

ACUITY BRANDS INC  
Form 10-K  
October 27, 2015  
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UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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Form 10-K

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(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE  
ACT OF 1934  
For the fiscal year ended August 31, 2015

OR  
 TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE  
ACT OF 1934  
For the transition period from to .

Commission file number 001-16583.

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ACUITY BRANDS, INC.  
(Exact name of registrant as specified in its charter)

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Delaware	58-2632672
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification Number)
1170 Peachtree Street, N.E., Suite 2300, Atlanta, Georgia	30309-7676
(Address of principal executive offices)	(Zip Code)
(404) 853-1400	
(Registrant's telephone number, including area code)	

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Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Name of Each Exchange on Which Registered
Common Stock (\$0.01 Par Value)	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act: None

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Indicate by checkmark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by checkmark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

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Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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

Large Accelerated Filer  Accelerated Filer  Non-accelerated Filer  Smaller Reporting Company   
(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes  No   
Based on the closing price of the Registrant's common stock of \$158.48 as quoted on the New York Stock Exchange on February 28, 2015, the aggregate market value of the voting stock held by nonaffiliates of the registrant was \$6,883,007,480.

The number of shares outstanding of the registrant's common stock, \$0.01 par value, was 43,635,497 shares as of October 23, 2015.

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DOCUMENTS INCORPORATED BY REFERENCE

Location in Form 10-K	Incorporated Document
Part II, Item 5	Proxy Statement for 2015 Annual Meeting of Stockholders
Part III, Items 10, 11, 12, 13, and 14	Proxy Statement for 2015 Annual Meeting of Stockholders

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PART I

Item 1. Business

(\$ in millions, except per-share data and as indicated)

Overview

Acuity Brands, Inc. (“Acuity Brands”) is the parent company of Acuity Brands Lighting, Inc. (“ABL”) and other subsidiaries (Acuity Brands, ABL, and such other subsidiaries are collectively referred to herein as the “Company”), and was incorporated in 2001 under the laws of the State of Delaware. The Company is one of the world’s leading providers of lighting solutions for commercial, institutional, industrial, infrastructure, and residential applications throughout North America and select international markets. The Company’s lighting solutions include devices such as luminaires, lighting controls, lighting components, power supplies, prismatic skylights, and integrated lighting systems for indoor and outdoor applications utilizing a combination of light sources, including daylight, and other devices controlled by software that monitors and manages light levels while optimizing energy consumption (collectively referred to herein as “lighting solutions”). Additionally, the Company continues to expand its solutions portfolio for both indoor and outdoor applications in an effort to capitalize on the evolving and growing market for intelligent networked systems that collect and exchange data to increase efficiency as well as provide a host of other economic benefits resulting from data analytics to better enable smart buildings and smart cities. The transition to solid-state lighting provides the opportunity for lighting to be integrated with other building automation systems to create an optimal platform for enabling the “Internet of Things” (IoT), which will support the advancement of smart buildings, smart cities, and the smart grid.

On September 1, 2015, Acuity Brands acquired Distech Controls, Inc. (“Distech Controls”) a leading provider of building automation solutions that allow for the seamless integration of lighting, HVAC, access control, closed circuit television, and related systems. The acquisition of Distech Controls, coupled with Acuity Brands’ broad, industry-leading solid-state lighting portfolio, innovative control technologies and integrated digital solutions, is part of the Company’s strategy to offer a single digital ecosystem that will allow for the true end-to-end optimization of all aspects of a building, including a quality visual environment, seamless operation, energy efficiency, operational cost reductions, and increased digital functionality.

As a goal-oriented, customer-centric company, we expect to continue to align the unique capabilities and resources of our organization to drive profitable growth through a keen focus on providing comprehensive, differentiated, and integrated lighting and building automation solutions for our customers, driving world-class cost efficiency, and leveraging a culture of operational excellence through continuous improvement.

The Company manufactures or procures lighting devices primarily in North America, Europe, and Asia. These devices can be sold separately or as part of an integrated lighting system. Devices used in lighting systems vary significantly in terms of functionality and performance and are selected based on a customer's specification, including the aesthetic desires and performance requirements for a given lighting application. The Company’s lighting solutions are marketed under numerous brand names, including but not limited to Lithonia Lighting®, Holophane®, Peerless®, Gotham®, Mark Architectural Lighting™, Winona® Lighting, Healthcare Lighting®, Hydrel®, American Electric Lighting®, Carandini®, Antique Street Lamps™, Sunoptics®, RELOC® Wiring Solutions, eldoLED®, Distech Controls®, and Acuity Controls™. As of August 31, 2015, the Company manufactures products in 13 facilities in North America and two facilities in Europe.

Principal customers include electrical distributors, retail home improvement centers, electric utilities, lighting showrooms, national accounts, and energy service companies located in North America and select international markets serving new construction, renovation, and maintenance and repair applications. In North America, the Company’s lighting solutions are sold primarily by independent sales agents, electrical wholesalers, and sales representatives who cover specific geographic areas and market channels. Products are delivered directly or through a network of distribution centers, regional warehouses, and commercial warehouses using both common carriers and a company-owned truck fleet. To serve international customers, the sales forces utilize a variety of distribution methods to meet specific individual customer or country requirements. In fiscal 2015, sales originated in North America accounted for approximately 97% of net sales. See the Supplemental Disaggregated Information footnote of the Notes to Consolidated Financial Statements for more information concerning the domestic and international net sales of the

Company. The Company has one reportable segment serving the North American lighting market and select international markets.

#### Industry Overview

Based on industry sources and government information, the Company estimates that in fiscal 2015 the size of the North American lighting market served by the Company (also referred to herein as “N.A. addressable lighting market”) was approximately \$14.5 billion and includes non-portable luminaires (as defined by the National Electrical Manufacturers Association), poles for outdoor lighting, emergency lighting fixtures, daylighting, and lighting controls. This market estimate is based on a combination of external industry data and internal estimates, and excludes portable and vehicular lighting fixtures and certain related lighting components, such as lighting ballasts and most lamps. The U.S. market, which represents approximately 80% of the North American market, is relatively fragmented.

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The Company operates in a highly competitive industry that is affected by volatility from a number of general business and economic factors, such as gross domestic product growth, employment levels, credit availability, energy costs, and commodity costs. The Company's market is based on residential and non-residential construction, both new and renovation and retrofit activity, which is sensitive to the volatility of these general economic factors. The Company is not aware of any data that accurately quantifies the split of the non-residential lighting market between new construction and renovation and retrofit activity; however, recent trends developed from industry sources and Company estimates suggest that renovation and retrofit activity represents a growing proportion of the total non-residential lighting market. Construction spending on infrastructure projects such as highways, streets, and urban developments has a material impact on the demand for the Company's infrastructure-focused lighting solutions. Demand for the Company's lighting solutions sold through certain retail channels is highly dependent on economic drivers, such as consumer spending and discretionary income, along with housing construction and home improvement spending.

A source of demand for the lighting industry is attributed to the renovation and retrofit of lighting systems in existing buildings. The Company estimates the potential market size of the installed base of U.S. lighting and lighting controls is significant (approximately \$300 billion) based on square footage of existing buildings, of which a majority represents potential space for relighting activities as they contain older, less efficient lighting systems.

The residential and non-residential industry is influenced by: the development of new lighting technologies, including solid-state lighting, electronic drivers, embedded lighting controls, and more effective optical designs and lamps; federal, state, and local requirements for updated energy codes; incentives by federal, state, and local municipal authorities, as well as utility companies, for using more energy-efficient lighting solutions; and design technologies addressing sustainability all to facilitate smarter buildings and smarter cities. The Company is a leading provider of integrated lighting solutions based on these technologies and utilizes internally developed, licensed, or acquired intellectual property. Solid-state lighting and digital building automation systems provide the opportunity for lighting and building automation systems to be integrated in a manner resulting in the optimal platform for enabling the "Internet of Things" (IoT) that collect and exchange data to increase efficiency as well as provide a host of other economic benefits resulting from data analytics. The industry's addressable market is likely to meaningfully expand due to the benefits and value creation provided by intelligent networked lighting and building automation systems and, therefore, new entrants, including both well-established as well as new software companies, continue to develop capabilities and solutions that are both complementary as well as competitive to those of traditional industry participants.

In addition, the September 2015 acquisition of Distech Controls, Inc. expanded the Company's addressable market to include building automation systems ("BAS"). The Company estimates that the addressable global BAS market, excluding lighting controls, for fiscal 2015 was \$8.7 billion. Sources of demand for the BAS market are similar to the lighting industry including new construction and renovation of existing structures.

**Products and Solutions**

The Company offers a broad portfolio of indoor and outdoor lighting products and solutions for commercial, institutional, industrial, infrastructure, and residential applications. The portfolio of products and solutions of the Company includes lighting products utilizing fluorescent, LED, organic LED ("OLED"), high intensity discharge, metal halide, and incandescent light sources to illuminate an extensive number of applications as well as standalone and embedded lighting control solutions from simple to sophisticated, wired and wireless. Lighting and controls products and solutions include the following: recessed, surface, and suspended lighting; downlighting; decorative lighting; emergency and exit lighting; track lighting; daylighting; special-use lighting; street and roadway lighting; parking garage lighting; underwater lighting; area pedestrian, flood, and decorative site lighting; landscape lighting; occupancy sensors; photocontrols; relay panels; architectural dimming panels; and integrated lighting controls systems.

The product and solutions portfolio of the Company also includes modular wiring, LED drivers, glass, and inverters sold primarily to original equipment manufacturers. In addition, the Company provides services across applications that primarily relate to monitoring and controlling lighting systems through network technologies and the commissioning of control systems.

Sales of lighting solutions, excluding services, accounted for approximately 99% of total consolidated net sales for Acuity Brands in fiscal 2015, 2014, and 2013.

Sales and Marketing

**Sales.** The Company sells lighting products and solutions to customers in the North American market utilizing numerous sales forces, including independent sales agencies, based on the channel served and geography. The Company also operates separate European sales forces, including independent international sales agencies, and an international sales group coordinating export sales outside of North America and Europe.

**Marketing.** The Company markets its portfolio and service capabilities to end users in multiple channels through a broad spectrum of marketing and promotional methods, including direct customer contact, trade shows, on-site training, print advertising

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in industry publications, product brochures and other literature, as well as the internet and social media. The Company operates training and display facilities in several locations throughout North America and Europe designed to enhance the lighting knowledge of customers and industry professionals.

### Customers

Customers of the Company include electrical distributors, retail home improvement centers, electric utilities, utility distributors, national accounts, U.S. government and municipalities, lighting showrooms, original equipment manufacturers ("OEMs"), and energy service companies. In addition, there are a variety of other professionals who could represent a significant influence in the product specification process for any given project. These generally include building owners, federal, state, and local governments, contractors, engineers, architects, and lighting designers.

A single customer of the Company, The Home Depot, accounted for approximately 11% of net sales in fiscal 2015, 12% in fiscal 2014, and 13% in fiscal 2013. These sales include products for resale as well as for lighting its facilities. The loss of The Home Depot's business could temporarily adversely affect the Company's results of operations.

### Manufacturing

The Company operates 15 manufacturing facilities, including seven facilities in the United States, five facilities in Mexico, two facilities in Europe, and one in Canada. The Company utilizes a blend of internal and outsourced manufacturing processes and capabilities to fulfill a variety of customer needs in the most cost-effective manner. Certain critical processes, such as reflector forming and anodizing, high-end glass production, surface mount circuit board production, LED driver production, software development, and assembly are performed (not exclusively) at company-operated facilities, offering the ability to differentiate products through superior capabilities. Other critical components, such as lamps, LEDs, certain LED light engines, sockets, and ballasts are purchased primarily from third-party vendors. The Company's investment in its production facilities is focused primarily on improving capabilities, product quality, and manufacturing efficiency as well as environmental, health, and safety compliance. The Company also utilizes contract manufacturing from U.S., Asian, and European sources for certain products. Of total finished goods manufactured and purchased in fiscal 2015, the Company's U.S. operations produced approximately 25%; its Mexican operations produced approximately 52%; its European operations produced approximately 2%; and finished product manufactured by others accounted for approximately 21%.

### Distribution

Lighting solutions are delivered directly from manufacturing facilities or through a network of strategically located distribution centers, regional warehouses, and commercial warehouses in North America using both common carriers and a company-owned truck fleet. For international customers, distribution methods are adapted to meet individual customer or country requirements.

### Research and Development

Research and development ("R&D") is defined as the critical investigation aimed at discovery of new knowledge and the conversion of that knowledge into the design of a new product or significant improvement to an existing product. The Company invests in the development of new products and solutions as well as the enhancement of existing offerings with a focus on improving the performance-to-cost ratio and energy efficiency. R&D expenses consist of compensation, payroll taxes, employee benefits, materials, supplies, and other administrative costs, but do not include all new product development costs. For fiscal 2015, 2014, and 2013, research and development expense totaled \$41.1, \$35.3, and \$32.7, respectively.

### Competition

The lighting market served by the Company is highly competitive, with some of the largest suppliers of lighting components also serving many of the same markets and competing for the same customers. Competition is based on numerous factors, including features and benefits, brand name recognition, product quality, product and lighting system design, energy efficiency, customer relationships, service capabilities, and price. The Company's largest competitors in the North American lighting market include the lighting divisions of Koninklijke Philips N.V., Eaton Corporation, Hubbell Incorporated, Schneider Electric, Cree, Inc., and General Electric Company. The Company estimates that the largest publicly traded manufacturers (including Acuity Brands), which participate in varying degrees in the North American lighting market, have over half of the total market share. In addition to these large



competitors, the Company also competes with hundreds of manufacturers of varying size. The market for lighting solutions and services is competitive and continues to evolve. Certain global and more diversified electrical manufacturers may provide a broader product offering utilizing electrical, lighting, and building automation products.

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In addition, there have been a growing number of new competitors, from small startup companies to global consumer electronics companies, offering solid-state (primarily LED) lighting solutions and other new technologies.

### Environmental Regulation

The operations of the Company are subject to numerous comprehensive laws and regulations relating to the generation, storage, handling, transportation, and disposal of hazardous substances, as well as solid and hazardous wastes, and to the remediation of contaminated sites. In addition, permits and environmental controls are required for certain of the Company's operations to limit air and water pollution, and these permits are subject to modification, renewal, and revocation by issuing authorities. On an ongoing basis, the Company allocates resources, including investments in capital and operating costs relating to environmental compliance. Environmental laws and regulations have generally become stricter in recent years, and federal, state, and local governments domestically and internationally are considering new laws and regulations, including those governing raw material composition, air emissions, end-of-life product dispositions, and energy-efficiency. The Company is not aware of any pending legislation or proposed regulation related to environmental issues that would have a material adverse effect on the Company. The cost of responding to future changes, however, may be substantial.

### Raw Materials

The products produced by the Company require certain raw materials, including certain grades of steel and aluminum, electrical and electronic components, plastics, and other petroleum-based materials and components. In fiscal 2015, the Company purchased approximately 95,000 tons of steel and aluminum. The Company estimates that approximately 8% of purchased raw materials are petroleum-based. Additionally, the Company estimates that approximately five million gallons of diesel fuel were consumed in fiscal 2015 through the Company's distribution activities. The Company purchases most raw materials and other components on the open market and relies on third parties for providing certain finished goods. While these items are generally available from multiple sources, the cost of products sold may be affected by changes in the market price of raw materials, as well as disruptions in availability of raw materials, components, and sourced finished goods.

The Company does not currently engage in or expect to engage in significant commodity hedging transactions for raw materials, though the Company has and will continue to commit to purchase certain materials for a period of up to 12 months. Significant increases in the prices of the Company's products due to increases in the cost of raw materials and components could have a negative effect on demand for products and on profitability. While the Company has generally been able to pass along these increases in cost in the form of higher selling prices for its products, there can be no assurance that future disruptions in either supply or price of these materials will not negatively affect future results.

The Company monitors and investigates alternative suppliers and materials based on numerous attributes including quality, service, and price. The Company currently sources raw materials and components from a number of suppliers, but the Company's ongoing efforts to improve the cost effectiveness of its products and services may result in a reduction in the number of its suppliers. A reduction in the number of suppliers could cause increased risk associated with reliance on a single or limited number of suppliers for certain raw materials, component parts (such as LEDs, lamps, ballasts, and power supplies), and finished goods.

### Backlog Orders

The Company produces and stocks quantities of inventory at key distribution centers and warehouses throughout North America and to a much lesser degree, certain European markets. The backlog of orders at any given time is affected by various factors, including seasonality, cancellations, sales promotions, production cycle times, and the timing of receipt and shipment of orders, which are usually shipped within a few weeks of order receipt. Accordingly, a comparison of backlog orders from period to period is not necessarily meaningful and may not be indicative of future shipments.

### Patents, Licenses, and Trademarks

The Company owns or has licenses to use various domestic and foreign patents and trademarks related to its products, processes, and businesses. These intellectual property rights are important factors for its businesses. To protect these proprietary rights, the Company relies on copyright, patent, trade secret, and trademark laws. Despite these protections, unauthorized parties may attempt to infringe on the intellectual property of the Company. Management is

not aware of any pending claims asserting that the Company does not have the right to use intellectual property that is material to the Company. While patents and patent applications in the aggregate are important to the competitive position of the Company, no single patent or patent application is individually material to the Company.

**Seasonality and Cyclical**

The Company's business exhibits some seasonality, with net sales being affected by the impact of weather and seasonal demand on construction and installation programs, particularly during the winter months, as well as the annual budget cycles of

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major customers. Because of these seasonal factors, the Company has experienced, and generally expects to experience, its highest sales in the last two quarters of each fiscal year.

The Company's lighting solutions are sold to customers in both the new construction and renovation and retrofit markets for residential and non-residential applications. The construction market is cyclical in nature and subject to changes in general economic conditions. Sales volume has a major impact on the profitability of the Company. Economic downturns and the potential decline in key construction markets may have a material adverse effect on the net sales and operating income of the Company.

### International Operations

The Company manufactures and assembles products at numerous facilities, some of which are located outside the United States. Approximately 68% of the products produced by the Company are manufactured outside the United States, primarily in Mexico and Europe. In addition, the Company sources certain finished goods from third parties with operations outside the United States, primarily in Asia.

Of the products produced by the Company, approximately 65% are manufactured at five facilities in Mexico. Most of these facilities are authorized to operate as Maquiladoras by the Ministry of Economy of Mexico. Maquiladora status allows the Company to import certain items from the United States into Mexico duty-free, provided that such items, after processing, are exported from Mexico within a stipulated time frame. Maquiladora status, which is renewed every year, is subject to various restrictions and requirements, including compliance with the terms of the Maquiladora program and other local regulations, which have become stricter in recent years.

During fiscal 2015, net sales initiated outside of the U.S. represented approximately 9% of total net sales. See the Supplemental Disaggregated Information footnote of the Notes to Consolidated Financial Statements for additional information regarding the geographic distribution of net sales, operating profit, and long-lived assets.

