligations and restrictions on the debt securities;

the currency or currencies for which you may purchase the debt securities and the currency or currencies in which principal and interest, if any, on the debt securities may be payable;

any conversion or exchange features of the debt securities;

whether and upon what terms the debt securities may be defeased;

any events of default or covenants in addition to or in lieu of those set forth in the indenture;

whether the debt securities will be issued in definitive or global form or in definitive form only upon satisfaction of certain conditions;

whether the series of debt securities will be guaranteed as to payment or performance;

any special tax implications of the debt securities; and

any other material terms of the debt securities.

We may from time to time, without notice to or the consent of the holders of any series of debt securities, create and issue further debt securities of any such series ranking equally with the debt securities of such series in all respects (or in all respects other than (1) the payment of interest accruing prior to the issue date of such further debt securities or (2) the first payment of interest following the issue date of such further debt securities). Such further debt securities may be consolidated and form a single series with the debt securities of such series and have the same terms as to status, redemption or otherwise as the debt securities of such series.

You may present debt securities for exchange and you may present debt securities for transfer in the manner, at the places and subject to the restrictions set forth in the debt securities and the applicable prospectus supplement. We will provide you those services without charge, although you may have to pay any tax or other governmental charge payable in connection with any exchange or transfer, as set forth in the indenture.

Debt securities may bear interest at a fixed rate or a floating rate. Debt securities bearing no interest or interest at a rate that at the time of issuance is below the prevailing market rate (original issue discount securities) may be sold at a discount below their stated principal amount. U.S. federal income tax considerations applicable to any such discounted debt securities or to certain debt securities issued at par which are treated as having been issued at a discount for U.S. federal income tax purposes will be described in the applicable prospectus supplement.

## **Table of Contents**

We may issue debt securities with the principal amount payable on any principal payment date, or the amount of interest payable on any interest payment date, to be determined by reference to one or more currency exchange rates, securities or baskets of securities, commodities or other indices. You may receive a payment of principal on any principal payment date, or a payment of interest on any interest payment date, that is greater than or less than the amount of principal or interest otherwise payable on such dates, depending on the value on such dates of the applicable currency, securities or baskets of securities, commodities or indices. Information as to the methods for determining the amount of principal or interest payable on any date, the currencies, securities or baskets of securities, commodities or indices to which the amount payable on such date is linked and certain related tax considerations will be set forth in the applicable prospectus supplement.

### **Certain Terms of the Senior Debt Securities**

*Covenants.* Unless we indicate otherwise in a prospectus supplement, the senior debt securities will not contain any financial or restrictive covenants, including covenants restricting either us or any of our subsidiaries from incurring, issuing, assuming or guaranteeing any indebtedness secured by a lien on any of our or our subsidiaries' property or capital stock, or restricting either us or any of our subsidiaries from entering into sale and leaseback transactions.

*Consolidation, Merger and Sale of Assets.* Unless we indicate otherwise in a prospectus supplement, we may not consolidate with or merge into any other person, in a transaction in which we are not the surviving corporation, or convey, transfer or lease our properties and assets substantially as an entirety to any person, in either case, unless:

the successor entity, if any, is a U.S. corporation, limited liability company, partnership or trust (subject to certain exceptions provided for in the senior indenture);

the successor entity assumes our obligations on the senior debt securities and under the senior indenture;

immediately after giving effect to the transaction, no default or event of default shall have occurred and be continuing; and

certain other conditions are met.

*No Protection in the Event of a Change in Control.* Unless we indicate otherwise in a prospectus supplement with respect to a particular series of senior debt securities, the senior debt securities will not contain any provisions that may afford holders of the senior debt securities protection in the event we have a change in control or in the event of a highly leveraged transaction (whether or not such transaction results in a change in control).

*Events of Default.* The following are events of default under the senior indenture for any series of senior debt securities:

we fail to pay principal or premium on the senior debt securities of such series when due and payable whether at maturity, upon redemption, by declaration or otherwise (and, if specified for the securities of such series, the continuance of such default for a specified period);

we fail to pay interest on any senior debt securities of such series when due and payable, if that default continues for a period of 90 days (or such other period as may be specified for such series);

our default in the performance of or breach of any of our covenants or agreements in the senior indenture applicable to senior debt securities of such series, other than a breach which is specifically dealt with elsewhere in the senior indenture, and that default or breach continues for a period of 90 days after we receive written notice from the trustee or from the holders of 25% or more in aggregate principal amount of the senior debt securities of such series;



**Table of Contents**

certain events of bankruptcy or insolvency, whether voluntary or not; and

there occurs any other event of default provided for in such series of senior debt securities as may be specified in the applicable prospectus supplement.

The default by us under any other debt, including any other series of debt securities, is not a default under the senior indenture.

If an event of default, other than a bankruptcy or insolvency event of default specified in the second to last bullet point above, occurs with respect to a series of senior debt securities and is continuing under the senior indenture, then, and in each such case, either the trustee or the holders of not less than 25% in aggregate principal amount of such series then outstanding under the senior indenture (each such series voting as a separate class) by written notice to us and to the trustee, if such notice is given by the holders, may declare the principal amount of, premium, if any, and accrued interest on such senior debt securities to be immediately due and payable.

If a bankruptcy or insolvency event of default specified in the second to last bullet point above occurs and is continuing, the entire principal amount of, and accrued interest, if any, on each series of senior debt securities then outstanding shall become immediately due and payable.

Unless otherwise specified in the prospectus supplement relating to a series of senior debt securities originally issued at a discount, the amount due upon acceleration shall include only the original issue price of the senior debt securities, the amount of original issue discount accrued to the date of acceleration and accrued interest, if any.

Upon certain conditions, declarations of acceleration may be rescinded and annulled and past defaults may be waived by the holders of a majority in aggregate principal amount of all the senior debt securities of such series affected by the default. Furthermore, subject to various provisions in the senior indenture, the holders of a majority in aggregate principal amount of a series of senior debt securities, by notice to the trustee, may waive an existing default or event of default with respect to such senior debt securities and its consequences, except a default in the payment of principal of, premium, if any, or interest on such senior debt securities or in respect of a covenant or provision of the senior indenture which cannot be modified or amended without the consent of the holders of each such senior debt security. Upon any such waiver, such default shall cease to exist, and any event of default with respect to such senior debt securities shall be deemed to have been cured, for every purpose of the senior indenture; but no such waiver shall extend to any subsequent or other default or event of default or impair any right consequent thereto. For information as to the waiver of defaults, see Modification and Waiver.

The holders of a majority in aggregate principal amount of a series of senior debt securities may direct the time, method and place of conducting any proceeding for any remedy available to the trustee or exercising any trust or power conferred on the trustee with respect to such senior debt securities. However, the trustee may refuse to follow any direction that conflicts with law or the senior indenture, that may involve the trustee in personal liability or that the trustee determines in good faith may be unduly prejudicial to the rights of holders of such series of senior debt securities not joining in the giving of such direction and may take any other action it deems proper that is not inconsistent with any such direction received from holders of such series of senior debt securities. A holder may not pursue any remedy with respect to the senior indenture or any series of senior debt securities unless:

the holder gives the trustee written notice of a continuing event of default;

the holders of at least 25% in aggregate principal amount of such series of senior debt securities make a written request to the trustee to pursue the remedy in respect of such event of default;

## Table of Contents

the requesting holder or holders offer the trustee indemnity satisfactory to the trustee against any costs, liability or expense;

the trustee does not comply with the request within 60 days after receipt of the request and the offer of indemnity; and

during such 60-day period, the holders of a majority in aggregate principal amount of such series of senior debt securities do not give the trustee a direction that is inconsistent with the request.

These limitations, however, do not apply to the right of any holder of a senior debt security to receive payment of the principal of, premium, if any, and interest on such senior debt security in accordance with its terms, or to bring suit for the enforcement of any such payment, on or after the due date for the senior debt securities, which right shall not be impaired or affected without the consent of the holder.

The senior indenture requires certain of our officers to certify, on or before a fixed date in each year in which any senior debt security is outstanding, as to their knowledge of our compliance with all conditions and covenants under the senior indenture.

*Satisfaction and Discharge.* We can satisfy and discharge our obligations to holders of any series of debt securities if:

we pay or cause to be paid, as and when due and payable, the principal of, premium, if any, and any interest on all senior debt securities of such series outstanding under the senior indenture; or

all senior debt securities of such series have become due and payable or will become due and payable within one year (or are to be called for redemption within one year) and we deposit in trust a combination of cash and U.S. government or U.S. government agency obligations that will generate enough cash to make interest, principal, any premium and any other payments on the debt securities of that series on their various due dates.

Under current U.S. federal income tax law, the deposit and our legal release from the debt securities would be treated as though we took back a holder's debt securities and gave such holder his or her share of the cash and debt securities or bonds deposited in trust. In that event, such holder could recognize gain or loss on the debt securities such holder gives back to us. Holders of the debt securities should consult their own advisers with respect to the tax consequences to them of such deposit and discharge, including the applicability and effect of tax laws other than the U.S. federal income tax law.

*Defeasance.* Unless the applicable prospectus supplement provides otherwise, the following discussion of legal defeasance and discharge and covenant defeasance will apply to any series of senior debt securities issued under the senior indenture.

*Legal Defeasance.* We can legally release ourselves from any payment or other obligations on the debt securities of any series (called legal defeasance) if certain conditions are met, including the following:

We deposit in trust for a holder's benefit and the benefit of all other direct holders of the senior debt securities of the same series a combination of cash and U.S. government or U.S. government agency obligations that will generate enough cash to make interest, principal, any premium and any other payments on the senior debt securities of that series on their various due dates.

There is a change in current U.S. federal income tax law or an IRS ruling that lets us make the above deposit without causing any holder to be taxed on the senior debt securities any differently than if we did not make the deposit and instead repaid the senior debt securities ourselves when due. Under current U.S. federal income tax law, the deposit and our legal release from the debt securities would be treated as though we took back any holder's senior debt securities and gave such holder his or her

## Table of Contents

share of the cash and senior debt securities or bonds deposited in trust. In that event, such holder could recognize gain or loss on the senior debt securities such holder gives back to us.

We deliver to the trustee a legal opinion of our counsel confirming the tax law change or ruling described above. If we ever did accomplish legal defeasance, as described above, holders would have to rely solely on the trust deposit for repayment of the senior debt securities. Such holders could not look to us for repayment in the event of any shortfall.

*Covenant Defeasance.* Without any change of current U.S. federal tax law, we can make the same type of deposit described above and be released from some of the covenants in the senior debt securities (called *covenant defeasance* ). In that event, holders would lose the protection of those covenants but would gain the protection of having money and securities set aside in trust to repay the senior debt securities. In order to achieve covenant defeasance, we must do the following (among other things):

We must deposit in trust for any holder's benefit and the benefit of all other direct holders of the senior debt securities of the same series a combination of cash and U.S. government or U.S. government agency obligations that will generate enough cash to make interest, principal, any premium and any other payments on the senior debt securities of that series on their various due dates.

We must deliver to the trustee a legal opinion of our counsel confirming that under current U.S. federal income tax law we may make the above deposit without causing any holder to be taxed on the senior debt securities any differently than if we did not make the deposit and instead repaid the senior debt securities ourselves when due.

If we accomplish covenant defeasance, as described above, holders can still look to us for repayment of the senior debt securities if there were a shortfall in the trust deposit. In fact, if one of the events of default occurred (such as our bankruptcy) and the senior debt securities become immediately due and payable, there may be such a shortfall. Depending on the events causing the default, holders may not be able to obtain payment of the shortfall.

*Modification and Waiver.* We and the trustee may amend or supplement the senior indenture or the senior debt securities without the consent of any holder:

to convey, transfer, assign, mortgage or pledge any assets as security for the senior debt securities of one or more series;

to evidence the succession of another corporation, and the assumption by such successor corporation of our covenants, agreements and obligations under the senior indenture;

to add to our covenants such new covenants, restrictions, conditions or provisions for the protection of the holders, and to make the occurrence, or the occurrence and continuance, of a default in any such additional covenants, restrictions, conditions or provisions an event of default;

to cure any ambiguity, defect or inconsistency in the senior indenture or in any supplemental indenture or to conform the senior indenture or the senior debt securities to the description of senior debt securities of such series set forth in this prospectus or any applicable prospectus supplement;

to provide for or add guarantors with respect to the senior debt securities of any series;



to evidence and provide for the acceptance of appointment hereunder by a successor trustee, or to make such changes as shall be necessary to provide for or facilitate the administration of the trusts in the senior indenture by more than one trustee;

**Table of Contents**

to establish the form or forms or terms of the senior debt securities as permitted by the senior indenture;

to add to, delete from or revise the conditions, limitations and restrictions on the authorized amount, terms, purposes of issue, authentication and delivery of any series of senior debt securities;

to make any change to the senior debt securities of any series so long as no senior debt securities of such series are outstanding; or

to make any change that does not adversely affect the rights of any holder in any material respect.

Other amendments and modifications of the senior indenture or the senior debt securities issued may be made, and our compliance with any provision of the senior indenture with respect to any series of senior debt securities may be waived, with the consent of the holders of a majority of the aggregate principal amount of the outstanding senior debt securities of all series affected by the amendment or modification (voting together as a single class); provided, however, that each affected holder must consent to any modification, amendment or waiver that:

extends the final maturity of any senior debt securities of such series;

reduces the principal amount of, or premium, if any, on any senior debt securities of such series;

reduces the rate or extends the time of payment of interest on any senior debt securities of such series;

reduces the amount payable upon the redemption of any senior debt securities of such series;

changes the currency of payment of principal of, or premium, if any, or interest on, any senior debt securities of such series;

reduces the principal amount of original issue discount securities payable upon acceleration of maturity or the amount provable in bankruptcy;

waives a default in the payment of principal of, premium, if any, or interest on the senior debt securities;

changes the provisions relating to the waiver of past defaults or changes or impairs the right of holders to receive payment or to institute suit for the enforcement of any payment or conversion of any senior debt securities of such series on or after the due date therefor;

modifies any of the provisions of this paragraph, except to increase any required percentage or to provide that certain other provisions cannot be modified or waived without the consent of the holder of each senior debt security of such series affected by the modification; or

reduces the above-stated percentage of outstanding senior debt securities of such series whose holders must consent to a supplemental indenture.

It shall not be necessary for the holders to approve the particular form of any proposed amendment, supplement or waiver, but it shall be sufficient if the holders' consent approves the substance thereof. After an amendment, supplement or waiver of the senior indenture in accordance with the provisions described in this section becomes effective, the trustee must give to the holders affected thereby certain notice briefly describing the amendment, supplement or waiver. Any failure by the trustee to give such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amendment, supplemental indenture or waiver.