### Information Concerning Acuity Brands

The Company makes its Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K (and all amendments to these reports) and proxy statements, together with all reports filed pursuant to Section 16 of the Securities Exchange Act of 1934 by the Company's officers, directors, and beneficial owners of 10% or more of the Company's common stock, available free of charge through the "SEC Filings" link on the Company's website, located at [www.acuitybrands.com](http://www.acuitybrands.com), as soon as reasonably practicable after they are filed with or furnished to the SEC. Information included on the Company's website is not incorporated by reference into this Annual Report on Form 10-K. The Company's reports are also available at the Securities and Exchange Commission's Public Reference Room at 100 F. Street, NE, Washington, DC 20549 or on their website at [www.sec.gov](http://www.sec.gov). You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330.

Additionally, the Company has adopted a written Code of Ethics and Business Conduct that applies to all of the Company's directors, officers, and employees, including its principal executive officer and senior financial officers. The Code of Ethics and Business Conduct and the Company's Corporate Governance Guidelines are available free of charge through the "Corporate Governance" link on the Company's website. Any amendments to, or waivers of, the Code of Ethics and Business Conduct for our principal executive officer and senior financial officers will be disclosed on our website promptly following the date of such amendment or waiver. Additionally, the Statement of Responsibilities of Committees of the Board and the Statement of Rules and Procedures of Committees of the Board, which contain the charters for the Company's Audit Committee, Compensation Committee, and Governance Committee, and the rules and procedures relating thereto, are available free of charge through the "Corporate Governance" link on the Company's website. Each of the Code of Ethics and Business Conduct, the Corporate Governance Guidelines, the Statement of Responsibilities of Committees of the Board, and the Statement of Rules and Procedures of Committees of the Board is available in print to any stockholder of the Company that requests such document by contacting the Company's Investor Relations department.

### Employees

Acuity Brands employs approximately 7,800 people, of which approximately 3,200 are employed in the United States, approximately 4,300 in Mexico, and approximately 300 in other international locations, including Europe, Canada, and the Asia/Pacific region. Union recognition and collective bargaining arrangements are in place or in process, covering approximately 5,400 persons (including approximately 1,450 in the United States). Union recognition and

collective bargaining arrangements covering approximately 4,800 persons will expire within the next fiscal year. The Company believes that it has a good relationship with both its unionized and non-unionized employees.

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Item 1a. Risk Factors

This filing contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. A variety of risks and uncertainties could cause Acuity Brands' actual results to differ materially from the anticipated results or other expectations expressed in the Company's forward-looking statements. See "Cautionary Statement Regarding Forward-Looking Information" included in Management's Discussion and Analysis of Financial Condition and Results of Operations. These risks include, without limitation:

Risks Related to Economic Factors

General business, political, and economic conditions, including the strength of the construction market, political events, or other factors may affect demand for the Company's products and services, which could impact results of operations.

The Company competes based on such factors as name recognition and reputation, service, product features, innovation, and price. In addition, the Company operates in a highly competitive environment that is influenced by a number of general business and economic factors, such as economic vitality, employment levels, credit availability, interest rates, trends in vacancy rates and rent values, energy costs, and commodity costs. Sales of lighting equipment depend significantly on the level of activity in new construction and renovation/retrofits. Declines in general economic activity, appropriations, and regulations, including tax policy, may negatively impact new construction and renovation projects, which in turn may impact demand for the Company's product and service offerings. The impact of these factors could adversely affect the Company's financial position, results of operations, and cash flows.

Acuity Brands' results may be adversely affected by fluctuations in the cost or availability of raw materials, components, purchased finished goods, or services.

The Company utilizes a variety of raw materials and components in its production process including steel, aluminum, lamps, certain rare earth materials, LEDs, LED drivers, ballasts, wire, electronic components, power supplies, petroleum-based by-products, natural gas, and copper. The Company also sources certain finished goods externally. Future increases in the costs of these items could adversely affect profitability, as there can be no assurance that future price increases will be successfully passed through to customers. The Company generally sources these goods from a number of suppliers. However, there are a limited number of suppliers for certain components and certain purchased finished goods, which on a limited basis results in sole-source supplier situations. Disruptions in the supply of those items could negatively impact the Company's performance. In addition, the Company's ongoing efforts to improve the cost effectiveness of its products and services may result in a reduction in the number of its suppliers, and in turn, increased risk associated with reliance on a single or limited number of suppliers. Furthermore, volatility in certain commodities, such as oil, impacts all suppliers and, therefore, may cause the Company to experience significant price increases from time to time regardless of the number and availability of suppliers. Profitability and volume could be negatively impacted by limitations inherent within the supply chain of certain of these component parts, including competitive, governmental, and legal limitations, natural disasters, and other events that could impact both supply and price. Additionally, the Company is dependent on certain service providers for key operational functions. While there are a number of suppliers of these services, the cost to change service providers and set up new processes could be significant. Variability in cost and availability of raw materials, components, purchased finished goods, or services could adversely affect the Company's financial position, results of operations, and cash flows.

Tight credit conditions could impair the ability of the Company and other industry parties to effectively access capital markets, which could negatively impact the Company's capital position and demand for the Company's products and services.

The impact of tight credit conditions could impair the ability of real estate developers, property owners, and contractors to effectively access capital markets or obtain reasonable costs of capital on borrowed funds, resulting in depressed levels of construction and renovation projects. The inability of these constituents to borrow money to fund construction and renovation projects may reduce the demand for the Company's products and services and could adversely affect the Company's financial position, results of operations, and cash flows.

In addition to the impact on customers, tight credit conditions could impair the Company's ability to effectively access capital. This could impair the Company's ability to refinance debt as it becomes due or to obtain additional credit, if needed. The inability to effectively access capital markets could adversely affect the Company's financial position,

results of operations, and cash flows.

The market price and trading volume of the Company's shares may be volatile.

The market price of the Company's common shares could fluctuate significantly for many reasons, including reasons unrelated to the Company's specific performance, such as reports by industry analysts, investor perceptions, or negative announcements by customers, competitors, or suppliers regarding their own performance, as well as general global economic, industry, and political conditions. To the extent that other large companies within the Company's industry experience declines in share price, the

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Company's share price may decline as well. In addition, when the market price of a company's shares drops significantly, shareholders could institute securities class action lawsuits against the Company. Such a lawsuit could cause the Company to incur substantial costs and could divert the time and attention of the Company's management and other resources.

**Risks Related to the Company's Strategy**

Acuity Brand's results may be adversely affected by the Company's inability to maintain pricing.

Aggressive pricing actions by competitors may affect the Company's ability to achieve desired revenue growth and profitability levels under its current pricing strategies. The Company may also decide to lower pricing to match the competition. Additionally, the Company may not be able to increase prices to cover rising costs of components and raw materials. Even if the Company were able to increase prices to cover costs, competitive pricing pressures may not allow the Company to pass on any more than the cost increases. Alternatively, if component and raw material costs were to decline, the marketplace may not allow the Company to hold prices at their current levels, which could negatively impact net sales, profitability, and cash flows.

The Company's inability to effectively introduce new products could adversely affect its ability to compete and its operating performance.

Continual introductions of new products and solutions, services, and technologies, enhancement of existing products and services, and effective servicing of customers are key to the Company's competitive strategy. The success of new product and solution introductions depends on a number of factors, including, but not limited to, timely and successful product development, market acceptance, the Company's ability to manage the risks associated with product life cycles, such as new products and production capabilities, the effective management of purchase commitments and inventory levels to support anticipated product manufacturing and demand, the availability of products in appropriate quantities and costs to meet anticipated demand, and the risk that new products may have quality or other defects in the early stages of introduction. Accordingly, the Company cannot fully predict the ultimate effect of new product introductions and transitions on the Company's business, financial condition, results of operations, and cash flows. Acuity Brands may pursue future growth through strategic acquisitions, alliances, or investments, which may not yield anticipated benefits.

The Company has strengthened its business through strategic acquisitions, alliances, and investments and may continue to do so as opportunities arise in the future. Such investments have been and may be in start-up or development stage entities. The Company will benefit from such activity only to the extent that it can effectively leverage and integrate the assets of the acquired businesses and alliances, including, but not limited to, personnel, technology, and operating processes. Uncertainty is inherent within the acquisition, alliance, and investment process and unforeseen circumstances arising from recent and future transactions could offset the anticipated benefits. In addition, unanticipated events, negative revisions to valuation assumptions and estimates, and/or difficulties in attaining synergies, among other factors, could adversely affect the Company's ability to recover initial and subsequent investments, particularly those related to acquired goodwill and intangible assets or non-controlling interests. Any of these factors could have a material adverse effect on the Company's financial condition, results of operations, and cash flows. In addition, such investment transactions may limit the Company's ability to invest in other activities, which could be more profitable or advantageous.

The risks associated with the inability to effectively execute its strategies could adversely affect the Company's financial condition and results of operations.

Various uncertainties and risks are associated with the implementation of a number of aspects of the Company's global business strategy, including but not limited to new product development, the development, marketing, and selling of lighting solutions, effective integration of acquisitions, and the development of production capacity related to components such as LED drivers. Those uncertainties and risks include, but are not limited to: diversion of management's attention; difficulty in retaining or attracting employees; negative impact on relationships with distributors and customers; obsolescence of current products and slow new product development; additional streamlining efforts; inability to produce certain components with quality, performance, and cost attributes equal to or better than provided by other component manufacturers; and unforeseen difficulties in the implementation of the management operating structure. Problems with strategy execution could offset anticipated benefits, disrupt service to



customers, and impact product quality as well as adversely affect the Company's financial condition and results of operations.

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Acuity Brands may experience difficulties in streamlining activities which could impact shipments to customers, product quality, and the ability to realize the expected savings from streamlining actions.

The Company will benefit from its ongoing programs to streamline operations, including the consolidation of certain manufacturing facilities and the reduction of overhead costs, only to the extent that it can effectively leverage assets, personnel, and operating processes in the transition of production between manufacturing facilities. Uncertainty is inherent within the facility consolidation process and unforeseen circumstances could offset the anticipated benefits, disrupt service to customers, and impact product quality.

### Risks Related to the Company's Operations

Technological developments and increased competition could affect the Company's operating profit margins and sales volume.

The Company competes in an industry where technology and innovation play major roles in the competitive landscape. The Company is highly engaged in the investigation, development, and implementation of new technologies and services. Securing key partnerships and alliances as well as employee talent, including having access to technologies, services, and solutions developed by others, and obtaining appropriate patents play a significant role in protecting the Company's intellectual property and development activities. Additionally, the continual development of new technologies (e.g., LED, OLED, lamp/ballast systems, drivers, lighting controls systems, etc.) by existing and new source suppliers — including non-traditional competitors with significant resources — looking for either direct market access or partnerships with competing large manufacturers, coupled with significant associated exclusivity and/or patent activity, could adversely affect the Company's ability to sustain operating profit margins and desirable levels of sales volume. Also, certain key suppliers of components compete with the Company and could choose to cease supplying the Company, which could temporarily disrupt production by the Company until alternative supplier relationships are established. In addition, there have been a growing number of new competitors, from small startup companies to global consumer electronics companies, offering solid-state (primarily LED) lighting solutions to compete with traditional lighting providers. Certain global and more diversified electrical manufacturers may be able to obtain a competitive advantage over the Company by offering broader and more integrated electrical solutions utilizing electrical, lighting, and building automation products, and small startup companies may offer more localized product sales and support services within individual regions, which could have a material adverse effect on the Company's business, financial condition, results of operations, and cash flows.

Acuity Brands may be unable to sustain significant customer and/or channel partner relationships.

Relationships with customers, including The Home Depot which historically has represented approximately 10% or more of the Company's total net sales, are directly impacted by the Company's ability to deliver quality products and services. The loss of or a substantial decrease in the volume of purchases by The Home Depot could harm the Company's sales, profitability, and cash flows. The Company also has relationships with channel partners such as electrical distributors and independent sales agencies. While the Company has experienced positive, and in most cases long-term, relationships with these channel partners, the loss of a number of these channel partners or a substantial decrease in the volume of purchases from a major channel partner or a group of channel partners could adversely affect the Company's sales, profitability, and cash flows.

Acuity Brands could be adversely affected by disruptions of its operations.

The breakdown of equipment or other events, including labor disputes, strikes, pandemics, cyber attacks, or catastrophic events such as war or natural disasters, leading to production interruptions in the Company's or one or more of its suppliers' facilities could have a material adverse effect on the Company's financial results and cash flows. Approximately 52% of the Company's finished products are manufactured in Mexico, a country that periodically experiences heightened civil unrest which could also disrupt supply of products to or from these facilities. Further, because many of the Company's customers are to varying degrees dependent on planned deliveries from the Company's facilities, those customers that have to reschedule their own production or delay opening a facility due to the Company's missed deliveries could pursue financial claims against the Company. The Company may incur costs to correct any of these problems in addition to facing claims from customers. Further, the Company's reputation among actual and potential customers may be harmed and result in a loss of business. While the Company has developed business continuity plans, including alternative capacity, to support responses to such events or disruptions and

maintains insurance policies covering, among other things, physical damage and business interruptions, these policies may not cover all losses. The Company could incur uninsured losses and liabilities arising from such events, including damage to its reputation, loss of customers, and substantial losses in operational capacity, any of which could have a material adverse effect on its financial condition, results of operations, and cash flows.

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Failure of a Company operating or information system or a compromise of security with respect to an operating or information system or portable electronic device could adversely affect the Company's results of operations and financial condition or the effectiveness of internal controls over operations and financial reporting.

The Company is highly dependent on various software and automated systems to record and process operational and financial transactions. The Company could experience a failure of one or more of these software and automated systems or could fail to complete all necessary data reconciliation or other conversion controls when implementing a new software system. The Company could also experience a compromise of its security due to many reasons, including technical system flaws, clerical, data input or record-keeping errors, or tampering or manipulation of its systems by employees or unauthorized third parties. Information security risks also exist with respect to the use of portable electronic devices, such as laptops and smartphones, which are particularly vulnerable to loss and theft. The Company may also be subject to disruptions of any of these systems arising from events that are wholly or partially beyond its control (for example, natural disasters, acts of terrorism, cyber attacks, epidemics, computer viruses, and electrical/telecommunications outages). All of these risks are also applicable where the Company relies on outside vendors to provide services, which may operate in a cloud environment. The Company is dependent on the third-party vendors to operate secure and reliable systems which may include data transfers over the internet.

The Company also maintains information technology to support lighting controls systems in certain of its customer offerings, which are integral to the functionality of those integrated systems. In addition to the risks noted above, there are other risks associated with these customer offerings. Customers may be installing software on their networks and utilizing portable electronic devices, which may have security protocol variations that are outside of the Company's control and could result in a data security compromise.

The Company and certain of its third-party vendors may receive and store personal information in connection with human resources operations, customer offerings, and other aspects of the business. A material network breach in the security of these systems could include the theft of intellectual property, trade secrets, or employee and customer information. To the extent that any disruption or security breach results in a loss or damage to the Company's data, or an inappropriate disclosure of confidential or customer or employee information, it could cause significant damage to the Company's reputation, affect relationships with the Company's customers and employees, lead to claims against the Company, and ultimately harm the Company's business. In addition, the Company may be required to incur significant costs to protect against damage caused by these disruptions or security breaches in the future.

Operating system failures, ineffective system implementation or disruptions, or the compromise of security with respect to internal or external operating systems or portable electronic devices could subject the Company to liability claims, harm the Company's reputation, interrupt the Company's operations, disrupt customer operations, and adversely affect the Company's internal control over financial reporting, business, financial condition, results of operations, or cash flows.

Changes in the Company's relationship with employees, changes in U.S. or international employment regulations, an inability to attract and retain talented employees, or a loss of key employees could adversely impact the effectiveness of the Company's operations.

The Company employed approximately 7,800 people as of August 31, 2015, approximately 4,600 of whom are employed in international locations. As such, the Company has significant exposure to changes in domestic and foreign laws governing relationships with employees, including wage and hour laws and regulations, fair labor standards, minimum wage requirements, overtime pay, unemployment tax rates, workers' compensation rates, citizenship requirements, and payroll taxes, which likely would have a direct impact on the Company's operating costs. Union recognition and collective bargaining agreements are in place or in process covering approximately 69% of the Company's workforce. Collective bargaining agreements representing approximately 62% of the Company's workforce will expire within one year. While the Company believes that it has good relationships with both its unionized and non-unionized employees, the Company may become vulnerable to a strike, work stoppage, or other labor action by these employees that could have an adverse effect on the Company's business, financial condition, results of operations, or cash flows.

The Company relies upon the knowledge and experience of employees involved in functions throughout the organization that require technical expertise and knowledge of the industry. An inability to attract and retain such

employees could adversely impact the Company's ability to execute key operational functions and could adversely affect the Company's operations.

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There are inherent risks in our solutions and services businesses.

Risks inherent in the sale of solutions and services include assuming greater responsibility for successfully delivering projects that meet a particular customer specification, including defining and controlling contract scope and timing, efficiently executing projects, and managing the performance and quality of the Company's subcontractors and suppliers. As the Company expands its service offerings, reliance on the technical infrastructure to provide services to customers will increase. If the Company fails to appropriately manage and secure the technical infrastructure required, customers could experience service outages or delays in implementation of services. If the Company is unable to manage and mitigate these risks, the Company could incur liabilities and other losses that would adversely affect the Company's results of operations.

### Risks Related to Legal and Regulatory Matters

Acuity Brands is subject to a broad range of environmental, health, and safety laws and regulations in the jurisdictions in which it operates, and the Company may be exposed to substantial environmental, health, and safety costs and liabilities.

The Company is subject to a broad range of environmental, health, and safety laws and regulations in the jurisdictions in which the Company operates. These laws and regulations impose increasingly stringent environmental, health, and safety protection standards and permitting requirements regarding, among other things, air emissions, wastewater storage, treatment, and discharges, the use and handling of hazardous or toxic materials, waste disposal practices, the remediation of environmental contamination, and working conditions for the Company's employees. Some environmental laws, such as Superfund, the Clean Water Act, and comparable laws in U.S. states and other jurisdictions world-wide, impose joint and several liability for the cost of environmental remediation, natural resource damages, third party claims, and other expenses, without regard to the fault or the legality of the original conduct, on those persons who contributed to the release of a hazardous substance into the environment. The Company may also be affected by future laws or regulations, including those imposed in response to energy, climate change, geopolitical, or similar concerns. These laws may impact the sourcing of raw materials and the manufacture and distribution of the Company's products and place restrictions and other requirements on the products the Company can sell in certain geographical locations.

The costs of complying with these laws and regulations, including participation in assessments and remediation of contaminated sites and installation of pollution control capabilities, have been, and in the future could be, significant. In addition, these laws and regulations may result in substantial environmental liabilities associated with divested assets, third party locations, and past activities. The Company establishes reserves for environmental remediation activities and liabilities where appropriate. However, the cost of addressing environmental matters (including the timing of any charges related thereto) cannot be predicted with certainty, and these reserves may not ultimately be adequate, especially in light of potential changes in environmental conditions, changing interpretations of laws and regulations by regulators and courts, the discovery of previously unknown environmental conditions, the risk of governmental orders to carry out additional compliance on certain sites not initially included in remediation in progress, the Company's potential liability to remediate sites for which provisions have not previously been established, and the adoption of more stringent environmental laws. Such future developments could result in increased environmental costs and liabilities and could require significant capital and other ongoing expenditures, any of which could have a material adverse effect on the Company's financial condition or results of operations. In addition, the presence of environmental contamination at the Company's properties could adversely affect its ability to sell a property, receive full value for a property, or use a property as collateral for a loan.

Acuity Brands may develop unexpected legal contingencies or matters that exceed insurance coverage.

The Company is subject to and in the future may be subject to various claims, including legal claims arising in the normal course of business, which may include without limitation employment claims, product recall or personal injury claims resulting from the use of our products or exposure to hazardous materials, contract disputes, intellectual property disputes, and product liability claims. The Company is insured up to specified limits for certain types of losses with a self-insurance retention per occurrence, including product liability claims, and is fully self-insured for certain other types of losses, including environmental, product recall, warranties, commercial disputes, and patent infringement. The Company establishes reserves for legal claims when the costs associated with the claims become

probable and can be reasonably estimated. The actual costs of resolving legal claims may be substantially higher or lower than the level of insurance coverage held by the Company and/or the amounts reserved for such claims. In the event of unexpected future developments, it is possible that the ultimate resolutions of such matters, if unfavorable, could have a material adverse effect on the Company's results of operations, financial position, or cash flows. The Company's insurance coverage is negotiated on an annual basis, and insurance policies in the future may have coverage exclusions that could cause claim-related costs to rise.

If Acuity Brands' products are improperly designed, manufactured, packaged, or labeled, the Company may need to recall those items, may have increased warranty costs, and could be the target of product liability claims.

The Company may need to recall products if they are improperly designed, manufactured, packaged, or labeled, and the Company does not maintain insurance for such recall events. Many of the Company's products and solutions have become more

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complex in recent years and include more sophisticated and sensitive electronic components. The Company has increasingly manufactured certain of those components and products in its own facilities. The Company has previously initiated product recalls as a result of potentially faulty components, assembly, installation, and packaging of its products, and widespread product recalls could result in significant losses due to the costs of a recall, the destruction of product inventory, penalties, and lost sales due to the unavailability of a product for a period of time. In addition, products developed by the Company that incorporate new technologies, such as LED technology, generally provide for more extensive warranty protection which may result in higher costs if warranty claims on these products are higher than historical amounts. The Company may also be liable if the use of any of its products causes harm, and could suffer losses from a significant product liability judgment against the Company in excess of its insurance limits. The Company may not be able to obtain indemnity or reimbursement from its suppliers or other third parties for the warranty costs or liabilities associated with its products. A significant product recall, warranty claim, or product liability case could also result in adverse publicity, damage to the Company's reputation, and a loss of consumer confidence in its products, which could have a material adverse effect on the Company's business, financial condition, results of operations, and cash flows.

Failure to effectively estimate employer-sponsored health insurance premiums and incremental costs due to the Affordable Care Act could materially and adversely affect the Company's financial condition, results of operations, and cash flows.

In March 2010, the United States federal government enacted comprehensive health care reform legislation, which, among other things, includes guaranteed coverage requirements, eliminates pre-existing condition exclusions and annual and lifetime maximum limits, restricts the extent to which policies can be rescinded, and imposes new taxes on health insurers, self-insured companies, and health care benefits. The legislation imposes implementation effective dates that began in 2010 and extend through 2020 with many of the changes requiring additional guidance and regulations from federal agencies. Possible adverse effects could include increased costs, exposure to expanded liability, and requirements for the Company to revise the ways in which healthcare and other benefits are provided to employees. To date, the Company has experienced increased costs related to such legislation; however, due to the phased-in nature of the implementation and the lack of interpretive guidance, the Company continues to monitor the potential impacts the health care reform legislation will have on the Company's financial results. Future costs could have a material adverse effect on the Company's financial condition, results of operations, and cash flows.

The Company may not be able to adequately protect its intellectual property.

The Company owns certain patents, trademarks, copyrights, trade secrets, and other intellectual property. In addition, the Company continues to file patent applications, when appropriate. The Company cannot be certain that others have not and will not infringe on its intellectual property rights; however, the Company seeks to establish and protect those rights, which could result in significant legal expenses and adversely affect the Company's financial condition and results of operations.

Compliance with new reporting requirements related to the use of conflict minerals, within the meaning of the Dodd-Frank Wall Street Reform and Consumer Protection Act, may result in additional expense, supply chain limitations, or loss of customers.

In July 2010, the United States federal government enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act, which contained provisions that mandated the creation of rules by the SEC for public companies to ascertain the region of origin of conflict minerals (i.e., cassiterite, wolframite, coltan, and gold) used in the production of goods. In August 2012, the SEC adopted new rules requiring disclosures of conflict minerals that are necessary to the functionality or production of products manufactured or contracted to be manufactured by public companies. The new rule requires companies to perform due diligence and disclose through the issuance of a report whether or not such minerals originate from the Democratic Republic of Congo or an adjoining country. The new rule could affect sourcing at competitive prices and availability in sufficient quantities of certain minerals used in the manufacture of the Company's products, including tantalum, tin, tungsten, and gold. The number of suppliers who provide conflict-free minerals may be limited, which could have an adverse effect on the Company's ability to source these products in the future. In addition, due to the complexity and sophistication of the Company's supply chain, compliance with the rules requires significant efforts from a cross-functional project team, including identifying and



contacting the Company's suppliers (who in turn may be required to contact their suppliers), compiling and documenting the findings, and possibly providing for an independent third party audit. Therefore, costs attributable to compliance with the disclosure requirements of the SEC's new rules will be incurred and could be material. In addition, pressure from customers for more information or due diligence could result in increased costs or potentially the loss of certain customers. Jurisdictions other than the U.S. federal government, such as U.S. states and the European Union, may adopt similar rules and regulations, which could have different reporting requirements or time lines. The costs of compliance, including those related to supply chain research, unexpected consequences to the Company's reputation or customer relationships, the limited number of suppliers, and possible changes in the sourcing of these materials could adversely affect the Company's results of operations and cash flows.

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Risks Related to Other Factors

The Company may be subject to risk in connection with third party relationships necessary to operate the Company's business.

The Company utilizes strategic partners and third party relationships in order to operate and grow its business. For instance, the Company utilizes third parties for contract manufacturing for certain products, a portion of its sales function and some of its distribution requirements. The Company cannot control the actions or performance of these third parties and therefore, cannot be certain that the Company or its end-users will be satisfied. Any future actions of or any failure to act by any third party on which the Company's business relies could cause the Company to incur losses or interruptions in its operations and adversely affect the Company's financial condition and results of operations.

Acuity Brands is subject to risks related to operations outside the United States.

The Company has substantial activities outside of the United States, including sourcing of products, materials, components and purchased finished goods. The Company's operations, as well as those of key vendors, are therefore subject to regulatory, economic, political, military, and other events in countries where these operations are located, particularly Mexico. In addition to the risks that are common to both the Company's domestic and international operations, the Company faces risks specifically related to its foreign operations, including but not limited to: foreign currency fluctuations; unstable political, social, regulatory, economic, financial, and market conditions; laws that prohibit shipments to certain countries or restricted parties and that prohibit improper payments to government officials such as the Foreign Corrupt Practices Act and the U.K. Bribery Act; potential for privatization and other confiscatory actions; trade restrictions and disruption; criminal activities; unforeseen increases in tariffs and taxes; corruption; and other changes in regulation in international jurisdictions that could result in substantial additional legal or compliance obligations for the Company. The Company operates five manufacturing facilities in Mexico, which are authorized to operate as Maquiladoras by the Ministry of Economy of Mexico. Maquiladora status allows the Company to import certain items from the United States into Mexico duty-free, provided that such items, after processing, are exported from Mexico within a stipulated time frame. Maquiladora status, which is renewed periodically, is subject to various restrictions and requirements, including compliance with the terms of the Maquiladora program and other local regulations, which have become stricter in recent years.

Certain regulations related to the Maquiladora program became effective in January 2015. The Company may not be able to comply with certain of the regulations within the stipulated time frames. Failure to comply with these new regulations could have a material adverse effect on the Company's financial position, results of operations, and cash flows primarily because the Company would in such event be required to pay value-added tax on material imported into Mexico and then seek a refund of those amounts months later after the material is exported from Mexico.

The Company continues to monitor conditions affecting its international locations, including potential changes in income from a strengthening or weakening in foreign exchange rates in relation to the U.S. dollar. Some of these risks, including but not limited to foreign exchange risk, violations of laws, and higher costs associated with changes in regulation, could have a material adverse effect on the Company's business, financial condition, results of operations, and cash flows.

Risks related to the Company's defined benefit retirement plans may adversely impact results of operations and cash flows.

Significant changes in actual investment returns on defined benefit plan assets, discount rates, and other factors could adversely affect the Company's results of operations and the amount of contributions the Company is required to make to the defined benefit plans in future periods. As the Company's defined benefit plan assets and liabilities are marked-to-market on an annual basis, large non-cash gains or losses could be recorded in the fourth quarter of each fiscal year. In accordance with United States generally accepted accounting principles the income or expense for the plans is calculated using actuarial valuations. These valuations reflect assumptions about financial markets and interest rates, which may change based on economic conditions. Funding requirements for the defined benefit plans are dependent upon, among other things, interest rates, underlying asset returns, and the impact of legislative or regulatory changes related to defined benefit funding obligations. Unfavorable changes in these factors could have an

adverse effect on the Company's financial position, results of operations, and cash flows.

Item 1b. Unresolved Staff Comments

None.

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## Item 2. Properties

The general corporate offices of Acuity Brands are located in Atlanta, Georgia. Because of the diverse nature of operations and the large number of individual locations, it is neither practical nor meaningful to describe each of the operating facilities owned or leased by the Company. The following listing summarizes the significant facility categories as of August 31, 2015:

Nature of Facilities	Owned	Leased
Manufacturing Facilities	9	6
Warehouses	—	3
Distribution Centers*	1	6
Offices	4	14

\* The majority of the distribution centers also have certain manufacturing and assembly capabilities.

The following table provides additional geographic information related to Acuity Brands' manufacturing facilities as of August 31, 2015:

	United States	Mexico	Europe	Canada	Total
Owned	4	4	1	—	9
Leased	3	1	1	1	6
Total	7	5	2	1	15

Acuity Brands believes that its properties are well maintained and in good operating condition and that its properties are suitable and adequate for its present needs. During fiscal 2016, the Company expects to make investments to expand capacity at certain manufacturing and other non-manufacturing facilities. In addition, initiatives related to enhancing the global supply chain may result in the future consolidation of certain facilities.

Although a loss at any of the facilities could temporarily impact the Company's ability to serve the needs of its customers, a substantial loss at the Company's largest manufacturing facilities in Mexico could have a material, adverse effect on the Company's financial position, results of operations, and cash flows. The Company believes the financial impact of any loss would be partially mitigated by various insurance programs in place as well as capacity contingencies developed as part of an enterprise-wide contingency plan.

## Item 3. Legal Proceedings

## General

Acuity Brands is subject to various legal claims arising in the normal course of business, including, but not limited to, patent infringement, product liability claims, and employment matters. Acuity Brands is self-insured up to specified limits for certain types of claims, including product liability, and is fully self-insured for certain other types of claims, including environmental, product recall, and patent infringement. Based on information currently available, it is the opinion of management that the ultimate resolution of pending and threatened legal proceedings will not have a material adverse effect on the financial condition, results of operations, or cash flows of Acuity Brands. However, in the event of unexpected future developments, it is possible that the ultimate resolution of any such matters, if unfavorable, could have a material adverse effect on the financial condition, results of operations, or cash flows of Acuity Brands in future periods. Acuity Brands establishes reserves for legal claims when the costs associated with the claims become probable and can be reasonably estimated. The actual costs of resolving legal claims may be substantially higher than the amounts reserved for such claims. However, the Company cannot make a meaningful estimate of actual costs to be incurred that could possibly be higher or lower than the amounts reserved.

## Environmental Matters

The operations of the Company are subject to numerous comprehensive laws and regulations relating to the generation, storage, handling, transportation, and disposal of hazardous substances, as well as solid and hazardous wastes, and to the remediation of contaminated sites. In addition, permits and environmental controls are required for certain of the Company's operations to limit air and water pollution, and these permits are subject to modification,

renewal, and revocation by issuing authorities. On an ongoing basis, Acuity Brands invests capital and incurs operating costs relating to environmental compliance. Environmental laws and regulations have generally become stricter in recent years. The cost of responding to future changes may be substantial. Acuity Brands establishes reserves for known environmental claims when the costs associated with the claims become probable and can be reasonably estimated. The actual cost of environmental issues may be substantially higher than that reserved due to difficulty in estimating such costs.

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## PART II

## Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

The common stock of Acuity Brands, Inc. ("Acuity Brands" or the "Company") is listed on the New York Stock Exchange under the symbol "AYI". At October 23, 2015, there were 2,886 stockholders of record. The following table sets forth the New York Stock Exchange high and low sale prices and the dividend payments for Acuity Brands' common stock for the periods indicated.

	Price per Share		Dividends per Share
	High	Low	
2014			
First Quarter	\$106.33	\$83.61	\$0.13
Second Quarter	\$143.54	\$99.16	\$0.13
Third Quarter	\$146.28	\$116.77	\$0.13
Fourth Quarter	\$138.46	\$104.69	\$0.13
2015			
First Quarter	\$143.67	\$117.19	\$0.13
Second Quarter	\$164.13	\$127.85	\$0.13
Third Quarter	\$183.53	\$157.05	\$0.13
Fourth Quarter	\$211.82	\$174.60	\$0.13

The indicated annual dividend rate on the Company's common stock is \$0.52 per share. However, all decisions regarding the declaration and payment of dividends are at the discretion of the Board of Directors of the Company (the "Board") and will be evaluated regularly in light of the Company's financial condition, earnings, growth prospects, funding requirements, applicable law, and any other factors that the Board deems relevant. The information required by this item with respect to equity compensation plans is included under the caption Equity Compensation Plans in the Company's proxy statement for the annual meeting of stockholders to be held January 6, 2016, to be filed with the Securities and Exchange Commission pursuant to Regulation 14A, and is incorporated herein by reference.

## Issuer Purchases of Equity Securities

In September 2011, the Board authorized the repurchase of two million shares of the Company's outstanding common stock. None of the Company's outstanding common stock has been repurchased under the current plan; therefore, the maximum number of shares that may yet be purchased under the program equals two million.

Depending on market conditions, shares may be repurchased from time to time at prevailing market prices through open market or privately negotiated transactions. No date has been established for the completion of the share repurchase program and the Company is not obligated to repurchase any shares. Subject to applicable corporate securities laws, repurchases may be made at such times and in such amounts as management deems appropriate. Repurchases under the program can be discontinued at any time management feels additional repurchases are not warranted.

## Company Stock Performance

The following information in this Annual Report on Form 10-K is not deemed to be "soliciting material" or to be "filed" with the SEC or subject to Regulation 14A or 14C under the Exchange Act or to the liabilities of Section 18 of the Exchange Act, and will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent specifically incorporated by reference into such filing.

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The following graph compares the cumulative total return to shareholders on the Company's outstanding stock during the five years ended August 31, 2015, with the cumulative total returns of the Standard & Poor's ("S&P") MidCap 400 Index, the Dow Jones U.S. Electrical Components & Equipment Index, and the Dow Jones U.S. Building Materials & Fixtures Index. The Company is a component of both the S&P Midcap 400 Index and Dow Jones U.S. Building Materials & Fixtures Index. The Dow Jones U.S. Electrical Components & Equipment Index is also included in the following graph as the parent companies of several major lighting companies are included in the index.

## COMPARISON OF FIVE-YEAR CUMULATIVE TOTAL RETURN\*

Among Acuity Brands, Inc., the S&P Midcap 400 Index,  
the Dow Jones US Electrical Components & Equipment Index,  
and the Dow Jones US Building Materials & Fixtures Index

\*Assumes \$100 invested on August 31, 2010 in stock or index, including reinvestment of dividends.

	Aug-10	Aug-11	Aug-12	Aug-13	Aug-14	Aug-15
Acuity Brands, Inc.	\$100	\$120	\$169	\$227	\$330	\$521
S&P Midcap 400 Index	\$100	\$123	\$139	\$171	\$211	\$211
Dow Jones US Electrical Components & Equipment Index	\$100	\$124	\$154	\$192	\$241	\$217
Dow Jones US Building Materials & Fixtures Index	\$100	\$112	\$168	\$213	\$266	\$307

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## Item 6. Selected Financial Data

The following table sets forth certain selected consolidated financial data of Acuity Brands which has been derived from the Consolidated Financial Statements for each of the five years in the period ended August 31, 2015. This historical information may not be indicative of the Company's future performance. The information set forth below should be read in conjunction with Management's Discussion and Analysis of Financial Condition and Results of Operations and the Consolidated Financial Statements and the notes thereto.

	Years Ended August 31,				
	2015 <sup>(1)</sup>	2014 <sup>(2)</sup>	2013 <sup>(3)</sup>	2012 <sup>(4)</sup>	2011
	(In millions, except per-share data)				
Net sales	\$2,706.7	\$2,393.5	\$2,089.1	\$1,933.7	\$1,795.7
Net income	222.1	175.8	127.4	116.3	105.5
Basic earnings per share	5.13	4.07	2.97	2.75	2.46
Diluted earnings per share	5.09	4.05	2.95	2.72	2.42
Cash and cash equivalents	756.8	552.5	359.1	284.5	170.2
Total assets <sup>(5)</sup>	2,429.6	2,166.4	1,901.8	1,734.6	1,594.8
Long-term debt <sup>(5)</sup>	352.4	351.9	351.6	351.2	350.8
Total debt <sup>(5)</sup>	352.4	351.9	351.6	351.2	350.8
Stockholders' equity	1,360.0	1,163.5	993.5	834.0	757.0
Cash dividends declared per common share	0.52	0.52	0.52	0.52	0.52

Net Income, Basic Earnings per Share, and Diluted Earnings per Share for fiscal 2015 include a) pre-tax special charges of \$12.4 (\$7.7 after-tax), or \$0.19 per share, related to streamlining initiatives, b) non tax-deductible professional fees of \$3.2, or \$0.08 per share, related to acquisitions, and c) pre-tax net loss on financial instruments of \$2.6 (\$1.7 after-tax), or \$0.03 per share.

Net Income, Basic Earnings per Share, and Diluted Earnings per Share for fiscal 2014 include a) pre-tax recoveries of \$5.8 (\$3.6 after-tax), or \$0.08 per share, associated with fraud at the Company's former freight payment and audit service provider, and b) a pre-tax special charge reversal of \$0.2 (\$0.1 after-tax), or \$0.00 per share, related to initiatives to simplify and streamline the Company's operations.

Net Income, Basic Earnings per Share, and Diluted Earnings per Share for fiscal 2013 include a) pre-tax incremental costs of \$8.4 (\$5.2 after-tax), or \$0.12 per share, incurred due to manufacturing inefficiencies directly related to the Cochran, GA manufacturing facility closure; b) pre-tax costs of \$8.1 (\$5.0 after-tax), or \$0.12 per share, as a result of fraud at the Company's former freight payment and audit service provider; and c) a pre-tax special charge of \$8.5 (\$5.5 after-tax), or \$0.12 per share, related to initiatives to simplify and streamline the Company's operations.