*No Personal Liability of Incorporators, Stockholders, Officers, Directors.* The senior indenture provides that no recourse shall be had under any obligation, covenant or agreement of ours in the senior indenture or any supplemental indenture, or in any of the senior debt securities or because of the creation of

## **Table of Contents**

any indebtedness represented thereby, against any of our incorporators, stockholders, officers or directors, past, present or future, or of any predecessor or successor entity thereof under any law, statute or constitutional provision or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise. Each holder, by accepting the senior debt securities, waives and releases all such liability.

*Concerning the Trustee.* The senior indenture provides that, except during the continuance of an event of default, the trustee will not be liable, except for the performance of such duties as are specifically set forth in the senior indenture. If an event of default has occurred and is continuing, the trustee will exercise such rights and powers vested in it under the senior indenture and will use the same degree of care and skill in its exercise as a prudent person would exercise under the circumstances in the conduct of such person's own affairs.

The indenture and the provisions of the Trust Indenture Act of 1939 incorporated by reference in the indenture contain limitations on the rights of the trustee under the indenture should it become a creditor of ours or any of our subsidiaries, to obtain payment of claims in certain cases or to realize on certain property received by it in respect of any such claims, as security or otherwise. The trustee is permitted to engage in other transactions, provided that if it acquires any conflicting interest (as defined), it must eliminate such conflict or resign.

We may have normal banking relationships with the trustee under the senior indenture in the ordinary course of business.

*Unclaimed Funds.* All funds deposited with the trustee or any paying agent for the payment of principal, premium, interest or additional amounts in respect of the senior debt securities that remain unclaimed for two years after the date upon which such principal, premium, interest or additional amounts became due and payable will be repaid to us. Thereafter, any right of any holder of senior debt securities to such funds shall be enforceable only against us, and the trustee and paying agents will have no liability therefor.

*Governing Law.* The senior indenture and the senior debt securities will be governed by and construed in accordance with the laws of the State of New York without regard to any principle of conflict of laws that would require or permit the application of the laws of any other jurisdiction, except as may otherwise be required by mandatory provisions of law.

## **Certain Terms of the Subordinated Debt Securities**

Other than the terms of the subordinated indenture and subordinated debt securities relating to subordination and the remedies and procedures upon an event of default described above under **Certain Terms of the Senior Debt Securities** **Events of Default**, or otherwise as described in the prospectus supplement relating to a particular series of subordinated debt securities, the terms of the subordinated indenture and subordinated debt securities are identical in all material respects to the terms of the senior indenture and senior debt securities.

Additional or different subordination terms may be specified in the prospectus supplement applicable to a particular series.

*Subordination.* The indebtedness evidenced by the subordinated debt securities is subordinate to the prior payment in full of all of our senior indebtedness, as defined in the subordinated indenture. During the continuance beyond any applicable grace period of any default in the payment of principal, premium, interest or any other payment due on any of our senior indebtedness, we may not make any payment of principal of, or premium, if any, or interest on the subordinated debt securities. In addition, upon any payment or distribution of our assets upon any dissolution, winding up, liquidation or reorganization, the payment of the principal of, or premium, if any, and interest on the subordinated debt securities will be

**Table of Contents**

subordinated to the extent provided in the subordinated indenture in right of payment to the prior payment in full of all our senior indebtedness. Because of this subordination, if we dissolve or otherwise liquidate, holders of our subordinated debt securities may receive less, ratably, than holders of our senior indebtedness. The subordination provisions do not prevent the occurrence of an event of default under the subordinated indenture.

The term *senior indebtedness* of a person means with respect to such person the principal of, premium, if any, interest on, and any other payment due pursuant to any of the following, whether outstanding on the date of the subordinated indenture or incurred by that person in the future:

all of the indebtedness of that person for money borrowed;

all of the indebtedness of that person evidenced by notes, debentures, bonds or other securities sold by that person for money;

all of the lease obligations which are capitalized on the books of that person in accordance with generally accepted accounting principles;

all indebtedness of others of the kinds described in the first two bullet points above and all lease obligations of others of the kind described in the third bullet point above that the person, in any manner, assumes or guarantees or that the person in effect guarantees through an agreement to purchase, whether that agreement is contingent or otherwise; and

all renewals, extensions or refundings of indebtedness of the kinds described in the first, second or fourth bullet point above and all renewals or extensions of leases of the kinds described in the third or fourth bullet point above; unless, in the case of any particular indebtedness, lease, renewal, extension or refunding, the instrument or lease creating or evidencing it or the assumption or guarantee relating to it expressly provides that such indebtedness, lease, renewal, extension or refunding is not superior in right of payment to the subordinated debt securities. Our senior debt securities constitute senior indebtedness for purposes of the subordinated debt indenture.

**Table of Contents**

**DESCRIPTION OF CAPITAL STOCK**

The following description of our capital stock is intended as a summary only. This description is based upon, and is qualified by reference to, our certificate of incorporation, our bylaws and applicable provisions of Delaware corporate law. This summary is not complete. You should read our certificate of incorporation and bylaws, which are filed as exhibits to the registration statement of which this prospectus forms a part, for the provisions that are important to you.

Our authorized capital stock consists of 50,000,000 shares of common stock, \$.001 par value per share, and 4,000,000 shares of preferred stock, par value \$.001 per share. As of July 15, 2011, no shares of preferred stock were outstanding.

**Common Stock**

*Voting Rights.* Each holder of common stock is entitled to one vote for each share held on all matters to be voted upon by stockholders.

*Dividends.* The holders of common stock, after any preferences of holders of any preferred stock, are entitled to receive dividends when and if declared by the board of directors out of legally available funds.

*Liquidation and Dissolution.* If we are liquidated or dissolved, the holders of the common stock will be entitled to share in our assets available for distribution to stockholders in proportion to the amount of common stock they own. The amount available for common stockholders is calculated after payment of liabilities and is subject to any preferential rights of any then outstanding preferred stock.

*Other rights.* Holders of the common stock have no right to:

convert the stock into any other security;

have the stock redeemed; or

purchase additional stock or to maintain their proportionate ownership interest.

The common stock does not have cumulative voting rights. Holders of shares of the common stock are not required to make additional capital contributions.

*Transfer Agent and Registrar.* Computershare is transfer agent and registrar for the common stock.

**Director s Liability**

Our certificate of incorporation provides that members of the board of directors will not be personally liable to us or our stockholders for monetary damages for any breach of their fiduciary duties as directors, except to the extent that Delaware law prohibits the elimination or limitation of such liability. Our certificate of incorporation also allows us to indemnify directors and officers to the fullest extent authorized by Delaware law.

**Provisions of Our Certificate of Incorporation and Bylaws and Delaware Law That May Have Anti-Takeover Effects**

*Board of Directors.* Our bylaws provide that our board of directors is divided into three classes, with no class having more than one director more than any other class. The number of directors comprising our board of directors is fixed from time to time by the board of directors, but in no event may be less than three. The classification of directors has the effect of making it more difficult for stockholders to change the composition of our board.

## **Table of Contents**

*Removal of Directors by Stockholders.* Delaware law provides that members of a classified board of directors may only be removed for cause by a vote of the holders of a majority of the outstanding shares entitled to vote on the election of the directors.

*Stockholder Nomination of Directors.* Our bylaws provide that a stockholder must notify us in writing of any stockholder nomination not less than 60 days nor more than 90 days prior to our stockholder meeting; provided, however, that if we give stockholders less than 70 days' notice or prior public disclosure of the date of the meeting, such notice must have been given to us no later than the close of business on the tenth day following the date on which the notice of the meeting was mailed or such public disclosure was made, whichever occurs first.

*No Action By Written Consent.* Our certificate of incorporation provides that our stockholders may not act by written consent and may only act at duly called meetings of stockholders.