Net Income, Basic Earnings per Share, and Diluted Earnings per Share for fiscal 2012 include expenses incurred in the closing of the Cochran, GA manufacturing facility and other streamlining activities. Amounts related to these streamlining activities were comprised of the following: a) \$13.3 of pre-tax special charges (\$8.8 after-tax), or \$0.21 per share, primarily related to severance and production transfer costs; b) pre-tax non-cash impairments of \$1.2 (\$0.8 after-tax), or \$0.02 per share, attributable to the abandonment of inventory that was not transferred to other facilities; and c) pre-tax incremental costs incurred due to manufacturing inefficiencies directly related to the Cochran facility closure, which amounted to approximately \$3.2 (\$2.0 after-tax), or \$0.05 per share.

Fiscal 2014, 2013, 2012, and 2011 amounts include the reclassification of deferred debt issuance costs related to the adoption of ASU 2015-03. See the New Accounting Pronouncements footnote for more information.



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Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations  
(\$ in millions, except per-share data and as indicated)

The following discussion should be read in conjunction with the Consolidated Financial Statements and related notes included within this report. References made to years are for fiscal year periods.

The purpose of this discussion and analysis is to enhance the understanding and evaluation of the results of operations, financial position, cash flows, indebtedness, and other key financial information of Acuity Brands and its subsidiaries for the years ended August 31, 2015 and 2014. For a more complete understanding of this discussion, please read the Notes to Consolidated Financial Statements included in this report.

Overview

Company

Acuity Brands, Inc. ("Acuity Brands") is the parent company of Acuity Brands Lighting, Inc. ("ABL") and other subsidiaries (Acuity Brands, ABL, and such other subsidiaries are collectively referred to herein as the "Company").

The Company, with its principal office in Atlanta, Georgia, employs approximately 7,800 people worldwide.

The Company designs, produces, and distributes a broad array of lighting solutions, components, and services for commercial, institutional, industrial, infrastructure, and residential applications for various markets throughout North America and select international markets. The Company's lighting solutions include devices such as luminaires, lighting controls, power supplies, prismatic skylights, drivers, and integrated lighting systems for indoor and outdoor applications utilizing a combination of light sources, including daylight, and other devices controlled by software that monitors and manages light levels while optimizing energy consumption (collectively referred to herein as "lighting solutions"). The Company is one of the world's leading producers and distributors of lighting solutions, with a broad, highly configurable product offering, consisting of a diversified portfolio of lighting, controls, and daylighting brands. The Company integrates conventional and advanced solid-state lighting fixtures with digital controls and daylighting products to create greater energy efficiencies and higher quality of light for a broad and diverse customer base. As of August 31, 2015, the Company operated 15 manufacturing facilities and seven distribution facilities along with three warehouses to serve its extensive customer base.

The Company continues to expand and enhance its portfolio of lighting solutions, including the following transactions:

On April 15, 2015, the Company acquired for cash substantially all of the assets and assumed certain liabilities of ByteLight, Inc. ("ByteLight"), a provider of indoor location software for light-emitting diode ("LED") lighting.

ByteLight is headquartered in Boston, Massachusetts.

In addition, during fiscal 2015, the Company made a strategic, non-controlling investment in a company specializing in light sensory networks. This investment was accounted for using the cost method and is reflected in Other long term assets on the Consolidated Balance Sheets.

On March 13, 2013, the Company acquired for cash, including additional cash payments that were paid in future periods under earn-out provisions, all of the ownership interests in eldoLAB Holding B.V. ("eldoLED"), a leading provider of high-performance drivers for LED lighting systems based in Eindhoven, The Netherlands. The operating results of eldoLED have been included in the Company's consolidated financial statements since the date of acquisition.

Strategy

The Company's strategy is to extend its leadership position in the North American lighting market and certain markets internationally by delivering superior lighting solutions. With the September 2015 acquisition of Distech Controls, the Company's product offerings now include a wide-breadth of innovative products, services, and solutions that optimize comfort and energy efficiency in buildings. As a goal-oriented, customer-centric company, management will continue to align the unique capabilities and resources of the organization to drive profitable growth through a keen focus on providing comprehensive and differentiated lighting solutions and building automation products for its customers, driving world-class cost efficiency, and leveraging a culture of continuous improvement.

Throughout fiscal 2015, the Company believes it made significant progress towards achieving its strategic objectives, including expanding its access to the market, introducing new lighting solutions, and enhancing its operations to

create a stronger, more effective organization. The strategic objectives were developed to enable the Company to meet or exceed the following financial goals during an entire business cycle:

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Operating margins in the mid-teens or higher;  
Earnings per share growth in excess of 15% per annum;  
Return on stockholders' equity of 20% or better per annum; and  
Cash flow from operations, less capital expenditures, that is in excess of net income.

To increase the probability of the Company achieving these financial goals, management will continue to implement programs to enhance its capabilities at providing unparalleled customer service; creating a globally competitive cost structure; improving productivity; and introducing new and innovative solutions and services more rapidly and cost effectively. In addition, the Company has invested considerable resources to teach and train associates to utilize tools and techniques that accelerate success in these key areas, as well as to create a culture that demands excellence through continuous improvement. Additionally, the Company promotes a "pay-for-performance" culture that rewards achievement, while closely monitoring appropriate risk-taking. The expected outcome of these activities will be to better position the Company to deliver on its full potential, to provide a platform for future growth opportunities, and to allow the Company to achieve its long-term financial goals. See the Outlook section below for additional information.

### Liquidity and Capital Resources

The Company's principle sources of liquidity are operating cash flows generated primarily from its business operations, cash on hand, and various sources of borrowings. The ability of the Company to generate sufficient cash flow from operations or to access certain capital markets, including banks, is necessary to fund its operations and capital expenditures, pay dividends, meet its obligations as they become due, and maintain compliance with covenants contained in its financing agreements.

In recent years, the Company strengthened its liquidity position and extended its debt maturity profile following the issuance of \$350.0 of senior unsecured notes due in fiscal 2020 (the "Notes") and the execution of a \$250.0 revolving credit facility scheduled to mature in fiscal 2019 (the "Revolving Credit Facility"). See the Capitalization section below and the Debt and Lines of Credit footnote of the Notes to Consolidated Financial Statements for more information. Based on its cash on hand, availability under existing financing arrangements, and current projections of cash flow from operations, the Company believes that it will be able to meet its liquidity needs over the next 12 months.

Short-term needs are expected to include funding its operations as currently planned, making anticipated capital investments, funding potential acquisitions, paying quarterly stockholder dividends as currently anticipated, paying interest on borrowings as currently scheduled, and making required contributions into its employee benefit plans, as well as potentially repurchasing shares of its outstanding common stock as authorized by the Board of Directors. Two million shares of the Company's common stock are currently authorized and available for repurchase under the existing repurchase program. The Company expects to repurchase shares on an opportunistic basis. During fiscal 2016, the Company currently expects to invest approximately 2.5 percent of net sales in capital expenditures primarily for equipment, tooling, facility enhancements, and new and enhanced information technology capabilities.

Additionally, management believes that the Company's cash flow from operations and sources of funding, including, but not limited to, borrowing capacity, will sufficiently support the long-term liquidity needs of the Company.

### Cash Flow

The Company uses available cash and cash flow from operations, as well as proceeds from the exercise of stock options, to fund operations and capital expenditures, repurchase Company stock, fund acquisitions, and pay dividends. The Company's cash position at August 31, 2015 was \$756.8, an increase of \$204.3 from August 31, 2014. During the year ended August 31, 2015, the Company generated net cash from operating activities of \$288.9 with additional cash received of \$11.6 from stock issuances primarily in connection with stock option exercises. Cash generated from operating activities, as well as cash on-hand, was used during the current year primarily to fund capital expenditures of \$56.5 and pay dividends to stockholders of \$22.7. Foreign currency related items had an unfavorable effect on cash flows of \$8.3 during the current year.

During fiscal 2015, net cash generated from operating activities increased \$55.8 to \$288.9 compared with \$233.1 generated in the prior-year period due primarily to higher net income partially offset by higher operating working capital requirements. Operating working capital (calculated by adding accounts receivable plus inventories, and subtracting accounts payable-net of acquisitions and the impact of foreign exchange rate changes) increased by

approximately \$38.1 during fiscal 2015 compared to an increase of \$26.8 during fiscal 2014. In both periods, inventory and accounts payable increased due primarily to greater production and purchases to support the higher level of net sales, which in turn resulted in increased accounts receivable.

Management believes that investing in assets and programs that will over time increase the overall return on the Company's invested capital is a key factor in driving stockholder value. The Company invested \$56.5 and \$35.3 in fiscal 2015 and 2014, respectively, primarily for new tooling, machinery, equipment, facility enhancements, and information technology.

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## Contractual Obligations

The following table summarizes the Company's contractual obligations at August 31, 2015:

	Total	Payments Due by Period <sup>(6)</sup>			
		Less than One Year	1 to 3 Years	4 to 5 Years	After 5 Years
Debt <sup>(1)</sup>	\$354.0	\$—	\$—	\$350.0	\$4.0
Interest Obligations <sup>(2)</sup>	195.6	31.2	63.9	55.1	45.4
Operating Leases <sup>(3)</sup>	52.7	14.2	22.3	11.5	4.7
Purchase Obligations <sup>(4)</sup>	147.2	147.2	—	—	—
Other Long-term Liabilities <sup>(5)</sup>	41.1	5.6	7.1	4.3	24.1
Total	\$790.6	\$198.2	\$93.3	\$420.9	\$78.2

These amounts (which represent the amounts outstanding at August 31, 2015) are included in the Company's

(1) Consolidated Balance Sheets. See the Debt and Lines of Credit footnote for additional information regarding debt and other matters.

These amounts represent primarily the expected future interest payments on outstanding debt held by the Company at August 31, 2015 and the Company's outstanding loans related to its corporate-owned life insurance policies ("COLI"), which constitute a small portion of the total amounts shown. COLI-related interest payments included in

(2) this table are estimates. These estimates are based on various assumptions, including age at death, loan interest rate, and tax bracket. The amounts in this table do not include COLI-related payments after ten years due to the difficulty in calculating a meaningful estimate that far in the future. Note that payments related to debt and the COLI are reflected in the Company's Consolidated Statements of Cash Flows.

(3) The Company's operating lease obligations are described in the Commitments and Contingencies footnote.

(4) Purchase obligations include commitments to purchase goods or services that are enforceable and legally binding and that specify all significant terms, including open purchase orders.

These amounts are included in the Company's Consolidated Balance Sheets and largely represent other liabilities for which the Company is obligated to make future payments under certain long-term employee benefit programs. Estimates of the amounts and timing of these amounts are based on various assumptions, including expected return on plan assets, interest rates, and other variables. The amounts in this table do not include amounts related to future

(5) funding obligations under the defined benefit pension plans. The amount and timing of these future funding obligations are subject to many variables and are also dependent on whether or not the Company elects to make contributions to the pension plans in excess of those required under ERISA. Such voluntary contributions may reduce or defer the funding obligations. See the Pension and Profit Sharing Plans footnote for additional information. These amounts exclude \$4.5 of unrecognized tax benefits as the period of cash settlement with the respective taxing authorities cannot be reasonably estimated.

Deferred income tax liabilities as of August 31, 2015 were approximately \$118.9 million. Refer to the Income Taxes footnote for more information. This amount is not included in the total contractual obligations table because the Company believes this presentation would not be meaningful. Deferred income tax liabilities are calculated

(6) based on temporary differences between the tax bases of assets and liabilities and their respective book bases, which will result in taxable amounts in future years when the liabilities are settled at their reported financial statement amounts. The results of these calculations do not have a direct connection with the amount of cash taxes to be paid in any future periods. As a result, scheduling deferred income tax liabilities as payments due by period could be misleading, because this scheduling would not relate to liquidity needs.

## Capitalization

The current capital structure of the Company is comprised principally of senior unsecured notes and equity of its stockholders. Total debt outstanding, consisting primarily of fixed-rate obligations net of discount and deferred costs, was \$352.4 at August 31, 2015 compared with \$351.9 at August 31, 2014.

On December 8, 2009, ABL issued the Notes in a private placement transaction with an aggregate principle amount of \$350.0. The Notes were subsequently exchanged for SEC-registered notes with substantially identical terms. The Notes bear interest at a rate of 6% per annum and were issued at a price equal to 99.797% of their face value and for a term of 10 years. See the Debt and Lines of Credit footnote of the Notes to Consolidated Financial Statements for more information.

On August 27, 2014, the Company executed the Revolving Credit Facility with a borrowing capacity of \$250.0. The Revolving Credit Facility replaced the Company's prior \$250.0 revolving credit facility, which was scheduled to mature on January 31, 2017. The Revolving Credit Facility will mature and all amounts outstanding thereunder will be due and payable on August 27, 2019. The Company was compliant with all financial covenants under the Revolving Credit Facility as of August 31, 2015. As of August 31, 2015, the Company had outstanding letters of credit totaling \$10.3, primarily for securing collateral requirements under the casualty insurance programs for Acuity Brands and providing credit support for the Company's industrial revenue bond. At August 31, 2015, the Company had additional borrowing capacity under the Revolving Credit Facility of \$243.9 under the most restrictive covenant in effect at the time, which represents the full amount of the Revolving Credit Facility less outstanding letters of credit of \$6.1 issued under the Revolving Credit Facility. See the Debt and Lines of Credit footnote of the Notes to Consolidated Financial Statements.

During fiscal 2015, the Company's consolidated stockholders' equity increased \$196.5 to \$1,360.0 at August 31, 2015 from \$1,163.5 at August 31, 2014. The increase was due primarily to net income earned in the period, as well as amortization of stock-based compensation, and stock issuances resulting primarily from the exercise of stock options, partially offset by payment of dividends, pension plan adjustments, and foreign currency translation adjustments. The Company's debt to total capitalization

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ratio (calculated by dividing total debt by the sum of total debt and total stockholders' equity) was 20.6% and 23.2% at August 31, 2015 and August 31, 2014, respectively. The ratio of debt, net of cash, to total capitalization, net of cash, decreased to (42.3)% at August 31, 2015 from (20.8)% at August 31, 2014 due primarily to the substantial increase in the Company's cash balance and stockholders' equity in the current year.

**Dividends**

Acuity Brands paid dividends on its common stock of \$22.7 (\$0.52 per share) in fiscal 2015 and \$22.5 (\$0.52 per share) in fiscal 2014. The indicated quarterly dividend rate is \$0.13 per share. However, all decisions regarding the declaration and payment of dividends by Acuity Brands are at the discretion of the Company's Board of Directors and are evaluated regularly in light of the Company's financial condition, earnings, growth prospects, funding requirements, applicable law, and any other factors the Company's Board of Directors deems relevant.

**Results of Operations****Fiscal 2015 Compared with Fiscal 2014**

The following table sets forth information comparing the components of net income for the year ended August 31, 2015 with the year ended August 31, 2014:

	Years Ended August 31,		Increase	Percent	
	2015	2014	(Decrease)	Change	
Net Sales	\$2,706.7	\$2,393.5	\$313.2	13.1	%
Cost of Products Sold	1,561.1	1,414.3	146.8	10.4	%
Gross Profit	1,145.6	979.2	166.4	17.0	%
Percent of net sales	42.3	% 40.9	% 140	bps	
Selling, Distribution, and Administrative Expenses	756.9	680.3	76.6	11.3	%
Special Charge	12.4	(0.2 )	12.6	NM	
Operating Profit	376.3	299.1	77.2	25.8	%
Percent of net sales	13.9	% 12.5	% 140	bps	
Other Expense (Income):					
Interest Expense, net	31.5	32.1	(0.6 )	(1.9 )	%
Miscellaneous Expense, net	1.2	1.3	(0.1 )	7.7	%
Total Other Expense	32.7	33.4	(0.7 )	(2.1 )	%
Income before Provision for Income Taxes	343.6	265.7	77.9	29.3	Total capitalization \$ 6,869,593

- (1) As of March 31, 2018, we had \$90 million in borrowings and \$2 million in letters of credit outstanding under the prior credit agreement, with \$2.2 billion of available borrowing capacity. On April 12, 2018, we entered into the Credit Agreement, which amended and restated the prior credit agreement and under which we had \$232 million of borrowings and \$2 million in letters of credit outstanding with \$1.5 billion of available borrowing capacity as of that date.
- (2) Excludes unamortized debt discounts and premiums as well as unamortized debt issuance costs on notes, which totaled \$46 million and \$27 million as of March 31, 2018, respectively.
- (3) In accordance with Accounting Standards Codification 470-20 ( ASC 470-20 ), a convertible debt instrument that may be settled entirely or partially in cash is required to be separated into a liability and equity component, such that interest expense reflects the issuer's nonconvertible debt interest rate. Upon issuance, a debt discount was recognized as a decrease in debt and an increase in additional paid-in capital. 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 convertible notes is the aggregate principal amount of the convertible notes and does not reflect the debt discount that we recognized; however, the related increase to additional paid-in capital of \$137 million has been reflected in Total equity.





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

	Year ended December 31,					Three months ended
	2013	2014	2015	2016	2017	March 31, 2018
Ratio of earnings to fixed charges <sup>(1)</sup>	5.96x	1.81x	(2)	(2)	(2)	1.30x

- (1) For purposes of calculating the ratios above, earnings consist of income (loss) before income taxes and before income or loss from equity investees, plus fixed charges and amortization of capitalized interest and distributed income of equity investees and noncontrolling interest in pre-tax income of subsidiaries, less capitalized interest. Fixed charges consist of interest expensed, interest capitalized, amortized premiums, discounts and capitalized expenses related to indebtedness and an estimate of interest within rental expense.
- (2) For the years ended December 31, 2015, 2016 and 2017, earnings were inadequate to cover fixed charges, and the ratio of earnings to fixed charges has therefore not been presented for these periods. The coverage deficiency necessary for the ratio of earnings to fixed charges to equal 1.00x (one-to-one coverage) was \$3.0 billion, \$1.4 billion and \$1.7 billion for the years ended December 31, 2015, 2016 and 2017, respectively.

**Table of Contents****DESCRIPTION OF OTHER MATERIAL INDEBTEDNESS**

**Credit Agreement.** The Credit Agreement has a borrowing base of \$2.4 billion and aggregate commitments of \$1.75 billion. As of April 12, 2018, the day the amended and restated Credit Agreement was entered into, we had \$1.5 billion of availability under the Credit Agreement, which was net of \$234 million in borrowings and letters of credit outstanding.

The borrowing base under the Credit Agreement is determined at the discretion of the lenders, based on the collateral value of our proved reserves that have been mortgaged to such lenders, and is subject to regular redeterminations on May 1 and November 1 of each year, as well as special redeterminations described in the Credit Agreement, in each case which may reduce the amount of the borrowing base. Because oil and gas prices are principal inputs into the valuation of our reserves, if current or projected oil and gas prices decline from their current levels, our borrowing base could be reduced at the next redetermination date, which is scheduled for November 1, 2018, or during future redeterminations. Upon a redetermination of our borrowing base, either on a periodic or special redetermination date, if borrowings in excess of the revised borrowing capacity were outstanding, we could be forced to immediately repay a portion of our debt outstanding under the Credit Agreement.