*Delaware Business Combination Statute.* Section 203 of the Delaware General Corporation Law, which we refer to as the DGCL, is applicable to us. Section 203 of the DGCL restricts some types of transactions and business combinations between a corporation and a 15% stockholder. A 15% stockholder is generally considered by Section 203 to be a person owning 15% or more of the corporation's outstanding voting stock. Section 203 refers to a 15% stockholder as an interested stockholder. Section 203 restricts these transactions for a period of three years from the date the stockholder acquires 15% or more of our outstanding voting stock. With some exceptions, unless the transaction is approved by the board of directors and the holders of at least two-thirds of the outstanding voting stock of the corporation, Section 203 prohibits significant business transactions such as:

a merger with, disposition of significant assets to or receipt of disproportionate financial benefits by the interested stockholder, and

any other transaction that would increase the interested stockholder's proportionate ownership of any class or series of our capital stock. The shares held by the interested stockholder are not counted as outstanding when calculating the two-thirds of the outstanding voting stock needed for approval.

The prohibition against these transactions does not apply if:

prior to the time that any stockholder became an interested stockholder, the board of directors approved either the business combination or the transaction in which such stockholder acquired 15% or more of our outstanding voting stock, or

the interested stockholder owns at least 85% of our outstanding voting stock as a result of a transaction in which such stockholder acquired 15% or more of our outstanding voting stock. Shares held by persons who are both directors and officers or by some types of employee stock plans are not counted as outstanding when making this calculation.

### **Preferred Stock**

Under our certificate of incorporation, we have authority to issue 4,000,000 shares of preferred stock, par value \$.001 per share. Other terms of any series of preferred stock will be described in the prospectus supplement relating to that series of preferred stock. The terms of any series of preferred stock may differ from the terms described below. The summary of terms of the preferred stock contained in this prospectus is not complete. You should refer to our certificate of incorporation and the certificate of designation for the applicable series of preferred stock that are, or will be, filed with the SEC.

## Table of Contents

We are authorized to issue blank check preferred stock, which may be issued in one or more series upon authorization of our board of directors. Our board of directors is authorized to fix the designation of the series, the number of authorized shares of the series, dividend rights and terms, conversion rights, voting rights, redemption rights and terms, liquidation preferences, and any other rights, powers, preferences and limitations applicable to each series of the preferred stock. The authorized shares of our preferred stock are available for issuance without further action by our stockholders, unless such action is required by applicable law or the rules of any stock exchange on which our securities may be listed. If the approval of our stockholders is not required for the issuance of shares of our preferred stock, our board may determine not to seek stockholder approval.

A series of our preferred stock could, depending on the terms of such series, impede the completion of a merger, tender offer or other takeover attempt. Our board of directors will make any determination to issue such shares based upon its judgment as to the best interests of our stockholders. Our directors, in so acting, could issue our preferred stock having terms that could discourage an acquisition attempt through which an acquirer may be able to change the composition of our board of directors, including a tender offer or other transaction that some, or a majority, of our stockholders might believe to be in their best interests or in which stockholders might receive a premium for their stock over the then-current market price of the stock.

The preferred stock has the terms described below unless otherwise provided in the prospectus supplement relating to a particular series of the preferred stock. You should read the prospectus supplement relating to the particular series of the preferred stock being offered for specific terms, including:

the designation and stated value per share of the preferred stock and the number of shares offered;

the amount of liquidation preference per share;

the price at which the preferred stock will be issued;

the dividend rate, or method of calculation of dividends, the dates on which dividends will be payable, whether dividends will be cumulative or noncumulative and, if cumulative, the dates from which dividends will commence to accumulate;

any redemption or sinking fund provisions;

if other than the currency of the United States, the currency or currencies including composite currencies in which the preferred stock is denominated or in which payments will or may be payable;

any conversion provisions;

whether we have elected to offer depositary shares as described under [Description of Depositary Shares](#) ; and

any other rights, preferences, privileges, limitations and restrictions on the preferred stock.

The preferred stock will, when issued, be fully paid and nonassessable. Unless otherwise specified in the prospectus supplement, each series of the preferred stock will rank equally as to dividends and liquidation rights in all respects with each other series of preferred stock. The rights of holders of shares of each series of preferred stock will be subordinate to those of our general creditors.



As described under Description of Depositary Shares, we may, at our option, with respect to any series of preferred stock, elect to offer fractional interests in shares of preferred stock, and provide for the issuance of depositary receipts representing depositary shares, each of which will represent a fractional interest in a share of the series of the preferred stock. The fractional interest will be specified in the prospectus supplement relating to a particular series of the preferred stock.

## Table of Contents

*Rank.* Unless otherwise specified in the prospectus supplement, the preferred stock will, with respect to dividend rights and rights upon our liquidation, dissolution or winding up of its affairs, rank:

senior to our common stock and to all equity securities ranking junior to such preferred stock with respect to dividend rights or rights upon our liquidation, dissolution or winding up of our affairs;

on a parity with all equity securities issued by us, the terms of which specifically provide that such equity securities rank on a parity with the preferred stock with respect to dividend rights or rights upon our liquidation, dissolution or winding up of our affairs; and

junior to all equity securities issued by us, the terms of which specifically provide that such equity securities rank senior to the preferred stock with respect to dividend rights or rights upon our liquidation, dissolution or winding up of our affairs.

The term *equity securities* does not include convertible debt securities.

*Dividends.* Holders of the preferred stock of each series will be entitled to receive, when, as and if declared by our board of directors, cash dividends at such rates and on such dates described in the prospectus supplement. Different series of preferred stock may be entitled to dividends at different rates or based on different methods of calculation. The dividend rate may be fixed or variable or both. Dividends will be payable to the holders of record as they appear on our stock books on record dates fixed by our board of directors, as specified in the applicable prospectus supplement.

Dividends on any series of the preferred stock may be cumulative or noncumulative, as described in the applicable prospectus supplement. If our board of directors does not declare a dividend payable on a dividend payment date on any series of noncumulative preferred stock, then the holders of that noncumulative preferred stock will have no right to receive a dividend for that dividend payment date, and we will have no obligation to pay the dividend accrued for that period, whether or not dividends on that series are declared payable on any future dividend payment dates. Dividends on any series of cumulative preferred stock will accrue from the date we initially issue shares of such series or such other date specified in the applicable prospectus supplement.

No dividends may be declared or paid or funds set apart for the payment of any dividends on any parity securities unless full dividends have been paid or set apart for payment on the preferred stock. If full dividends are not paid, the preferred stock will share dividends pro rata with the parity securities.

No dividends may be declared or paid or funds set apart for the payment of dividends on any junior securities unless full dividends for all dividend periods terminating on or prior to the date of the declaration or payment will have been paid or declared and a sum sufficient for the payment set apart for payment on the preferred stock.

*Liquidation Preference.* Upon any voluntary or involuntary liquidation, dissolution or winding up of our affairs, then, before we make any distribution or payment to the holders of any common stock or any other class or series of our capital stock ranking junior to the preferred stock in the distribution of assets upon any liquidation, dissolution or winding up of our affairs, the holders of each series of preferred stock shall be entitled to receive out of assets legally available for distribution to stockholders, liquidating distributions in the amount of the liquidation preference per share set forth in the prospectus supplement, plus any accrued and unpaid dividends thereon. Such dividends will not include any accumulation in respect of unpaid noncumulative dividends for prior dividend periods. Unless otherwise specified in the prospectus supplement, after payment of the full amount of their liquidating distributions, the holders of preferred stock will have no right or claim to any of our remaining assets. Upon any such voluntary or involuntary liquidation, dissolution or winding up, if our available assets are insufficient to pay the amount of the liquidating distributions on all outstanding preferred stock and the corresponding amounts payable on all

## **Table of Contents**

other classes or series of our capital stock ranking on parity with the preferred stock and all other such classes or series of shares of capital stock ranking on parity with the preferred stock in the distribution of assets, then the holders of the preferred stock and all other such classes or series of capital stock will share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be entitled.