A portion of the revolving credit facility in an aggregate amount not to exceed \$50 million may be used to issue letters of credit for the account of Whiting Oil and Gas Corporation or other designated subsidiaries of ours. As of April 12, 2018, \$48 million was available for additional letters of credit under the agreement.

The Credit Agreement provides for interest only payments until April 2023, when the Credit Agreement expires and all outstanding borrowings are due. Interest under the revolving credit facility accrues at our option at either (i) a base rate for a base rate loan plus the margin in the table below, where the base rate is defined as the greatest of the prime rate, the federal funds rate plus 0.5% per annum, or an adjusted LIBOR rate plus 1.0% per annum, or (ii) an adjusted LIBOR rate for a Eurodollar loan plus the margin in the table below. Additionally, we also incur commitment fees as set forth in the table below on the unused portion of the aggregate commitments of the lenders under the Credit Agreement, which are included as a component of interest expense.

<b>Ratio of outstanding borrowings to borrowing base</b>	<b>Applicable margin for base rate loans</b>	<b>Applicable margin for Eurodollar loans</b>	<b>Commitment fee</b>
Less than 0.25 to 1.0	0.50%	1.50%	0.375%
Greater than or equal to 0.25 to 1.0 but less than 0.50 to 1.0	0.75%	1.75%	0.375%
Greater than or equal to 0.50 to 1.0 but less than 0.75 to 1.0	1.00%	2.00%	0.50%
Greater than or equal to 0.75 to 1.0 but less than 0.90 to 1.0	1.25%	2.25%	0.50%
Greater than or equal to 0.90 to 1.0	1.50%	2.50%	0.50%

The Credit Agreement contains restrictive covenants that may limit our ability to, among other things, incur additional indebtedness, sell assets, make loans to others, make investments, enter into mergers, enter into hedging contracts, incur liens and engage in certain other transactions without the prior consent of our lenders. Except for limited exceptions, the Credit Agreement also restricts our ability to make any dividend payments or distributions on our common stock. These restrictions apply to all of our restricted subsidiaries (as defined in the Credit Agreement). As of March 31, 2018, there were no retained earnings free from restrictions. The Credit Agreement requires us, as of the last day of any quarter, to maintain the following ratios (as defined in the Credit Agreement): (i) a consolidated current assets to consolidated current liabilities ratio (which includes an add back of the available borrowing capacity

under the Credit Agreement) of not less than 1.0 to 1.0 and (ii) a total debt to last four quarters EBITDAX ratio of not greater than 4.0 to 1.0.

The obligations of Whiting Oil and Gas Corporation under the Credit Agreement are collateralized by a first lien on substantially all of Whiting Oil and Gas Corporation's and Whiting Resource Corporation's properties.

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We have guaranteed the obligations of Whiting Oil and Gas Corporation under the Credit Agreement and have pledged the stock of its subsidiaries as security for our guarantee.

**Senior notes.** As of March 31, 2018, we had the following existing senior notes outstanding: (i) \$874 million aggregate principal amount of our 5.75% Senior Notes due 2021; (ii) \$408 million aggregate principal amount of our 6.25% Senior Notes due 2023; and (iii) \$1,000 million aggregate principal amount of our original notes. Our existing senior notes are guaranteed by Whiting Oil and Gas Corporation, Whiting US Holding Company, Whiting Canadian Holding Company ULC and Whiting Resources Corporation.

**Existing senior note covenants.** The indentures governing our senior notes contain various restrictive covenants that may limit our management's discretion in certain respects. In particular, these indentures limit our and our subsidiaries ability to, among other things:

pay dividends or make other distributions or repurchase or redeem our capital stock;

prepay, redeem or repurchase certain debt;

make loans and investments;

incur or guarantee additional indebtedness or issue preferred stock;

create certain liens;

sell assets;

enter into agreements that restrict dividends or other payments from our restricted subsidiaries to us;

consolidate, merge or transfer all or substantially all of our assets and those of our restricted subsidiaries taken as a whole;

engage in transactions with affiliates; and

create unrestricted subsidiaries.

**2020 Convertible Senior Notes.** As of March 31, 2018, we had \$562 million aggregate principal amount of our 1.25% Convertible Senior Notes due 2020. We have the option to settle conversions of these notes with cash, shares of common stock or a combination of cash and common stock at our election. Our intent is to settle the principal amount of the convertible notes in cash upon conversion. Prior to January 1, 2020, the convertible notes will be

convertible at the holder's option only under the following circumstances: (i) during any calendar quarter commencing after the calendar quarter ending on June 30, 2015 (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; (ii) 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 the convertible notes for each trading day of the measurement period is 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; or (iii) upon the occurrence of specified corporate events. On or after January 1, 2020, the convertible notes will be convertible at any time until the second scheduled trading day immediately preceding the April 1, 2020 maturity date of the notes. The notes will be convertible at a conversion rate of 6.4102 shares of our common stock per \$1,000 principal amount of the notes, which is equivalent to a conversion price of approximately \$156.00. The conversion rate will be subject to adjustment in some events. In addition, following certain corporate events that occur prior to the maturity date, we will increase, in certain circumstances, the conversion rate for a holder who elects to convert its convertible notes in connection with such corporate event. As of March 31, 2018, none of the contingent conditions allowing holders of the convertible notes to convert these notes had been met.

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**THE EXCHANGE OFFER**

***Purpose and effect; registration rights***

We issued and sold the original notes on December 27, 2017 in a transaction exempt from the registration requirements of the Securities Act. Therefore, the original notes are subject to significant restrictions on resale. In connection with the issuance of the original notes, we entered into a registration rights agreement, dated December 27, 2017 (the "Registration Rights Agreement") which required that we:

use our reasonable best efforts to cause to be filed with the SEC a registration statement with respect to the exchange offer to exchange the original notes for publicly registered 6.625% Senior Notes due 2026 (the "new notes");

to use our reasonable best efforts to cause such registration statement to be declared effective by the SEC on or prior to the 365th day after December 27, 2017; and

after the effectiveness of the registration statement with respect to the exchange offer, promptly commence the exchange offer and use our reasonable best efforts to complete the exchange offer not later than 60 days after such effective date.

If you participate in the exchange offer, then you will, with limited exceptions, receive new notes that are freely tradable and not subject to restrictions on transfer. You should read this prospectus under the heading "Resales of new notes" for more information relating to your ability to transfer new notes.

If you are eligible to participate in the exchange offer and do not tender your original notes, then you will continue to hold the untendered original notes, which will continue to be subject to restrictions on transfer under the Securities Act.

The exchange offer is intended to satisfy our exchange offer obligations under the Registration Rights Agreement. The above summary of the Registration Rights Agreement is not complete. You are encouraged to read the full text of the Registration Rights Agreement, which has been filed an exhibit to the registration statement that includes this prospectus.

***Terms of the exchange offer***

We are offering to exchange \$1,000,000,000 aggregate principal amount of our original notes which have not been registered under the Securities Act for a like principal amount of our registered new notes.

Upon the terms and subject to the conditions set forth in this prospectus and in the accompanying letter of transmittal, we will accept all original notes validly tendered and not withdrawn before 5:00 p.m., New York City time, on the expiration date of the exchange offer. We will issue \$1,000 principal amount of new notes in exchange for each \$1,000 principal amount of outstanding original notes we accept in the exchange offer. Holders may tender some or all of their original notes pursuant to the exchange offer in denominations of \$2,000 and integral multiples of \$1,000 in excess thereof. The exchange offer is not conditioned upon any minimum amount of original notes being tendered.

The form and terms of the new notes will be the same as the form and terms of the original notes, except that:

the new notes will be registered under the Securities Act and thus will not be subject to the restrictions on transfer or bear legends restricting their transfer;

the new notes will not be subject to the registration rights relating to the original notes; and

the new notes will not provide for the payment of additional interest under circumstances relating to the timing of the exchange offer.

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The new notes will evidence the same debt as the original notes and will be issued under, and be entitled to the benefits of, the indenture governing the original notes.

The new notes will accrue interest from December 27, 2017. Accordingly, registered holders of new notes on the record date for the first interest payment date following the completion of the exchange offer will receive interest accrued from December 27, 2017.

In connection with the exchange offer, you do not have any appraisal or dissenters' rights under the indenture. We intend to conduct the exchange offer in accordance with the Registration Rights Agreement and the applicable requirements of the Securities Act, the Securities Exchange Act of 1934, as amended (the Exchange Act), and the rules and regulations of the SEC. The exchange offer is not being made to, nor will we accept tenders for exchange from, a holder of the original notes in any jurisdiction in which the exchange offer or the acceptance of it would not be in compliance with the securities or blue sky laws of the jurisdiction.

We will be deemed to have accepted validly tendered original notes when we have given written notice of our acceptance to the exchange agent. The exchange agent will act as agent for the tendering holders for the purpose of receiving the new notes from us.

If we do not accept any tendered original notes because of an invalid tender or for any other reason, then we will return certificates for any unaccepted original notes without expense to the tendering holder as promptly as practicable after the expiration date.

### ***Expiration date; amendments***

The exchange offer will expire at 5:00 p.m., New York City time, on July 5, 2018, unless we, in our sole discretion, extend the exchange offer.

If we determine to extend the exchange offer, then we will notify the exchange agent of any extension by written notice and give each registered holder notice of the extension by means of a press release or other public announcement before 9:00 a.m., New York City time, on the next business day after the previously scheduled expiration date.

We reserve the right, in our sole discretion, to delay accepting any original notes, to extend the exchange offer, to amend or terminate the exchange offer if any of the conditions described below under Conditions have not been satisfied or waived by giving written notice to the exchange agent of the delay, extension, amendment or termination. Further, we reserve the right, in our sole discretion, to amend the terms of the exchange offer in any manner.

Any delay in acceptance for exchange, extension or amendment will be followed as promptly as practicable by a public announcement of the delay. If we amend the exchange offer in a manner we determine constitutes a material change, we will promptly disclose the amendment in a manner reasonably calculated to inform the holders of original notes of the amendment, and we will extend the exchange offer for a period of five to ten business days, depending upon the significance of the amendment and the manner of disclosure to the holders of the original notes, if the exchange offer would otherwise expire during that five to ten business day period. If we change the consideration being offered or the percentage of original notes being sought in the exchange offer, we will keep the exchange offer open for at least ten business days from the date on which we provide notice to holders of the original notes. The rights we have reserved in this paragraph are in addition to our rights set forth under Conditions.

### ***Procedures for tendering original notes***



Any tender of original notes that is not withdrawn prior to the expiration date will constitute a binding agreement between the tendering holder and us upon the terms and subject to the conditions set forth in this

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prospectus and in the accompanying letter of transmittal. A holder who wishes to tender original notes in the exchange offer must do either of the following:

properly complete, sign and date the letter of transmittal, including all other documents required by the letter of transmittal; have the signature on the letter of transmittal guaranteed if the letter of transmittal so requires; and deliver that letter of transmittal and other required documents to the exchange agent at the address listed below under "Exchange agent" on or before the expiration date; or

if the original notes are tendered under the book-entry transfer procedures described below, transmit to the exchange agent, on or before the expiration date, an agent's message.

In addition, one of the following must occur:

the exchange agent must receive certificates representing your original notes along with the letter of transmittal on or before the expiration date;

the exchange agent must receive a timely confirmation of book-entry transfer of the original notes into the exchange agent's account at The Depository Trust Company of New York City, or DTC, under the procedure for book-entry transfers described below along with the letter of transmittal or a properly transmitted agent's message, on or before the expiration date; or

the holder must comply with the guaranteed delivery procedures described below.

The term "agent's message" means a message, transmitted by a book-entry transfer facility to and received by the exchange agent and forming a part of the book-entry confirmation, which states that the book-entry transfer facility has received an express acknowledgement from the tendering DTC participant stating that the participant has received and agrees to be bound by the letter of transmittal and that we may enforce the letter of transmittal against the participant.

The method of delivery of original notes, the letter of transmittal and all other required documents to the exchange agent is at your election and risk. Rather than mail these items, we recommend that you use an overnight or hand delivery service. In all cases, you should allow sufficient time to assure timely delivery to the exchange agent before the expiration date. Do not send letters of transmittal or original notes to us.

Generally, an eligible institution must guarantee signatures on a letter of transmittal or a notice of withdrawal unless the original notes are tendered:

by a registered holder of the original notes who has not completed the box entitled "Special Issuance Instructions" or "Special Delivery Instructions" on the letter of transmittal; or

for the account of an eligible institution.

If signatures on a letter of transmittal or a notice of withdrawal are required to be guaranteed, the guarantee must be by a firm which is:

a member of a registered national securities exchange;

a commercial bank or trust company having an office or correspondent in the United States; or

another eligible guarantor institution within the meaning of Rule 17Ad-15 under the Exchange Act.

If the letter of transmittal is signed by a person other than the registered holder of any outstanding original notes, the original notes must be endorsed or accompanied by appropriate powers of attorney. The power of attorney must be signed by the registered holder exactly as the registered holder(s) name(s) appear(s) on the original notes and an eligible institution must guarantee the signature on the power of attorney.

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If the letter of transmittal, or any original notes or powers of attorney are signed by trustees, executors, administrators, guardians, attorneys-in-fact, officers of corporations or others acting in a fiduciary or representative capacity, these persons should so indicate when signing. Unless waived by us, they should also submit evidence satisfactory to us of their authority to so act.

If you wish to tender original notes that are registered in the name of a broker, dealer, commercial bank, trust company or other nominee, you should promptly instruct the registered holder to tender on your behalf. If you wish to tender on your behalf, you must, before completing the procedures for tendering original notes, either register ownership of the original notes in your name or obtain a properly completed bond power from the registered holder. The transfer of registered ownership may take considerable time.

We will determine in our sole discretion all questions as to the validity, form, eligibility, including time of receipt, and acceptance of original notes tendered for exchange. Our determination will be final and binding on all parties. We reserve the absolute right to reject any and all tenders of original notes that are not properly tendered or original notes, our acceptance of which might, in the judgment of our counsel, be unlawful. We also reserve the absolute right to waive any defects, irregularities or conditions of tender as to any particular original notes. Our interpretation of the terms and conditions of the exchange offer, including the instructions in the letter of transmittal, will be final and binding on all parties. Unless waived, any defects or irregularities in connection with tenders of original notes must be cured within the time period we determine. Neither we, the exchange agent nor any other person will incur any liability for failure to give you notification of defects or irregularities with respect to tenders of your original notes.

By tendering, you will represent to us that:

any new notes that the holder receives will be acquired in the ordinary course of its business;

the holder has no arrangement or understanding with any person or entity to participate in the distribution (within the meaning of the Securities Act) of the new notes;

if the holder is not a broker dealer, that it is not engaged in and does not intend to engage in the distribution (within the meaning of the Securities Act) of the new notes;

if the holder is a broker dealer, that the holder's original notes were acquired as a result of market making activities or other trading activities;

the holder is not our affiliate, as defined in Rule 405 of the Securities Act, or, if the holder is our affiliate, it will comply with any applicable registration and prospectus delivery requirements of the Securities Act; and

the holder is not acting on behalf of any person who could not truthfully make the foregoing representations. If any holder or any such other person is our affiliate, or is engaged in or intends to engage in or has an arrangement or understanding with any person to participate in a distribution of the new notes to be acquired in the exchange offer, then that holder or any such other person:

may not rely on the applicable interpretations of the staff of the SEC;

is not entitled and will not be permitted to tender original notes in the exchange offer; and

must comply with the registration and prospectus delivery requirements of the Securities Act in connection with any resale transaction.

Each broker dealer that receives new notes for its own account in exchange for original notes, where the original notes were acquired by the broker dealer as a result of market making activities or other trading activities, must acknowledge that it will deliver a prospectus in connection with any resale of the new notes. The letter of transmittal states that by so acknowledging and by delivering a prospectus, a broker dealer will not be deemed to admit that it is an underwriter within the meaning of the Securities Act.

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Any broker-dealer that acquired original notes directly from us may not rely on the applicable interpretations of the staff of the SEC and must comply with the registration and delivery requirements of the Securities Act (including being named as a selling security holder) in connection with any resales of the original notes or the new notes.

### ***Acceptance of original notes for exchange; delivery of new notes***

Upon satisfaction or waiver of all conditions to the exchange offer, we will accept, promptly after the expiration date, all original notes properly tendered and will issue the new notes promptly after acceptance of the original notes. For purposes of the exchange offer, we will be deemed to have accepted properly tendered original notes for exchange when we have given written notice of that acceptance to the exchange agent. For each original note accepted for exchange, you will receive a new note having a principal amount equal to that of the surrendered original note.

In all cases, we will issue new notes for original notes that we have accepted for exchange under the exchange offer only after the exchange agent timely receives:

certificates for your original notes or a timely confirmation of book-entry transfer of your original notes into the exchange agent's account at DTC; and

a properly completed and duly executed letter of transmittal and all other required documents or a properly transmitted agent's message.

If we do not accept any tendered original notes for any reason set forth in the terms of the exchange offer or if you submit original notes for a greater principal amount than you desire to exchange, we will return the unaccepted or non-exchanged original notes without expense to you. In the case of original notes tendered by book-entry transfer into the exchange agent's account at DTC under the book-entry procedures described below, we will credit the non-exchanged original notes to your account maintained with DTC.

### ***Book-entry transfer***

We understand that the exchange agent will make a request within two business days after the date of this prospectus to establish accounts for the original notes at DTC for the purpose of facilitating the exchange offer, and any financial institution that is a participant in DTC's system may make book-entry delivery of original notes by causing DTC to transfer the original notes into the exchange agent's account at DTC in accordance with DTC's procedures for transfer. Although delivery of original notes may be effected through book-entry transfer at DTC, the exchange agent must receive a properly completed and duly executed letter of transmittal with any required signature guarantees, or an agent's message instead of a letter of transmittal, and all other required documents at its address listed below under Exchange agent on or before the expiration date, or if you comply with the guaranteed delivery procedures described below, within the time period provided under those procedures.

### ***Guaranteed delivery procedures***

If you wish to tender your original notes and your original notes are not immediately available, or you cannot deliver your original notes, the letter of transmittal or any other required documents or comply with DTC's procedures for transfer before the expiration date, then you may participate in the exchange offer if:

the tender is made through an eligible institution;

before the expiration date, the exchange agent receives from the eligible institution a properly completed and duly executed notice of guaranteed delivery, substantially in the form provided by us, by facsimile transmission, mail or hand delivery, containing:

the name and address of the holder and the principal amount of original notes tendered;

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a statement that the tender is being made thereby; and

a guarantee that within three New York Stock Exchange trading days after the expiration date, the certificates representing the original notes in proper form for transfer or a book-entry confirmation and any other documents required by the letter of transmittal will be deposited by the eligible institution with the exchange agent; and

the exchange agent receives the properly completed and executed letter of transmittal as well as certificates representing all tendered original notes in proper form for transfer, or a book-entry confirmation, and all other documents required by the letter of transmittal within three New York Stock Exchange trading days after the expiration date.

***Withdrawal rights***

You may withdraw your tender of original notes at any time before the exchange offer expires.