Upon any such liquidation, dissolution or winding up and if we have made liquidating distributions in full to all holders of preferred stock, we will distribute our remaining assets among the holders of any other classes or series of capital stock ranking junior to the preferred stock according to their respective rights and preferences and, in each case, according to their respective number of shares. For such purposes, our consolidation or merger with or into any other corporation, trust or entity, or the sale, lease or conveyance of all or substantially all of our property or assets will not be deemed to constitute a liquidation, dissolution or winding up of our affairs.

*Redemption.* If so provided in the applicable prospectus supplement, the preferred stock will be subject to mandatory redemption or redemption at our option, as a whole or in part, in each case upon the terms, at the times and at the redemption prices set forth in such prospectus supplement.

The prospectus supplement relating to a series of preferred stock that is subject to mandatory redemption will specify the number of shares of preferred stock that shall be redeemed by us in each year commencing after a date to be specified, at a redemption price per share to be specified, together with an amount equal to all accrued and unpaid dividends thereon to the date of redemption. Unless the shares have a cumulative dividend, such accrued dividends will not include any accumulation in respect of unpaid dividends for prior dividend periods. We may pay the redemption price in cash or other property, as specified in the applicable prospectus supplement. If the redemption price for preferred stock of any series is payable only from the net proceeds of the issuance of shares of our capital stock, the terms of such preferred stock may provide that, if no such shares of our capital stock shall have been issued or to the extent the net proceeds from any issuance are insufficient to pay in full the aggregate redemption price then due, such preferred stock shall automatically and mandatorily be converted into the applicable shares of our capital stock pursuant to conversion provisions specified in the applicable prospectus supplement. Notwithstanding the foregoing, we will not redeem any preferred stock of a series unless:

if that series of preferred stock has a cumulative dividend, we have declared and paid or contemporaneously declare and pay or set aside funds to pay full cumulative dividends on the preferred stock for all past dividend periods and the then current dividend period; or

if such series of preferred stock does not have a cumulative dividend, we have declared and paid or contemporaneously declare and pay or set aside funds to pay full dividends for the then current dividend period.

In addition, we will not acquire any preferred stock of a series unless:

if that series of preferred stock has a cumulative dividend, we have declared and paid or contemporaneously declare and pay or set aside funds to pay full cumulative dividends on all outstanding shares of such series of preferred stock for all past dividend periods and the then current dividend period; or

if that series of preferred stock does not have a cumulative dividend, we have declared and paid or contemporaneously declare and pay or set aside funds to pay full dividends on the preferred stock of such series for the then current dividend period.

## **Table of Contents**

However, at any time we may purchase or acquire preferred stock of that series (1) pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding preferred stock of such series or (2) by conversion into or exchange for shares of our capital stock ranking junior to the preferred stock of such series as to dividends and upon liquidation.

If fewer than all of the outstanding shares of preferred stock of any series are to be redeemed, we will determine the number of shares that may be redeemed pro rata from the holders of record of such shares in proportion to the number of such shares held or for which redemption is requested by such holder or by any other equitable manner that we determine. Such determination will reflect adjustments to avoid redemption of fractional shares.

Unless otherwise specified in the prospectus supplement, we will mail notice of redemption at least 30 days but not more than 60 days before the redemption date to each holder of record of preferred stock to be redeemed at the address shown on our stock transfer books. Each notice shall state:

the redemption date;

the number of shares and series of preferred stock to be redeemed;

the redemption price;

the place or places where certificates for such preferred stock are to be surrendered for payment of the redemption price;

that dividends on the shares to be redeemed will cease to accrue on such redemption date;

the date upon which the holder's conversion rights, if any, as to such shares shall terminate; and

the specific number of shares to be redeemed from each such holder if fewer than all the shares of any series are to be redeemed. If notice of redemption has been given and we have set aside the funds necessary for such redemption in trust for the benefit of the holders of any shares called for redemption, then from and after the redemption date, dividends will cease to accrue on such shares, and all rights of the holders of such shares will terminate, except the right to receive the redemption price.

*Voting Rights.* Holders of preferred stock will not have any voting rights, except as required by law or as indicated in the applicable prospectus supplement.

Unless otherwise provided for under the terms of any series of preferred stock, no consent or vote of the holders of shares of preferred stock or any series thereof shall be required for any amendment to our certificate of incorporation that would increase the number of authorized shares of preferred stock or the number of authorized shares of any series thereof or decrease the number of authorized shares of preferred stock or the number of authorized shares of any series thereof (but not below the number of authorized shares of preferred stock or such series, as the case may be, then outstanding).

*Conversion Rights.* The terms and conditions, if any, upon which any series of preferred stock is convertible into our common stock will be set forth in the applicable prospectus supplement relating thereto. Such terms will include the number of shares of common stock into which the shares of preferred stock are convertible, the conversion price, rate or manner of calculation thereof, the conversion period, provisions as to whether conversion will be at our option or at the option of the holders of the preferred stock, the events requiring an adjustment of the conversion price and provisions affecting conversion in the event of the redemption.

*Transfer Agent and Registrar.* The transfer agent and registrar for the preferred stock will be set forth in the applicable prospectus supplement.



**Table of Contents**

**DESCRIPTION OF DEPOSITARY SHARES**

**General**

We may, at our option, elect to offer fractional shares of preferred stock, which we call depositary shares, rather than full shares of preferred stock. If we do, we will issue to the public receipts, called depositary receipts, for depositary shares, each of which will represent a fraction, to be described in the applicable prospectus supplement, of a share of a particular series of preferred stock. Unless otherwise provided in the prospectus supplement, each owner of a depositary share will be entitled, in proportion to the applicable fractional interest in a share of preferred stock represented by the depositary share, to all the rights and preferences of the preferred stock represented by the depositary share. Those rights include dividend, voting, redemption, conversion and liquidation rights.

The shares of preferred stock underlying the depositary shares will be deposited with a bank or trust company selected by us to act as depositary under a deposit agreement between us, the depositary and the holders of the depositary receipts. The depositary will be the transfer agent, registrar and dividend disbursing agent for the depositary shares.

The depositary shares will be evidenced by depositary receipts issued pursuant to the depositary agreement. Holders of depositary receipts agree to be bound by the deposit agreement, which requires holders to take certain actions such as filing proof of residence and paying certain charges.

The summary of terms of the depositary shares contained in this prospectus is not complete. You should refer to the form of the deposit agreement, our certificate of incorporation and the certificate of designation for the applicable series of preferred stock that are, or will be, filed with the SEC.

**Dividends and Other Distributions**

The depositary will distribute all cash dividends or other cash distributions, if any, received in respect of the preferred stock underlying the depositary shares to the record holders of depositary shares in proportion to the numbers of depositary shares owned by those holders on the relevant record date. The relevant record date for depositary shares will be the same date as the record date for the underlying preferred stock.

If there is a distribution other than in cash, the depositary will distribute property (including securities) received by it to the record holders of depositary shares, unless the depositary determines that it is not feasible to make the distribution. If this occurs, the depositary may, with our approval, adopt another method for the distribution, including selling the property and distributing the net proceeds from the sale to the holders.