For a withdrawal to be effective, the exchange agent must receive a written notice of withdrawal at its address listed below under Exchange agent. The notice of withdrawal must:

specify the name of the person who tendered the original notes to be withdrawn;

identify the original notes to be withdrawn, including the principal amount, or, in the case of original notes tendered by book-entry transfer, the name and number of the DTC account to be credited, and otherwise comply with the procedures of DTC;

be signed in the same manner as the old signature on the letter of transmittal by which the original notes were tendered (including any required signature guarantees) or be accompanied by documents of transfer sufficient to have the trustee with respect to the original notes register the transfer of the original notes into the name of the person withdrawing the tender; and

if certificates for original notes have been transmitted, specify the name in which those original notes are registered if different from that of the withdrawing holder.

If certificates for original notes have been delivered or otherwise identified to the exchange agent in connection with the exchange offer and are to be withdrawn then, before the release of these certificates by the exchange agent, the holder must also submit the serial numbers of the particular certificates to be withdrawn and a signed notice of withdrawal with the signatures guaranteed by an eligible institution, unless the holder is an eligible institution.

We will determine in our sole discretion all questions as to the validity, form and eligibility, including time of receipt, of notices of withdrawal. Our determination will be final and binding on all parties. Any original notes so withdrawn will be deemed not to have been validly tendered for purposes of the exchange offer. We will return any original notes that have been tendered but that are not exchanged for any reason to the holder, without cost, as soon as practicable after withdrawal, rejection of tender or termination of the exchange offer. In the case of original notes tendered by



book-entry transfer into the exchange agent's account at DTC, the original notes will be credited to an account maintained with DTC for the original notes. You may tender properly withdrawn original notes by following one of the procedures described under "Procedures for tendering original notes" at any time on or before the expiration date.

*Conditions*

Notwithstanding any other term of the exchange offer, we will not be required to accept for exchange, or to exchange new notes for, any original notes if:

the exchange offer, or the making of any exchange by a holder of original notes, would violate any applicable law or applicable interpretation by the staff of the SEC; or

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any action or proceeding is instituted or threatened in any court or by or before any governmental agency with respect to the exchange offer which, in our judgment, would reasonably be expected to impair our ability to proceed with the exchange offer.

The conditions listed above are for our sole benefit and we may assert them regardless of the circumstances giving rise to any condition. Subject to applicable law, we may waive these conditions in our discretion in whole or in part at any time and from time to time.

We expressly reserve the right, at any time or at various times, to extend the period of time during which the exchange offer is open. Consequently, we may delay acceptance of any original notes by giving oral or written notice of an extension to their holders. During an extension, all original notes previously tendered will remain subject to the exchange offer, and we may accept them for exchange.

***Exchange agent***

The Bank of New York Mellon Trust Company, N.A. is the exchange agent for the exchange offer. You should direct any questions and requests for assistance regarding the procedure for exchanging your original notes for new notes and requests for additional copies of this prospectus, the letter of transmittal or the notice of guaranteed delivery to the exchange agent addressed as follows:

*By Facsimile Transmission:*

*(For Eligible Institutions Only)*

(732) 667-9408

Attention: Corporate Trust Operations Reorganization Unit

*Confirm by Telephone:*

(315) 414-3349

Delivery of the letter of transmittal to an address other than as listed above or transmission via facsimile other than as listed above will not constitute a valid delivery of the letter of transmittal.

***Fees and expenses***

We will bear the expenses of soliciting tenders pursuant to the exchange offer. The principal solicitation for tenders pursuant to the exchange offer is being made by mail; however, additional solicitation may be made by telephone, telecopy, in person or by other means by our officers and regular employees and by officers and employees of our affiliates.

We have not retained any dealer-manager in connection with the exchange offer and will not make any payments to brokers, dealers or others soliciting acceptances of the exchange offer. However, we will pay the exchange agent reasonable and customary fees for its services and will reimburse it for its reasonable out-of-pocket expenses. We may also pay brokerage houses and other custodians, nominees and fiduciaries the reasonable out-of-pocket expenses

incurred by them in forwarding copies of this prospectus, letters of transmittal and related documents to the beneficial owners of the original notes and in handling or forwarding tenders for exchange. We will pay the other expenses incurred in connection with the exchange offer, including fees and expenses of the trustee, accounting and legal fees and printing costs.

***Transfer taxes***

We will pay all transfer taxes, if any, applicable to the exchange of original notes pursuant to the exchange offer. If, however, certificates representing new notes or original notes for principal amounts not tendered or accepted for exchange are to be delivered to, or are to be issued in the name of, any person other than the

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registered holder of the original notes tendered, or if tendered original notes are registered in the name of any person other than the person signing the letter of transmittal, or if a transfer tax is imposed for any reason other than the exchange of original notes pursuant to the exchange offer, then the amount of any transfer taxes (whether imposed on the registered holder or any other persons) will be payable by the tendering holder. If satisfactory evidence of payment of any taxes or exemption therefrom is not submitted with the letter of transmittal, the amount of any transfer taxes will be billed directly to the tendering holder.

***Accounting treatment***

We will record the new notes at the same carrying values as the original notes, as reflected in our accounting records on the date of exchange. Accordingly, we will not recognize any gain or loss on the exchange of notes. We will amortize the expenses of the exchange offer over the term of the new notes.

***Consequences of failure to exchange original notes***

If you are eligible to participate in the exchange offer but do not tender your original notes, you will not have any further registration rights, except in limited circumstances with respect to specific types of holders of original notes. Original notes that are not tendered or are tendered but not accepted will, following the consummation of the exchange offer, continue to be subject to the provisions in the indenture governing the original notes regarding the transfer and exchange of the original notes and the existing restrictions on transfer set forth in the legend on the original notes. Accordingly, you may resell the original notes that are not exchanged only:

to us or any of our subsidiaries;

under a registration statement that has been declared effective under the Securities Act;

for so long as the original notes are eligible for resale under Rule 144A, to a person the seller reasonably believes is a qualified institutional buyer that is purchasing for its own account or for the account of another qualified institutional buyer and to whom notice is given that the transfer is being made in reliance on Rule 144A;

through offers and sales to non-U.S. persons that occur outside the United States within the meaning of Regulation S under the Securities Act;

to an institutional accredited investor (within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act) that is not a qualified institutional buyer and that is purchasing for its own account or for the account of another institutional accredited investor, in each case in a minimum principal amount of original notes of \$250,000; or

under any other available exemption from the registration requirements of the Securities Act;

subject in each of the above cases to any requirement of law that the disposition of the seller's property or the property of an investor account or accounts be at all times within the seller or account's control and to compliance with any applicable state securities laws. We do not intend to register the original notes under the Securities Act.

Original notes that are not exchanged in the exchange offer will remain outstanding and continue to accrue interest and will be entitled to the rights and benefits their holders have under the indenture relating to the original notes. Holders of the new notes and any original notes that remain outstanding after consummation of the exchange offer will vote as a single class for purposes of determining whether holders of the requisite percentage of the class have taken certain actions or exercised certain rights under the indenture.

***Resales of new notes***

Based on interpretations of the staff of the SEC, as set forth in no action letters to third parties, we believe that new notes issued under the exchange offer in exchange for original notes may be offered for resale, resold

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and otherwise transferred by any original note holder without further registration under the Securities Act and without delivery of a prospectus that satisfies the requirements of Section 10 of the Securities Act if:

the holder is not our affiliate within the meaning of Rule 405 under the Securities Act;

the new notes are acquired in the ordinary course of the holder's business; and

the holder does not intend to participate in a distribution (within the meaning of the Securities Act) of the new notes.

Any holder who exchanges original notes in the exchange offer with the intention of participating in any manner in a distribution of the new notes must comply with the registration and prospectus delivery requirements of the Securities Act in connection with a secondary resale transaction.

This prospectus may be used for an offer to resell, resale or other retransfer of new notes. With regard to broker dealers, only broker dealers that acquire the original notes as a result of market making activities or other trading activities may participate in the exchange offer. Each broker dealer that receives new notes for its own account in exchange for original notes, where the original notes were acquired by the broker dealer as a result of market making activities or other trading activities, must acknowledge that it will deliver a prospectus in connection with any resale of the new notes. Please see Plan of Distribution for more details regarding the transfer of new notes.

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**DESCRIPTION OF NEW NOTES**

You can find the definitions of certain terms used in this description under the subheading **Certain definitions**. In this description, the terms **Company**, **us** or **we** refer only to Whiting Petroleum Corporation and not to any of its subsidiaries. The term **notes** refers to the original notes and new notes collectively.

The Company will issue the new notes as part of the same series of debt securities as the original notes under a senior indenture, dated as of September 12, 2013 among itself, the Guarantors and The Bank of New York Mellon Trust Company, N.A., as trustee, as supplemented by a fifth supplemental indenture, dated as of December 27, 2017, which established the terms of the notes. We refer to the senior indenture, as so supplemented and amended, as the **indenture**. The terms of the notes include those stated 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**).

The following description is a summary of the material provisions of the notes and the indenture. This description does not restate the indenture in its entirety. We urge you to read the indenture because it, and not this description, defines your rights as holders of the new notes. A copy of the indenture is incorporated by reference into the registration statement of which this prospectus forms a part. See **Where You Can Find More Information**. Certain defined terms used in this description but not defined below under **Certain definitions** have the meanings assigned to them in the indenture.

The registered Holder of a new note will be treated as the owner of it for all purposes. Only registered Holders will have rights with respect to the notes under the notes and the indenture.

**Brief description of the notes and the subsidiary guarantees**

***The notes***

The notes:

will be general unsecured obligations of the Company;

will rank equally in right of payment with all existing and future senior indebtedness of the Company (including the Company's guarantee of the borrowings under the Credit Agreement, the Existing Convertible Notes and the Existing Senior Notes);

will rank senior in right of payment to all future subordinated indebtedness of the Company;

will effectively be subordinated to all secured indebtedness of the Company (including the Company's guarantee of the borrowings under the Credit Agreement), to the extent of the value of the collateral securing such indebtedness; and

will be unconditionally guaranteed by the Guarantors on a senior unsecured basis.

*The subsidiary guarantees*

Initially, the notes will be guaranteed by each of the Company's Subsidiaries that is an obligor or guarantor under the Credit Agreement or the Existing Senior Notes.

Each Subsidiary Guarantee of a Guarantor:

will be a general unsecured obligation of such Guarantor;

will rank equally in right of payment with all existing and future senior indebtedness of such Guarantor (including such Guarantor's obligations as a primary obligor or guarantor, as the case may be, with respect to borrowings under the Credit Agreement, the Existing Convertible Notes and the Existing Senior Notes);



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will rank senior in right of payment to any future subordinated indebtedness of such Guarantor;

will be effectively subordinated to all secured indebtedness of such Guarantor (including such Guarantor's obligations as a primary obligor or guarantor, as the case may be, with respect to borrowings under the Credit Agreement), to the extent of the value of the collateral securing such indebtedness; and

will be structurally subordinated to all indebtedness and other liabilities of any Non-Guarantor Subsidiary (including trade payables).

As of March 31, 2018, the Company and the Guarantors had:

\$92 million of secured indebtedness (including \$90 million in borrowings and \$2 million in letters of credit under the prior credit agreement, with \$2.2 billion of available borrowing capacity (which was subsequently reduced to \$1.7 billion in connection with entering into the amended and restated Credit Agreement on April 12, 2018)); and

total senior indebtedness of approximately \$2.8 billion (excluding unamortized debt premiums, discounts and debt issuance costs), consisting of the original notes, the Existing Convertible Notes (which amount reflects the principal amount thereof) and the Existing Senior Notes.

Initially, not all of our existing Subsidiaries will guarantee the notes. Furthermore, under the circumstances described below under the subheading **Certain covenants Additional subsidiary guarantees**, in the future one or more of our newly created or acquired Subsidiaries may not guarantee the notes. In the event of a bankruptcy, liquidation or reorganization of any of these Non-Guarantor Subsidiaries, the Non-Guarantor Subsidiaries will pay the holders of their debt and their trade creditors before they will be able to distribute any of their assets to us. We advise you that there may not be sufficient assets remaining to pay amounts due on any or all of the notes then outstanding. Our Non-Guarantor Subsidiaries generated less than 0.1% of our consolidated revenues for the 12 months ended March 31, 2018 and as of March 31, 2018, had no Indebtedness (other than intercompany Indebtedness) and held less than 0.3% of our consolidated assets.

As of the Issue Date, all of our subsidiaries will be **Restricted Subsidiaries**. However, under the circumstances described below under the subheading **Certain covenants Limitation on designation of restricted and unrestricted subsidiaries**, we will be permitted to designate certain of our subsidiaries as **Unrestricted Subsidiaries**. Our **Unrestricted Subsidiaries** will not be subject to many of the restrictive covenants in the indenture and will not guarantee the notes.

**Principal, maturity and interest**

The Company issued the original notes with an aggregate principal amount of \$1,000,000,000. The Company may issue additional notes from time to time after this exchange offer. Any offering of additional notes is subject to the covenant described below under the caption **Certain covenants Limitation on incurrence of Indebtedness and issuance of preferred stock**. The notes and any additional notes subsequently issued under the indenture will be treated as a single series for all purposes under the indenture, including, without limitation, waivers, amendments, redemptions and offers to purchase; *provided* that if any additional notes are not fungible with the notes for U.S. federal income tax purposes, such additional notes will be issued as a separate series under the indenture and will have a separate CUSIP

number and ISIN from the notes. The Company will issue notes in minimum denominations of \$2,000 and any integral multiple of \$1,000 in excess thereof.

The notes will mature on January 15, 2026.

Interest on the notes will accrue at the rate of 6.625% per annum. Interest on the notes will be payable semi-annually in arrears on each January 15 and July 15, commencing on July 15, 2018. The Company will make each interest payment to the Holders of record as of the close of business on the January 1 and July 1 immediately preceding each interest payment date.

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Interest on the notes will accrue from the date of original issuance or, if interest has already been paid, from the date it was most recently paid. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months.

### **Methods of receiving payments on the notes**

If a Holder has given wire transfer instructions to the trustee, the Company will pay all principal, interest and premium, if any, on that Holder's notes in accordance with those instructions. All other payments on notes will be made at the office or agency of the paying agent and registrar within the City and State of New York unless the Company elects to make interest payments by check mailed to the Holders at their address set forth in the register of Holders.

We will pay the principal, premium, if any, and interest on the 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.

### **Paying agent and registrar for the notes**

The trustee will initially act as paying agent and registrar. The Company may change the paying agent or registrar without prior notice to the Holders of the notes, and the Company or any of its Domestic Subsidiaries may act as paying agent.

### **Transfer and exchange**

A Holder may transfer or exchange notes in accordance with the indenture. The Company or the trustee may require a Holder to furnish appropriate endorsements and transfer documents in connection with a transfer of notes. No service charge will be imposed for any registration of transfer or exchange of notes, but the Company may require Holders to pay all taxes due on transfer. The Company is not required to transfer or exchange any note selected for redemption. Also, the Company is not required to transfer or exchange any note for a period of 15 days before sending a notice of redemption of the notes.

### **Subsidiary guarantees**

Initially, the notes will be guaranteed by each of the Company's Subsidiaries that is an obligor or guarantor under the Credit Agreement or the Existing Senior Notes.

In the future, the notes will be guaranteed by each of the Company's newly created or acquired Material Domestic Subsidiaries and by any other Restricted Subsidiary of the Company that either (a) becomes a borrower or guarantees any Indebtedness of the Company or another Restricted Subsidiary of the Company under the Credit Agreement or (b)(i) guarantees any other Capital Markets Indebtedness of the Company or any other Restricted Subsidiary (including the Existing Senior Notes), or (ii) incurs any Capital Markets Indebtedness. See Certain covenants Additional subsidiary guarantees. These Subsidiary Guarantees will be joint and several obligations of the Guarantors.

The obligations of each Guarantor under its Subsidiary Guarantee will be limited as necessary to prevent that Subsidiary Guarantee from constituting a fraudulent conveyance or fraudulent transfer under applicable law. If a court were to find that the Subsidiary Guarantee constitutes a fraudulent conveyance or fraudulent transfer under applicable law, the court could void the Subsidiary Guarantee, require the Holders to repay any amounts received with respect to the Subsidiary Guarantee and/or subordinate the Subsidiary Guarantee to all other indebtedness (including other

guarantees and contingent liabilities) of the Guarantor. In the case of such a subordination, depending on the amount of such other indebtedness, a Guarantor's liability on its Subsidiary Guarantee could be reduced to zero. See Risk Factors Risks related to the exchange offer and new notes Any new note guarantees of the new notes may be subordinated or avoided by a court.

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A Guarantor may not consolidate or merge with or into another Person (whether or not the Guarantor is the surviving entity), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets, in one or more related transactions, to another Person, other than the Company or another Guarantor, unless:

(1) immediately after such transaction, no Default or Event of Default exists; and

(2) either:

(a) the Person acquiring the properties or assets in any such sale or other disposition or the Person formed by or surviving any such consolidation or merger (if other than the Guarantor) unconditionally assumes by supplemental indenture in a form satisfactory to the trustee all the obligations of that Guarantor under the notes, the indenture and its Subsidiary Guarantee on terms set forth therein and shall have by written agreement confirmed that its obligations under the Registration Rights Agreement shall continue to be in effect; or

(b) the Net Proceeds of such sale or other disposition are applied in accordance with the Asset Sale provisions of the indenture.

The Subsidiary Guarantee of a Guarantor will be released:

(1) in connection with any sale or other disposition of all or substantially all of the properties or assets of that Guarantor (including by way of merger or consolidation) to a Person that is not (either before or after giving effect to such transaction) a Subsidiary of the Company, if the sale or other disposition complies with the Asset Sale provisions of the indenture; *provided* that (i) all Subsidiary Guarantees and other obligations of such Guarantor in respect of all other Indebtedness of the Company and its Restricted Subsidiaries terminate upon consummation of such transaction and (ii) any Investment of the Company or any other Subsidiary of the Company (other than any Subsidiary of such Guarantor) in such Guarantor or any Subsidiary of such Guarantor in the form of an Obligation or preferred stock is repaid, satisfied, released and discharged in full upon such release; or

(2) in connection with any sale or other disposition of all of the Capital Stock of that Guarantor to a Person that is not (either before or after giving effect to such transaction) a Subsidiary of the Company, if the sale or other disposition complies with the Asset Sale provisions of the indenture; *provided* that (i) all Subsidiary Guarantees and other obligations of such Guarantor in respect of all other Indebtedness of the Company and its Restricted Subsidiaries terminate upon consummation of such transaction and (ii) any Investment of the Company or any other Subsidiary of the Company (other than any Subsidiary of such Guarantor) in such Guarantor or any Subsidiary of such Guarantor in the form of an Obligation or preferred stock is repaid, satisfied, released and discharged in full upon such release; or

(3) in the case of any Restricted Subsidiary which after the Issue Date is required to guarantee the notes pursuant to the covenant described under Certain covenants Additional subsidiary guarantees, upon the release or discharge in full from its obligations as a borrower or guarantor (as the case may be) under the Credit Agreement and any Capital Markets Indebtedness which resulted, or would result, in such Restricted

Subsidiary's obligation to guarantee the notes pursuant to the covenant described under Certain covenants Additional subsidiary guarantees (including by reason of the termination of the Credit Agreement or such Capital Markets Indebtedness but excluding, if such Restricted Subsidiary was a guarantor under the Credit Agreement or such other Capital Markets Indebtedness, a release or discharge as a result of repayment under its guarantee thereof); so long as such Restricted Subsidiary does not thereafter become a borrower or guarantor under the Credit Agreement or incur or guarantee Capital Markets Indebtedness which would result in such Restricted Subsidiary's obligation to guarantee the notes pursuant to the covenant described under Certain covenants Additional subsidiary guarantees without also guaranteeing the notes; or

- (4) if the Company designates any Restricted Subsidiary that is a Guarantor as an Unrestricted Subsidiary in accordance with the applicable provisions of the indenture; or

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(5) upon Legal Defeasance or Covenant Defeasance as described below under the caption Certain covenants Legal defeasance and covenant defeasance or upon satisfaction and discharge of the indenture with respect to the notes as described below under the caption Satisfaction and Discharge.  
 See Repurchase at the option of holders Asset sales.