**Liquidation Preference**

If a series of preferred stock underlying the depositary shares has a liquidation preference, in the event of the voluntary or involuntary liquidation, dissolution or winding up of us, holders of depositary shares will be entitled to receive the fraction of the liquidation preference accorded each share of the applicable series of preferred stock, as set forth in the applicable prospectus supplement.

**Withdrawal of Stock**

Unless the related depositary shares have been previously called for redemption, upon surrender of the depositary receipts at the office of the depositary, the holder of the depositary shares will be entitled to delivery, at the office of the depositary to or upon his or her order, of the number of whole shares of the preferred stock and any money or other property represented by the depositary shares. If the depositary

## **Table of Contents**

receipts delivered by the holder evidence a number of depositary shares in excess of the number of depositary shares representing the number of whole shares of preferred stock to be withdrawn, the depositary will deliver to the holder at the same time a new depositary receipt evidencing the excess number of depositary shares. In no event will the depositary deliver fractional shares of preferred stock upon surrender of depositary receipts. Holders of preferred stock thus withdrawn may not thereafter deposit those shares under the deposit agreement or receive depositary receipts evidencing depositary shares therefor.

### **Redemption of Depositary Shares**

Whenever we redeem shares of preferred stock held by the depositary, the depositary will redeem as of the same redemption date the number of depositary shares representing shares of the preferred stock so redeemed, so long as we have paid in full to the depositary the redemption price of the preferred stock to be redeemed plus an amount equal to any accumulated and unpaid dividends on the preferred stock to the date fixed for redemption. The redemption price per depositary share will be equal to the redemption price and any other amounts per share payable on the preferred stock multiplied by the fraction of a share of preferred stock represented by one depositary share. If less than all the depositary shares are to be redeemed, the depositary shares to be redeemed will be selected by lot or pro rata or by any other equitable method as may be determined by the depositary.

After the date fixed for redemption, depositary shares called for redemption will no longer be deemed to be outstanding and all rights of the holders of depositary shares will cease, except the right to receive the monies payable upon redemption and any money or other property to which the holders of the depositary shares were entitled upon redemption upon surrender to the depositary of the depositary receipts evidencing the depositary shares.

### **Voting the Preferred Stock**

Upon receipt of notice of any meeting at which the holders of the preferred stock are entitled to vote, the depositary will mail the information contained in the notice of meeting to the record holders of the depositary receipts relating to that preferred stock. The record date for the depositary receipts relating to the preferred stock will be the same date as the record date for the preferred stock. Each record holder of the depositary shares on the record date will be entitled to instruct the depositary as to the exercise of the voting rights pertaining to the number of shares of preferred stock represented by that holder's depositary shares. The depositary will endeavor, insofar as practicable, to vote the number of shares of preferred stock represented by the depositary shares in accordance with those instructions, and we will agree to take all action that may be deemed necessary by the depositary in order to enable the depositary to do so. The depositary will not vote any shares of preferred stock except to the extent it receives specific instructions from the holders of depositary shares representing that number of shares of preferred stock.

### **Charges of Depositary**

We will pay all transfer and other taxes and governmental charges arising solely from the existence of the depositary arrangements. We will pay charges of the depositary in connection with the initial deposit of the preferred stock and any redemption of the preferred stock. Holders of depositary receipts will pay transfer, income and other taxes and governmental charges and such other charges (including those in connection with receipt and distribution of dividends, the sale or exercise of rights, the withdrawal of the preferred stock and the transferring, splitting or grouping of depositary receipts) as are expressly provided in the deposit agreement to be for their accounts. If these charges have not been paid by the holders of depositary receipts, the depositary may refuse to transfer depositary shares, withhold dividends and distributions and sell the depositary shares evidenced by the depositary receipt.

## **Table of Contents**

### **Amendment and Termination of the Deposit Agreement**

The form of depositary receipt evidencing the depositary shares and any provision of the deposit agreement may be amended by agreement between us and the depositary. However, any amendment that materially and adversely alters the rights of the holders of depositary shares, other than fee changes, will not be effective unless the amendment has been approved by the holders of a majority of the outstanding depositary shares. The deposit agreement may be terminated by the depositary or us only if:

all outstanding depositary shares have been redeemed; or

there has been a final distribution of the preferred stock in connection with our dissolution and such distribution has been made to all the holders of depositary shares.

### **Resignation and Removal of Depositary**

The depositary may resign at any time by delivering to us notice of its election to do so, and we may remove the depositary at any time. Any resignation or removal of the depositary will take effect upon our appointment of a successor depositary and its acceptance of such appointment. The successor depositary must be appointed within 60 days after delivery of the notice of resignation or removal and must be a bank or trust company having its principal office in the United States and having the requisite combined capital and surplus as set forth in the applicable agreement.

### **Notices**

The depositary will forward to holders of depositary receipts all notices, reports and other communications, including proxy solicitation materials received from us, that are delivered to the depositary and that we are required to furnish to the holders of the preferred stock. In addition, the depositary will make available for inspection by holders of depositary receipts at the principal office of the depositary, and at such other places as it may from time to time deem advisable, any reports and communications we deliver to the depositary as the holder of preferred stock.

### **Limitation of Liability**

Neither we nor the depositary will be liable if either is prevented or delayed by law or any circumstance beyond its control in performing its obligations. Our obligations and those of the depositary will be limited to performance in good faith of our and their duties thereunder. We and the depositary will not be obligated to prosecute or defend any legal proceeding in respect of any depositary shares or preferred stock unless satisfactory indemnity is furnished. We and the depositary may rely upon written advice of counsel or accountants, on information provided by persons presenting preferred stock for deposit, holders of depositary receipts or other persons believed to be competent to give such information and on documents believed to be genuine and to have been signed or presented by the proper party or parties.



**Table of Contents**

**DESCRIPTION OF STOCK PURCHASE CONTRACTS AND STOCK**

**PURCHASE UNITS**

We may issue stock purchase contracts, including contracts obligating holders to purchase from or sell to us, and obligating us to sell to or purchase from the holders, a specified number of shares of our common stock, preferred stock or depositary shares at a future date or dates, which we refer to in this prospectus as stock purchase contracts. The price per share of common stock, preferred stock or depositary shares and the number of shares of each may be fixed at the time the stock purchase contracts are issued or may be determined by reference to a specific formula set forth in the stock purchase contracts. The stock purchase contracts may be issued separately or as part of units, often known as stock purchase units, consisting of one or more stock purchase contracts and beneficial interests in debt securities or any other securities described in the applicable prospectus supplement or any combination of the foregoing, securing the holders' obligations to purchase the common stock, preferred stock or depositary shares under the stock purchase contracts.

The stock purchase contracts may require us to make periodic payments to the holders of the stock purchase units or vice versa, and these payments may be unsecured or prefunded on some basis. The stock purchase contracts may require holders to secure their obligations under those contracts in a specified manner, including pledging their interest in another stock purchase contract.

The applicable prospectus supplement will describe the terms of the stock purchase contracts and stock purchase units, including, if applicable, collateral or depositary arrangements.