Upon delivery by the Company to the trustee of an officers certificate to the effect that any of the foregoing clauses (1) (5) has occurred, the trustee shall execute any documents reasonably requested by the Company in order to evidence the release of any Guarantor from its obligations under its Subsidiary Guarantee.

**Optional redemption**

At any time prior to October 15, 2025 (the date three months prior to the maturity date), the Company may on any one or more occasions redeem all or a part of the notes at a redemption price equal to 100% of the principal amount thereof plus the Applicable Premium as of, and accrued and unpaid interest, if any, to, the date of redemption (subject to the right of Holders of record on the relevant record date to receive interest due on an interest payment date that is on or prior to the redemption date).

*Applicable Premium* means, with respect to a note being redeemed (in whole or in part) at any redemption date, the greater of (x) 1.0% of the principal amount of such note being redeemed and (y) the excess of (A) the present value at such redemption date of (1) the principal amount of such note, plus (2) all required remaining scheduled interest payments due with respect to such principal on October 15, 2025 (without regard to accrued and unpaid interest first due on the redemption date), computed using a discount rate equal to the Treasury Rate plus 50 basis points, over (B) the principal amount of such note being redeemed on such redemption date.

*Treasury Rate* means the yield to maturity at the time of computation of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two Business Days prior to the redemption date (or, if such Statistical Release is no longer published, any publicly available source or similar market data)) most nearly equal to the period from the redemption date to October 15, 2025; *provided, however*, that if the period from the redemption date to October 15, 2025 is not equal to the constant maturity of a United States Treasury security for which a weekly average yield is given, the Treasury Rate shall be obtained by linear interpolation (calculated to the nearest one-twelfth of a year) from the weekly average yields of United States Treasury securities for which such yields are given, except that if the period from the redemption date to October 15, 2025 is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year shall be used.

On and after October 15, 2025 (the date three months prior to the maturity date), we may redeem all or a part of the notes at 100% of the aggregate principal amount thereof, together with accrued and unpaid interest, if any, to the date of redemption plus accrued and unpaid interest, if any, to the applicable redemption date (subject to the right of Holders of record as of the close of business on the relevant record date to receive interest due on an interest payment date that is on or prior to the applicable redemption date).

The Company (or its agent) shall be responsible for making all determinations and calculations in respect of the redemption price of the notes. The trustee may conclusively rely and be fully protected in relying upon an officers certificate setting forth the redemption price of the notes.

Except as provided above or under Repurchase at the option of holders Change of Control triggering event, the notes will not be redeemable at the Company s option prior to their final maturity.

The Company may acquire notes by means other than a redemption, whether by tender offer, open market purchases, negotiated transactions or otherwise, in accordance with applicable securities laws, as long as such acquisition does not otherwise violate the terms of the indenture.



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### **Selection and notice**

If less than all of the notes are to be redeemed at any time, the trustee will select notes for redemption on a pro rata basis, by lot, in accordance with the procedures of DTC applicable to the trustee or by such other method as the trustee in its sole discretion deems to be fair and appropriate.

No notes of \$2,000 or less can be redeemed in part. Notices of redemption will be mailed by first class mail or otherwise delivered in accordance with the applicable procedures of DTC at least 30 but not more than 60 days before the redemption date to each Holder of notes to be redeemed at its registered address, except that redemption notices may be mailed or otherwise delivered more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the notes or a satisfaction and discharge of the indenture with respect to the notes.

Notices of redemption may, in the Company's discretion, be subject to one or more conditions precedent.

If any note is to be redeemed in part only, the notice of redemption that relates to that note will state the portion of the principal amount of that note that is to be redeemed. A new note in principal amount equal to the unredeemed portion of the original note will be issued in the name of the Holder of notes upon cancellation of the original note. Notes called for redemption become due on the date fixed for redemption. On and after the redemption date, interest ceases to accrue on notes or portions of them called for redemption.

### **Mandatory redemption**

Except as set forth below under **Repurchase at the option of Holders**, the Company is not required to make mandatory redemption or sinking fund payments with respect to the notes or to repurchase the notes at the option of the Holders.

### **Repurchase at the option of holders**

#### ***Change of control triggering event***

If a Change of Control Triggering Event occurs, each Holder of notes will have the right to require the Company to repurchase all or any part (equal to \$2,000 or any integral multiple of \$1,000 in excess thereof) of that Holder's notes pursuant to a Change of Control Offer on the terms set forth in the indenture. In the Change of Control Offer, the Company will offer a Change of Control Payment in cash equal to 101% of the aggregate principal amount of notes repurchased plus accrued and unpaid interest, if any, on the notes repurchased, to the date of settlement (the **Change of Control Settlement Date**), subject to the right of Holders of record on the relevant record date to receive interest due on an interest payment date that is on or prior to the Change of Control Settlement Date. The trustee shall have no duty to monitor whether a Change in Control Triggering Event has occurred. Within 30 days following any Change of Control Triggering Event, the Company will mail (or otherwise deliver in accordance with the applicable procedures of DTC) a notice to each Holder and the trustee describing the transaction or transactions that constitute the Change of Control Triggering Event and offering to repurchase notes as of the Change of Control Settlement Date specified in the notice, which date will be no earlier than 30 days and no later than 60 days from the date such notice is mailed or otherwise delivered (or, in the case of a notice mailed or otherwise delivered in advance of a Change of Control Triggering Event, no earlier than 30 days and no later than 60 days from the date of such Change of Control Triggering Event), pursuant to the procedures required by the indenture and described in such notice.

Notwithstanding the foregoing, the Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder and all other laws, regulations and orders of any court or governmental authority having jurisdiction over the Company to the extent those laws, regulations and orders are

applicable in connection with the repurchase of the notes as a result of a Change of Control Triggering Event. To the extent that the provisions of any securities laws or regulations or any other

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laws, regulations or orders of any court or governmental authority having jurisdiction over the Company conflict with the Change of Control Triggering Event provisions of the indenture, the Company will comply with the applicable securities laws and regulations and all other laws, regulations and orders of any court or governmental authority having jurisdiction over the Company and will not be deemed to have breached its obligations under the Change of Control Triggering Event provisions of the indenture by virtue of such compliance.

On the Change of Control Settlement Date, the Company will, to the extent lawful, accept for payment all notes or portions of notes properly tendered pursuant to the Change of Control Offer. Promptly thereafter on the Change of Control Settlement Date the Company will:

- (1) deposit with the paying agent an amount equal to the Change of Control Payment in respect of all notes or portions of notes properly tendered; and
- (2) deliver or cause to be delivered to the trustee the notes properly accepted together with an officers certificate stating the aggregate principal amount of notes or portions of notes being purchased by the Company.

On the Change of Control Settlement Date, the paying agent will mail to each Holder of notes properly tendered the Change of Control Payment for such notes (or, if all the notes are then in global form, make such payment through the facilities of DTC), and the trustee will authenticate and mail (or cause to be transferred by book-entry) to each Holder a new note equal in principal amount to any unpurchased portion of the notes surrendered, if any; *provided* that each new note will be in a principal amount of \$2,000 or any integral multiple of \$1,000 in excess thereof. The Company will publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Settlement Date.

The provisions described above that require the Company to make a Change of Control Offer following a Change of Control Triggering Event will be applicable whether or not any other provisions of the indenture are applicable. Except as described above with respect to a Change of Control Triggering Event, the indenture does not contain provisions that permit the Holders of the notes to require that the Company repurchase or redeem the notes in the event of a takeover, recapitalization or similar transaction.

The Company will not be required to make a Change of Control Offer upon a Change of Control Triggering Event if (1) a third party makes the Change of Control Offer in the manner, at the time and otherwise in compliance with the requirements set forth in the indenture applicable to a Change of Control Offer made by the Company and purchases all notes properly tendered and not withdrawn under the Change of Control Offer or (2) notice of redemption has been given pursuant to the indenture as described above under the caption *Optional redemption*, with respect to all outstanding notes, unless and until there is a default in payment of the applicable redemption price. Notwithstanding anything to the contrary contained herein, a Change of Control Offer by the Company or a third party may be made in advance of a Change of Control Triggering Event, and conditioned upon the occurrence of a Change of Control Triggering Event, if a definitive agreement is in place for the Change of Control Triggering Event at the time the Change of Control Offer is made.

Notes purchased by the Company pursuant to a Change of Control Offer will have the status of notes issued but not outstanding or will be retired and cancelled, at the Company's option. Notes purchased by a third party pursuant to the preceding paragraph will have the status of notes issued and outstanding.

The definition of Change of Control Triggering Event includes a phrase relating to the direct or indirect sale, lease, transfer, conveyance or other disposition of all or substantially all of the properties or assets of the Company and its Restricted Subsidiaries taken as a whole. The indenture is governed by New York law and although there is a limited body of case law interpreting the phrase substantially all, there is no precise established definition under New York law of substantially all the assets of an entity. Accordingly, the ability of a Holder of notes to require the Company to repurchase its notes as a result of a sale, lease, transfer, conveyance or other disposition of less than all of the assets of the Company and its Subsidiaries taken as a whole to another Person or group may be uncertain.

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In the event that Holders of not less than 90% of the aggregate principal amount of the outstanding notes accept a Change of Control Offer and the Company purchases all of the notes held by such Holders, the Company will have the right to, upon not less than 30 nor more than 60 days' prior notice, given not more than 30 days following the purchase pursuant to the Change of Control Offer described above, to redeem all of the notes that remain outstanding following such purchase at a purchase price equal to the Change of Control Payment plus, to the extent not included in the Change of Control Payment, accrued and unpaid interest on the notes that remain outstanding, if any, to the Change of Control Settlement Date, subject to the right of Holders of record on the relevant record date to receive interest due on an interest payment date that is on or prior to the Change of Control Settlement Date.

The Credit Agreement limits the ability of the Company to purchase any notes, and also provides that certain change of control events with respect to the Company would constitute an event of default requiring, at the option of the lenders, repayment of the debt arising under the Credit Agreement. Any future credit agreements or other agreements relating to indebtedness to which the Company becomes a party may contain similar or additional restrictions and provisions. In the event a Change of Control Triggering Event occurs at a time when the Company is prohibited from purchasing notes, the Company could seek the consent of its senior lenders to the purchase of notes or could attempt to refinance the borrowings that contain such prohibition. If the Company does not obtain such a consent or repay such borrowings, the Company will remain prohibited from purchasing notes. In such case, the Company's failure to purchase tendered notes would constitute an Event of Default under the indenture which would, in turn, constitute an event of default under such debt.

### ***Asset sales***

The Company will not, and will not permit any of its Restricted Subsidiaries to, consummate an Asset Sale unless:

- (1) the Company (or the Restricted Subsidiary, as the case may be) receives consideration at the time of the Asset Sale at least equal to the fair market value of the assets or Equity Interests issued or sold or otherwise disposed of;
- (2) the fair market value is determined by the Company's Board of Directors as evidenced by a Board Resolution; and
- (3) at least 75% of the aggregate consideration received from such Asset Sale and all other Asset Sales since the Issue Date, on a cumulative basis, by the Company or such Restricted Subsidiary is in the form of cash or Cash Equivalents. For purposes of this clause (3) only, each of the following will be deemed to be Cash Equivalents:
  - (a) any liabilities, as shown on the Company's or such Restricted Subsidiary's most recent balance sheet, of the Company or any Subsidiary (other than contingent liabilities and liabilities that are by their terms subordinated to the notes or any Subsidiary Guarantee) that are assumed by the transferee of any such assets pursuant to a novation agreement that releases the Company or such Subsidiary from further liability;
  - (b) any securities, notes or other obligations received by the Company or any such Restricted Subsidiary from such transferee that are converted by the Company or such Subsidiary into cash within 270 days of the receipt thereof, to the extent of the cash received in that conversion;

(c) with respect to any Asset Sale of oil and natural gas properties where the Company or such Restricted Subsidiary retains an interest in such property, the aggregate costs and expenses of the Company or such Restricted Subsidiary related to the exploration, development, completion or production of such properties and activities related thereto which the transferee (or an Affiliate thereof) agrees to pay; and

(d) any Designated Non-cash Consideration received by the Company or such Restricted Subsidiary in such Asset Sale having an aggregate fair market value, taken together with all other Designated Non-cash Consideration received pursuant to this clause (d) net of cash or Cash Equivalents received in

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connection with a subsequent sale of or collection on such Designated Non-cash Consideration, not to exceed an amount equal to 5.0% of the Company's ACNTA (determined at the time of receipt of such Designated Non-cash Consideration), with the fair market value of each item of Designated Non-cash Consideration being measured at the time received and without giving effect to subsequent changes in value other than as a result of payments received in connection therewith as contemplated by the definition of Designated Non-cash Consideration.

Within 360 days after the receipt of any Net Proceeds from an Asset Sale, the Company or any such Restricted Subsidiary may apply those Net Proceeds at its option to any combination of the following:

- (1) to prepay, repay, redeem or repurchase any Indebtedness of the Company or a Guarantor (other than intercompany Indebtedness, Capital Stock or Indebtedness that is subordinated to the notes or the Subsidiary Guarantees) or any Indebtedness of a Restricted Subsidiary that is not a Guarantor (other than intercompany Indebtedness);
- (2) to acquire all or substantially all of the properties or assets of one or more other Persons primarily engaged in the Oil and Gas Business, and, for this purpose, a division or line of business of a Person shall be treated as a separate Person;
- (3) to acquire a majority of the Voting Stock of one or more other Persons primarily engaged in the Oil and Gas Business;
- (4) to make one or more capital expenditures; or
- (5) to acquire other property or assets that are used or useful in the Oil and Gas Business.

Pending the final application of any Net Proceeds, the Company or any such Restricted Subsidiary may temporarily reduce revolving credit borrowings or otherwise invest the Net Proceeds in any manner that is not prohibited by the indenture. Any Net Proceeds from Asset Sales that are not applied or invested as provided in the preceding paragraph will constitute Excess Proceeds.

On the 361st day after the Asset Sale (or, at the Company's option, any earlier date), if the aggregate amount of Excess Proceeds then exceeds \$50.0 million, the Company will make an Asset Sale Offer to all Holders, and all holders of other Pari Passu Indebtedness containing provisions similar to those set forth in the indenture with respect to offers to purchase or redeem with the proceeds of sales of assets, to purchase the maximum principal amount of notes and such other Pari Passu Indebtedness that may be purchased out of the Excess Proceeds. The offer price in any Asset Sale Offer will be equal to 100% of the principal amount plus accrued and unpaid interest, if any, to the date of settlement, subject to the right of Holders of record on the relevant record date to receive interest due on an interest payment date that is on or prior to the date of settlement, and will be payable in cash. If any Excess Proceeds remain after consummation of an Asset Sale Offer, the Company may use those Excess Proceeds for any purpose not otherwise prohibited by the indenture. If the aggregate principal amount of notes and other Pari Passu Indebtedness tendered in such Asset Sale Offer exceeds the amount of Excess Proceeds, the trustee will select the notes and such other Pari Passu Indebtedness to be purchased on a pro rata basis on the basis of the aggregate accreted value (if issued with original issue discount) or principal amount of tendered notes and Pari Passu Indebtedness (*provided* that the selection

of such Pari Passu Indebtedness shall be made pursuant to the terms of such Pari Passu Indebtedness) (with such adjustments as may be deemed appropriate by the Company so that only notes in denominations of \$2,000 or any integral multiple of \$1,000 in excess thereof will be purchased). Upon completion of each Asset Sale Offer, the amount of Excess Proceeds will be reset at zero.

The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with each repurchase of notes pursuant to an Asset Sale Offer. To the extent that the provisions of any securities laws or regulations conflict with the Asset Sale provisions of the indenture, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under the Asset Sale provisions of the indenture by virtue of such compliance.



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**Certain covenants**

***Limitation on restricted payments***

The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly:

- (1) declare or pay any dividend or make any other payment or distribution on account of the Company's or any of its Restricted Subsidiaries' Equity Interests (including, without limitation, any payment in connection with any merger or consolidation to which the Company or any of its Restricted Subsidiaries is a party) or to the direct or indirect holders of the Company's or any of its Restricted Subsidiaries' Equity Interests in their capacity as such (other than dividends or distributions payable in Equity Interests (other than Disqualified Stock) of the Company or payable to the Company or a Restricted Subsidiary of the Company);
  - (2) purchase, redeem or otherwise acquire or retire for value (including, without limitation, in connection with any merger or consolidation to which the Company is a party) any Equity Interests or Convertible Securities (in the case of Convertible Securities, only that amount paid in cash in excess of the principal amount thereof and accrued and unpaid interest thereon) of the Company or any direct or indirect parent of the Company (other than with the Net Cash Proceeds of a substantially concurrent sale of Equity Interests (other than Disqualified Stock) of the Company; *provided*, that such Net Cash Proceeds shall be excluded from clause 3(b) of the next succeeding paragraph);
  - (3) make any principal payment on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value, any Indebtedness that is subordinated to the notes or the Subsidiary Guarantees (other than Indebtedness of the Company owing to and held by any Guarantor or Indebtedness of a Guarantor owing to and held by the Company or any other Guarantor permitted under clause (6) of the second paragraph of the covenant described below under *Limitation on incurrence of Indebtedness and issuance of preferred stock*) prior to any scheduled repayment or scheduled maturity, except a payment, purchase, redemption, defeasance or other acquisition of any such Indebtedness in anticipation of satisfying a sinking fund obligation, principal installment or the Stated Maturity thereof, in each case, due within one year of the date of such payment, purchase, redemption, defeasance or other acquisition; or
  - (4) make any Restricted Investment (all such payments and other actions set forth in these clauses (1) through (4) above being collectively referred to as *Restricted Payments*),
- unless, at the time of and after giving effect to such Restricted Payment:

- (1) no Default or Event of Default has occurred and is continuing or would occur as a consequence of such Restricted Payment;
- (2) the Company would, at the time of such Restricted Payment and after giving pro forma effect thereto as if such Restricted Payment had been made at the beginning of the applicable four-quarter period, have been

permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in the first paragraph of the covenant described below under the caption Limitation on incurrence of Indebtedness and issuance of preferred stock; and

- (3) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Company and its Restricted Subsidiaries after May 11, 2004 (excluding Restricted Payments permitted by clauses (2), (3), (4), (5), (6), (7) and (8) of the next succeeding paragraph), is less than the sum, without duplication, of:
  - (a) 50% of the Consolidated Net Income of the Company for the period (taken as one accounting period) from April 1, 2004 to the end of the Company's most recently ended fiscal quarter for which internal financial statements are available at the time of such Restricted Payment (or, if such Consolidated Net Income for such period is a deficit, less 100% of such deficit), *plus*
  - (b) 100% of the aggregate Net Cash Proceeds received by the Company (including the fair market value of any Additional Assets to the extent acquired in consideration of Equity Interests of the

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Company (other than Disqualified Stock)) since May 11, 2004 as a contribution to its common equity capital or from the issue or sale of Equity Interests of the Company (other than Disqualified Stock) or from the issue or sale of convertible or exchangeable Disqualified Stock or convertible or exchangeable debt securities of the Company that have been converted into or exchanged for such Equity Interests (other than Equity Interests (or Disqualified Stock or debt securities) sold to a Subsidiary of the Company), *plus*

(c) to the extent that any Restricted Investment that was made after May 11, 2004 is sold for cash or otherwise liquidated or repaid for cash, the lesser of (i) the cash return of capital with respect to such Restricted Investment (less the cost of disposition, if any) and (ii) the initial amount of such Restricted Investment, *plus*

(d) to the extent that any Unrestricted Subsidiary of the Company is redesignated as a Restricted Subsidiary after May 11, 2004, the lesser of (i) the fair market value of the Company's Investment in such Subsidiary as of the date of such redesignation or (ii) such fair market value as of the date on which such Subsidiary was originally designated as an Unrestricted Subsidiary.