**Table of Contents**

**DESCRIPTION OF WARRANTS**

We may issue warrants to purchase debt securities, preferred stock, depositary shares or common stock. We may offer warrants separately or together with one or more additional warrants, debt securities, preferred stock, depositary shares or common stock, or any combination of those securities in the form of units, as described in the applicable prospectus supplement. If we issue warrants as part of a unit, the accompanying prospectus supplement will specify whether those warrants may be separated from the other securities in the unit prior to the expiration date of the warrants. The applicable prospectus supplement will also describe the following terms of any warrants:

the specific designation and aggregate number of, and the offering price at which we will issue, the warrants;

the currency or currency units in which the offering price, if any, and the exercise price are payable;

the date on which the right to exercise the warrants will begin and the date on which that right will expire or, if you may not continuously exercise the warrants throughout that period, the specific date or dates on which you may exercise the warrants;

whether the warrants are to be sold separately or with other securities as parts of units;

whether the warrants will be issued in definitive or global form or in any combination of these forms, although, in any case, the form of a warrant included in a unit will correspond to the form of the unit and of any security included in that unit;

any applicable material U.S. federal income tax consequences;

the identity of the warrant agent for the warrants and of any other depositaries, execution or paying agents, transfer agents, registrars or other agents;

the proposed listing, if any, of the warrants or any securities purchasable upon exercise of the warrants on any securities exchange;

the designation and terms of any equity securities purchasable upon exercise of the warrants;

the designation, aggregate principal amount, currency and terms of any debt securities that may be purchased upon exercise of the warrants;

if applicable, the designation and terms of the debt securities, preferred stock, depositary shares or common stock with which the warrants are issued and, the number of warrants issued with each security;

if applicable, the date from and after which any warrants issued as part of a unit and the related debt securities, preferred stock, depositary shares or common stock will be separately transferable;

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the number of shares of preferred stock, the number of depositary shares or the number of shares of common stock purchasable upon exercise of a warrant and the price at which those shares may be purchased;

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

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

the antidilution provisions of, and other provisions for changes to or adjustment in the exercise price of, the warrants, if any;

any redemption or call provisions; and

any additional terms of the warrants, including terms, procedures and limitations relating to the exchange or exercise of the warrants.

**Table of Contents**

**FORMS OF SECURITIES**

Each debt security, depositary share, stock purchase contract, stock purchase unit and warrant will be represented either by a certificate issued in definitive form to a particular investor or by one or more global securities representing the entire issuance of securities. Unless the applicable prospectus supplement provides otherwise, certificated securities in definitive form and global securities will be issued in registered form. Definitive securities name you or your nominee as the owner of the security, and in order to transfer or exchange these securities or to receive payments other than interest or other interim payments, you or your nominee must physically deliver the securities to the trustee, registrar, paying agent or other agent, as applicable. Global securities name a depositary or its nominee as the owner of the debt securities, depositary shares, stock purchase contracts, stock purchase units or warrants represented by these global securities. The depositary maintains a computerized system that will reflect each investor's beneficial ownership of the securities through an account maintained by the investor with its broker/dealer, bank, trust company or other representative, as explained more fully below.

**Registered Global Securities**

We may issue the registered debt securities, depositary shares, stock purchase contracts, stock purchase units and warrants in the form of one or more fully registered global securities that will be deposited with a depositary or its nominee identified in the applicable prospectus supplement and registered in the name of that depositary or nominee. In those cases, one or more registered global securities will be issued in a denomination or aggregate denominations equal to the portion of the aggregate principal or face amount of the securities to be represented by registered global securities. Unless and until it is exchanged in whole for securities in definitive registered form, a registered global security may not be transferred except as a whole by and among the depositary for the registered global security, the nominees of the depositary or any successors of the depositary or those nominees.

If not described below, any specific terms of the depositary arrangement with respect to any securities to be represented by a registered global security will be described in the prospectus supplement relating to those securities. We anticipate that the following provisions will apply to all depositary arrangements.

Ownership of beneficial interests in a registered global security will be limited to persons, called participants, that have accounts with the depositary or persons that may hold interests through participants. Upon the issuance of a registered global security, the depositary will credit, on its book-entry registration and transfer system, the participants' accounts with the respective principal or face amounts of the securities beneficially owned by the participants. Any dealers, underwriters or agents participating in the distribution of the securities will designate the accounts to be credited. Ownership of beneficial interests in a registered global security will be shown on, and the transfer of ownership interests will be effected only through, records maintained by the depositary, with respect to interests of participants, and on the records of participants, with respect to interests of persons holding through participants. The laws of some states may require that some purchasers of securities take physical delivery of these securities in definitive form. These laws may impair your ability to own, transfer or pledge beneficial interests in registered global securities.

So long as the depositary, or its nominee, is the registered owner of a registered global security, that depositary or its nominee, as the case may be, will be considered the sole owner or holder of the securities represented by the registered global security for all purposes under the applicable indenture, stock purchase contract, warrant agreement or stock purchase unit agreement. Except as described below, owners of beneficial interests in a registered global security will not be entitled to have the securities represented by the registered global security registered in their names, will not receive or be entitled to receive physical delivery of the securities in definitive form and will not be considered the owners or holders of the securities under the applicable indenture, depositary share agreement, stock purchase contract, stock

## **Table of Contents**

purchase unit agreement or warrant agreement. Accordingly, each person owning a beneficial interest in a registered global security must rely on the procedures of the depositary for that registered global security and, if that person is not a participant, on the procedures of the participant through which the person owns its interest, to exercise any rights of a holder under the applicable indenture, depositary share agreement, stock purchase contract, stock purchase unit agreement or warrant agreement. We understand that under existing industry practices, if we request any action of holders or if an owner of a beneficial interest in a registered global security desires to give or take any action that a holder is entitled to give or take under the applicable indenture, depositary share agreement, stock purchase contract, stock purchase unit agreement or warrant agreement, the depositary for the registered global security would authorize the participants holding the relevant beneficial interests to give or take that action, and the participants would authorize beneficial owners owning through them to give or take that action or would otherwise act upon the instructions of beneficial owners holding through them.

Principal, premium, if any, and interest payments on debt securities, and any payments to holders with respect to warrants, stock purchase agreements or stock purchase units, represented by a registered global security registered in the name of a depositary or its nominee will be made to the depositary or its nominee, as the case may be, as the registered owner of the registered global security. None of us, the trustees, the warrant agents, the unit agents or any other agent of ours, agent of the trustees or agent of the warrant agents or unit agents will have any responsibility or liability for any aspect of the records relating to payments made on account of beneficial ownership interests in the registered global security or for maintaining, supervising or reviewing any records relating to those beneficial ownership interests.

We expect that the depositary for any of the securities represented by a registered global security, upon receipt of any payment of principal, premium, interest or other distribution of underlying securities or other property to holders on that registered global security, will immediately credit participants' accounts in amounts proportionate to their respective beneficial interests in that registered global security as shown on the records of the depositary. We also expect that payments by participants to owners of beneficial interests in a registered global security held through participants will be governed by standing customer instructions and customary practices, as is now the case with the securities held for the accounts of customers or registered in street name, and will be the responsibility of those participants.

If the depositary for any of the securities represented by a registered global security is at any time unwilling or unable to continue as depositary or ceases to be a clearing agency registered under the Exchange Act, and a successor depositary registered as a clearing agency under the Exchange Act is not appointed by us within 90 days, we will issue securities in definitive form in exchange for the registered global security that had been held by the depositary. Any securities issued in definitive form in exchange for a registered global security will be registered in the name or names that the depositary gives to the relevant trustee, warrant agent, unit agent or other relevant agent of ours or theirs. It is expected that the depositary's instructions will be based upon directions received by the depositary from participants with respect to ownership of beneficial interests in the registered global security that had been held by the depositary.

**Table of Contents**

**SELLING STOCKHOLDERS**

In addition to covering the offering of securities by us, this prospectus covers the offering for resale of securities by selling stockholders. The applicable prospectus supplement will set forth, with respect to each selling stockholder:

the name of the selling stockholder;

the nature of any position, office or other material relationship which the selling stockholder will have had during the prior three years with us or any of our predecessors or affiliates;

the number of securities owned by the selling stockholder prior to the offering;

the number of securities to be offered for the selling stockholder's account; and

the number of securities and (if one percent or more) the percentage of the applicable class of securities to be owned by the selling stockholder after completion of the offering.

**Table of Contents**

**PLAN OF DISTRIBUTION**

We or a selling stockholder may sell securities:

through underwriters;

through dealers;

through agents;

directly to purchasers; or

through a combination of any of these methods of sale.

In addition, we may issue the securities as a dividend or distribution or in a subscription rights offering to our existing security holders.

We or any selling stockholder may directly solicit offers to purchase securities, or agents may be designated to solicit such offers. We will, in the prospectus supplement relating to such offering, name any agent that could be viewed as an underwriter under the Securities Act, and describe any commissions that we must pay. Any such agent will be acting on a best efforts basis for the period of its appointment or, if indicated in the applicable prospectus supplement, on a firm commitment basis. This prospectus may be used in connection with any offering of our securities through any of these methods or other methods described in the applicable prospectus supplement.

The distribution of the securities may be effected from time to time in one or more transactions:

at a fixed price, or prices, which may be changed from time to time;

at market prices prevailing at the time of sale;

at prices related to such prevailing market prices; or

at negotiated prices.

Each prospectus supplement will describe the method of distribution of the securities and any applicable restrictions.

The prospectus supplement with respect to the securities of a particular series will describe the terms of the offering of the securities, including the following:

the name of the agent or any underwriters;

the public offering or purchase price;

any discounts and commissions to be allowed or paid to the agent or underwriters;

all other items constituting underwriting compensation;

any discounts and commissions to be allowed or paid to dealers; and

any exchanges on which the securities will be listed.

If any underwriters or agents are utilized in the sale of the securities in respect of which this prospectus is delivered, we will enter into an underwriting agreement or other agreement with them at the time of sale to them, and we will set forth in the prospectus supplement relating to such offering the names of the underwriters or agents and the terms of the related agreement with them.

If a dealer is utilized in the sale of the securities in respect of which the prospectus is delivered, we and any selling stockholder will sell such securities to the dealer, as principal. The dealer may then resell such securities to the public at varying prices to be determined by such dealer at the time of resale.



## **Table of Contents**

If we offer securities in a subscription rights offering to our existing security holders, we may enter into a standby underwriting agreement with dealers, acting as standby underwriters. We may pay the standby underwriters a commitment fee for the securities they commit to purchase on a standby basis. If we do not enter into a standby underwriting arrangement, we may retain a dealer-manager to manage a subscription rights offering for us.

Agents, underwriters, dealers and other persons may be entitled under agreements which they may enter into with us to indemnification by us against certain civil liabilities, including liabilities under the Securities Act, and may be customers of, engage in transactions with or perform services for us in the ordinary course of business.

We may pay expenses incurred with respect to the registration of the securities owned by any selling stockholders.

If so indicated in the applicable prospectus supplement, we or any selling stockholder will authorize underwriters or other persons acting as our agents to solicit offers by certain institutions to purchase securities from us pursuant to delayed delivery contracts providing for payment and delivery on the date stated in the prospectus supplement. Each contract will be for an amount not less than, and the aggregate amount of securities sold pursuant to such contracts shall not be less nor more than, the respective amounts stated in the prospectus supplement. Institutions with whom the contracts, when authorized, may be made include commercial and savings banks, insurance companies, pension funds, investment companies, educational and charitable institutions and other institutions, but shall in all cases be subject to our approval. Delayed delivery contracts will not be subject to any conditions except that:

the purchase by an institution of the securities covered under that contract shall not at the time of delivery be prohibited under the laws of the jurisdiction to which that institution is subject; and

if the securities are also being sold to underwriters acting as principals for their own account, the underwriters shall have purchased such securities not sold for delayed delivery. The underwriters and other persons acting as our agents will not have any responsibility in respect of the validity or performance of delayed delivery contracts.

Certain agents, underwriters and dealers, and their associates and affiliates may be customers of, have borrowing relationships with, engage in other transactions with, or perform services, including investment banking services, for us or one or more of our respective affiliates in the ordinary course of business.

In order to facilitate the offering of the securities, any underwriters may engage in transactions that stabilize, maintain or otherwise affect the price of the securities or any other securities the prices of which may be used to determine payments on such securities. Specifically, any underwriters may overallocate in connection with the offering, creating a short position for their own accounts. In addition, to cover overallocations or to stabilize the price of the securities or of any such other securities, the underwriters may bid for, and purchase, the securities or any such other securities in the open market. Finally, in any offering of the securities through a syndicate of underwriters, the underwriting syndicate may reclaim selling concessions allowed to an underwriter or a dealer for distributing the securities in the offering if the syndicate repurchases previously distributed securities in transactions to cover syndicate short positions, in stabilization transactions or otherwise. Any of these activities may stabilize or maintain the market price of the securities above independent market levels. Any such underwriters are not required to engage in these activities and may end any of these activities at any time.

Under Rule 15c6-1 of the Exchange Act, trades in the secondary market generally are required to settle in three business days, unless the parties to any such trade expressly agree otherwise. Your prospectus supplement may provide that the original issue date for your securities may be more than three scheduled business days after the trade date for your securities. Accordingly, in such a case, if you wish to trade

**Table of Contents**

securities on any date prior to the third business day before the original issue date for your securities, you will be required, by virtue of the fact that your securities initially are expected to settle in more than three scheduled business days after the trade date for your securities, to make alternative settlement arrangements to prevent a failed settlement.

The securities may be new issues of securities and may have no established trading market. The securities may or may not be listed on a national securities exchange. We can make no assurance as to the liquidity of or the existence of trading markets for any of the securities.

**Table of Contents**

**LEGAL MATTERS**

Unless the applicable prospectus supplement indicates otherwise, the validity of the securities in respect of which this prospectus is being delivered will be passed upon by Wilmer Cutler Pickering Hale and Dorr LLP.

**EXPERTS**

The consolidated financial statements of Bottomline Technologies (de), Inc. appearing in Bottomline Technologies (de), Inc.'s Annual Report (Form 10-K) for the year ended June 30, 2010, including the schedule appearing therein, have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their report thereon included therein, and incorporated herein by reference. Such financial statements and schedule are, and audited financial statements and schedule to be included in subsequently filed documents will be, incorporated herein in reliance upon the reports of Ernst & Young LLP pertaining to such financial statements and schedule as of the respective dates (to the extent covered by consents filed with the Securities and Exchange Commission) given on the authority of such firm as experts in accounting and auditing.

The consolidated financial statements of LAS Holdings, Inc. appearing in Bottomline Technologies (de), Inc.'s Current Report on Form 8-K/A filed with the SEC on June 8, 2011 have been audited by Crowe Horwath LLP, independent auditors, as set forth in their report thereon included in such Form 8-K/A and incorporated herein by reference. Such financial statements are incorporated herein in reliance upon the report of Crowe Horwath LLP pertaining to such financial statements given on the authority of such firm as experts in accounting and auditing.

Table of Contents

**\$150,000,000**

**BOTTOMLINE TECHNOLOGIES (de), INC.**

**% Convertible Senior Notes due 2017**

**PRELIMINARY PROSPECTUS SUPPLEMENT**

December , 2012

*Sole Coordinator*

**RBC CAPITAL MARKETS**

**RBS**