As of March 31, 2018, the amount available for Restricted Payments under the foregoing clause (3) totaled approximately \$3.5 billion.

The preceding provisions will not prohibit:

- (1) the payment of any dividend or distribution or the consummation of any irrevocable redemption of debt that is subordinate to the notes, within 60 days after the date of declaration of such dividend or the delivery of any irrevocable notice of redemption, as the case may be, if the dividend, distribution or redemption payment on the date of declaration or the date of the notice of redemption, as the case may be, would have complied with the provisions of the indenture;
- (2) the redemption, repurchase, retirement, defeasance or other acquisition of any subordinated Indebtedness of the Company or any Guarantor or of any Equity Interests of the Company in exchange for, or out of the Net Cash Proceeds of the substantially concurrent sale (other than to a Subsidiary of the Company) of, Equity Interests of the Company (other than Disqualified Stock), with a sale being deemed substantially concurrent if such redemption, repurchase, retirement, defeasance or acquisition occurs not more than 120 days after such sale; *provided* that the amount of any such Net Cash Proceeds that are utilized for any such redemption, repurchase, retirement, defeasance or other acquisition will be excluded from clause (3)(b) of the preceding paragraph;
- (3) the defeasance, redemption, repurchase, retirement or other acquisition of subordinated Indebtedness of the Company or any Guarantor with the Net Cash Proceeds from an incurrence of, or in exchange for, Permitted Refinancing Indebtedness;
- (4) the payment of any dividend or distribution by a Restricted Subsidiary of the Company to the holders of its Equity Interests on a pro rata basis;

- (5) the redemption, repurchase or other acquisition or retirement for value of any Equity Interests of the Company or any Restricted Subsidiary of the Company held by any current or former director, officer, employee or consultant of the Company or any of its Restricted Subsidiaries pursuant to any equity subscription agreement or plan, stock option agreement or similar agreement or plan; *provided* that the aggregate price paid for all such repurchased, redeemed, acquired or retired Equity Interests may not exceed \$4.0 million in any calendar year (with unused amounts in any calendar year being carried over to succeeding calendar years up to a maximum of \$8.0 million in any calendar year);
- (6) the acquisition of Equity Interests by the Company in connection with the exercise of stock options or stock appreciation rights or other equity-based awards by way of cashless exercise;
- (7) the purchase, repurchase, redemption, defeasance or other acquisition or retirement for value of subordinated Indebtedness of the Company or any Restricted Subsidiary (a) at a purchase price not

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greater than 101.0% of the principal amount thereof (plus accrued and unpaid interest) in the event of a Change of Control Triggering Event in accordance with provisions similar to the covenant described under

Repurchase at the option of holders Change of control triggering event or (b) at a purchase price not greater than 100.0% of the principal amount thereof (plus accrued and unpaid interest) in accordance with provisions similar to the covenant described under Repurchase at the option of holders Asset sales; *provided* that, prior to or simultaneously with such purchase, repurchase, redemption, defeasance or other acquisition or retirement, the Company has made the Change of Control Offer or Asset Sale Offer, as applicable, as provided in such covenants with respect to the notes and has completed the repurchase or redemption of all notes validly tendered for payment in connection with such Change of Control Offer or Asset Sale Offer;

(8) the payment of cash in lieu of fractional shares of Capital Stock in connection with any transaction otherwise permitted under this covenant; or

(9) other Restricted Payments in an aggregate amount since May 11, 2004 not to exceed \$50.0 million; *provided, however*, that at the time of, and after giving effect to, any Restricted Payment permitted under clause (9), no Default or Event of Default shall have occurred and be continuing or would be caused thereby.

The amount of all Restricted Payments (other than cash) will be the fair market value on the date of the Restricted Payment of the asset(s) or securities proposed to be transferred or issued by the Company or such Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment. The fair market value of any assets or securities that are required to be valued by this covenant will be determined, in the case of amounts under \$50.0 million, in good faith by an officer of the Company and, in the case of amounts of \$50.0 million or more, by the Board of Directors of the Company, whose determination shall be evidenced by a Board Resolution. The amount of any Restricted Payment paid in cash shall be its face amount. Not later than the date of making any Restricted Payment (excluding any Restricted Payment described in the preceding clauses (2), (3), (4), (5), (6), (7) or (8)) in excess of \$50.0 million the Company will deliver to the trustee an officers certificate stating that such Restricted Payment is permitted and setting forth the basis upon which the calculations required by this Limitation on restricted payments covenant were computed. For purposes of determining compliance with this Limitation on restricted payments covenant, in the event that a Restricted Payment meets the criteria of more than one of the categories of Restricted Payments described in the preceding clauses (1) through (9), or is entitled to be made pursuant to the first paragraph of this covenant, the Company will be permitted to divide or classify (or later divide, classify or reclassify in whole or in part in its sole discretion) such Restricted Payment in any manner that complies with this covenant.

***Limitation on incurrence of Indebtedness and issuance of preferred stock***

The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, incur ) any Indebtedness (including Acquired Debt), neither the Company nor any Guarantor will issue any Disqualified Stock, and the Company will not permit any Non-Guarantor Subsidiary to issue any shares of preferred stock; *provided, however*, that the Company and any Restricted Subsidiary may incur Indebtedness (including Acquired Debt) or issue Disqualified Stock, and any Restricted Subsidiary may issue preferred stock, if the Fixed Charge Coverage Ratio for the Company s most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or preferred stock is issued would have been at least 2.0 to 1.0, determined on a pro forma basis (including a pro forma application of the net proceeds therefrom), as if the additional Indebtedness had been incurred or Disqualified Stock or preferred stock had been issued, as the case may be, at the beginning of such

four-quarter period.

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The first paragraph of this covenant will not prohibit the incurrence of any of the following items of Indebtedness (collectively, Permitted Debt ):

- (1) the incurrence by the Company or any of its Restricted Subsidiaries of additional Indebtedness (including letters of credit) under one or more Credit Facilities in an aggregate principal amount at any one time outstanding under this clause (1) (with letters of credit being deemed to have a principal amount equal to the maximum available amount thereunder) not to exceed an amount equal to the greater of (a) \$3.0 billion or (b) 30.0% of ACNTA as of the date of such incurrence;
- (2) the incurrence by the Company or any of its Restricted Subsidiaries of the Existing Indebtedness;
- (3) the incurrence by the Company and the Guarantors of Indebtedness represented by the original notes and the related Subsidiary Guarantees and any new notes and the related Subsidiary Guarantees thereof;
- (4) the incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness represented by Capital Lease Obligations, mortgage financings or purchase money obligations, in each case, incurred for the purpose of financing all or any part of the purchase price or cost of design, construction, installation or improvement of property, plant or equipment used in the Oil and Gas Business of the Company or such Restricted Subsidiary, in an aggregate principal amount at any time outstanding, including all Permitted Refinancing Indebtedness incurred to renew, refund, refinance or replace, defease or discharge any Indebtedness incurred pursuant to this clause (4), not to exceed the greater of (a) \$100.0 million and (b) 1.0% of ACNTA as of the date of such incurrence at any time outstanding;
- (5) the incurrence by the Company or any of its Restricted Subsidiaries of Permitted Refinancing Indebtedness, or the issuance by the Company or any Restricted Subsidiary of Disqualified Stock or by any Restricted Subsidiary of preferred stock, in each case in exchange for, or the net proceeds of which are used to refund, refinance or replace Indebtedness (other than intercompany Indebtedness), Disqualified Stock or preferred stock that was permitted by the indenture to be incurred or issued under the first paragraph of this covenant or clause (2) or (3) of this paragraph or this clause (5);
- (6) the incurrence by the Company or any of its Restricted Subsidiaries of intercompany Indebtedness between or among the Company and any of its Restricted Subsidiaries; *provided, however*, that:
  - (a) if the Company is the obligor on such Indebtedness and a Guarantor is not the obligee, such Indebtedness must be expressly subordinated to the prior payment in full in cash of all Obligations with respect to the notes, or if a Guarantor is the obligor on such Indebtedness and neither the Company nor another Guarantor is the obligee, such Indebtedness must be expressly subordinated to the prior payment in full in cash of all Obligations with respect to the Subsidiary Guarantee of such Guarantor; and
  - (b) (i) any subsequent issuance or transfer of Equity Interests that results in any such Indebtedness being held by a Person other than the Company or a Restricted Subsidiary of the Company and (ii) any sale or other transfer of any such Indebtedness to a Person that is neither the Company nor a Restricted Subsidiary of the Company will be

deemed, in each case, to constitute an incurrence of such Indebtedness by the Company or such Restricted Subsidiary, as the case may be, that was not permitted by this clause (6);

- (7) the issuance by any Restricted Subsidiary to the Company or to any Restricted Subsidiary of shares of Disqualified Stock or preferred stock; *provided, however*, that:
- (a) any subsequent issuance or transfer of Equity Interests that results in any such Disqualified Stock or preferred stock being held by a Person other than the Company or a Restricted Subsidiary of the Company, and
  - (b) any sale or other transfer of any such Disqualified Stock or preferred stock to a Person that is neither the Company nor a Restricted Subsidiary,



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will be deemed, in each case, to constitute an issuance of such Disqualified Stock or preferred stock by such Restricted Subsidiary that was not permitted by this clause (7);

- (8) the incurrence by the Company or any of its Restricted Subsidiaries of Hedging Obligations;
- (9) the guarantee by the Company or any of the Guarantors of Indebtedness of the Company or any Guarantor that was permitted to be incurred by another provision of this covenant;
- (10) the incurrence by the Company or any of its Restricted Subsidiaries of obligations relating to net gas balancing positions arising in the ordinary course of business and consistent with past practice;
- (11) the incurrence by the Company's Unrestricted Subsidiaries of Non-Recourse Debt; *provided, however*, that if any such Indebtedness ceases to be Non-Recourse Debt of an Unrestricted Subsidiary, such event will be deemed to constitute an incurrence of Indebtedness by a Restricted Subsidiary of the Company that was not permitted by this clause (11);
- (12) the incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness in respect of bid, performance, surety and similar bonds issued for the account of the Company and any of its Restricted Subsidiaries in the ordinary course of business, including guarantees and obligations of the Company and any of its Restricted Subsidiaries with respect to letters of credit supporting such obligations (in each case other than an obligation for money borrowed);
- (13) the incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness arising from agreements of the Company or any of its Restricted Subsidiaries providing for indemnification, adjustment of purchase price or similar obligations, in each case, incurred or assumed in connection with the disposition of any business, assets or Capital Stock of a Subsidiary; *provided* that the maximum aggregate liability in respect of all such Indebtedness shall at no time exceed the gross proceeds actually received by the Company and its Restricted Subsidiaries in connection with such disposition;
- (14) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business; *provided, however*, that such Indebtedness is promptly extinguished;
- (15) Indebtedness arising in connection with endorsement of instruments for deposit in the ordinary course of business;
- (16) Indebtedness owed on a short-term basis to banks and other financial institutions incurred in the ordinary course of business of the Company and any Restricted Subsidiary with such banks or financial institutions

that arises in connection with ordinary banking arrangements to manage cash balances of the Company and any Restricted Subsidiary;

(17) the incurrence by the Company or any of its Restricted Subsidiaries of Acquired Debt in connection with a transaction meeting either one of the financial tests set forth in clause (4) under Merger, consolidation or sale of assets; and

(18) the incurrence or issuance by the Company or any of its Restricted Subsidiaries of additional Indebtedness, Disqualified Stock and preferred stock in an aggregate principal amount, accreted value or liquidation preference, as applicable, at any time outstanding, not to exceed the greater of (a) \$250.0 million and (b) 2.5% of ACNTA as of the date of incurrence.

For purposes of determining compliance with this Limitation on incurrence of Indebtedness and issuance of preferred stock covenant, in the event that an item of Indebtedness (including Acquired Debt) or Disqualified Stock or preferred stock, as applicable, meets the criteria of more than one of the categories of Permitted Debt described in clauses (1) through (18) above, or is entitled to be incurred pursuant to the first paragraph of this covenant, the Company will be permitted to divide and classify (or later divide, classify, reclassify or re-divide in

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whole or in part in its sole discretion) such item of Indebtedness or Disqualified Stock or preferred stock, as applicable, in any manner that complies with this covenant, except that any Indebtedness under Credit Facilities on the Issue Date (after giving effect to the initial offering of original notes and the use of proceeds thereof) shall be considered incurred under the first paragraph of this covenant. In addition, the principal amount of any Disqualified Stock or preferred stock of a Person will be deemed to be equal to the greater of the maximum mandatory redemption or repurchase price (not including, in either case, any redemption or repurchase premium) or the liquidation preference of all obligations of such Person with respect to the redemption, repayment or other repurchase of any Disqualified Stock, or with respect to any Non-Guarantor Subsidiary, any preferred stock.

The accrual of interest, the accretion or amortization of original issue discount, the payment of interest on any Indebtedness in the form of additional Indebtedness with the same terms, the payment of dividends on Disqualified Stock in the form of additional shares of the same class of Disqualified Stock and the payment of dividends on preferred stock in the form of additional shares of the same class of preferred stock will not be deemed to be an incurrence of Indebtedness or an issuance of Disqualified Stock or preferred stock for purposes of this covenant; *provided*, in each such case, that the amount thereof is included in Fixed Charges of the Company as accrued.

Notwithstanding any other provision of this covenant, the maximum amount of Indebtedness that the Company or any Restricted Subsidiary may incur pursuant to this covenant shall not be deemed exceeded solely as a result of fluctuations in exchange rates or currency values.

***Limitation on liens***

The Company will not and will not permit any of its Restricted Subsidiaries to, create, incur, assume or otherwise cause or suffer to exist or become effective any Lien of any kind (other than Permitted Liens) securing Indebtedness upon any of their property or assets, now owned or hereafter acquired, unless the notes or any Subsidiary Guarantee of such Restricted Subsidiary, as applicable, is secured on an equal and ratable basis (or on a senior basis to, in the case of obligations subordinated in right of payment to the notes or such Subsidiary Guarantee, as the case may be) with the obligations so secured until such time as such obligations are no longer secured by a Lien. For the avoidance of doubt, the creation, incurrence, assumption and existence of Liens (but not the foreclosure thereof) shall be governed by this covenant and not by the covenants described under Repurchase at the option of holders or Certain covenants Merger, consolidation or sale of assets.

***Limitation on dividend and other payment restrictions affecting subsidiaries***

The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create or permit to exist or become effective any consensual encumbrance or consensual restriction on the ability of any Restricted Subsidiary to:

- (1) pay dividends or make any other distributions on its Capital Stock to the Company or any of its Restricted Subsidiaries (it being understood that the priority of any preferred stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock shall not be deemed a restriction on the ability to pay dividends or make distributions on Capital Stock), or pay any Indebtedness or other obligations owed to the Company or any of its Restricted Subsidiaries;

- (2)

make loans or advances to the Company or any of its Restricted Subsidiaries (it being understood that the subordination of loans or advances made to the Company or any Restricted Subsidiary to other Indebtedness incurred by the Company or any Restricted Subsidiary shall not be deemed a restriction on the ability to make loans or advances); or

- (3) transfer any of its properties or assets to the Company or any of its Restricted Subsidiaries.

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However, the preceding restrictions will not apply to encumbrances or restrictions existing under or by reason of:

- (1) agreements governing Existing Indebtedness, Capital Stock and Credit Facilities as in effect on the Issue Date and any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of those agreements; *provided*, that the amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are not materially more restrictive, taken as a whole, with respect to such encumbrances and restrictions than those contained in the applicable agreements or instruments on the Issue Date as determined in good faith by the Company;
- (2) the indenture, the notes, the exchange notes and the Subsidiary Guarantees;
- (3) applicable law, rule, regulation, order, approval, license, permit or similar restriction;
- (4) any instrument governing Indebtedness or Capital Stock of a Person acquired by the Company or any of its Restricted Subsidiaries as in effect at the time of such acquisition, which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired; *provided* that, in the case of Indebtedness, such Indebtedness was permitted by the terms of the indenture to be incurred, and any amendments, restatements, modifications, renewals, supplements, refundings, replacements or refinancings of those agreements; *provided, further*, that the amendments, restatements, modifications, renewals, supplements, refundings, replacements or refinancings are not materially more restrictive, taken as a whole, with respect to such encumbrances and restrictions than those contained in those agreements on the date of such acquisition as determined in good faith by the Company;
- (5) customary non-assignment provisions in leases entered into in the ordinary course of business and consistent with past practices;
- (6) Capital Lease Obligations or purchase money obligations, in each case for property acquired in the ordinary course of business that impose restrictions on that property of the nature described in clause (3) of the preceding paragraph;
- (7) any agreement for the sale or other disposition of a Restricted Subsidiary of the Company that restricts distributions and/or transfers of properties and assets by that Restricted Subsidiary pending its sale or other disposition;
- (8) Permitted Refinancing Indebtedness; *provided* that the restrictions contained in the agreements governing such Permitted Refinancing Indebtedness are not materially more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being refinanced as determined in good faith by the Company;

- (9) Liens securing Indebtedness otherwise permitted to be incurred under the provisions of the covenant described above under the caption "Limitation on liens" that limit the right of the debtor to dispose of the assets subject to such Liens;
- (10) provisions with respect to the disposition or distribution of assets or property in joint venture agreements, asset sale agreements, stock sale agreements, agreements respecting Permitted Business Investments and other similar agreements entered into (a) in the ordinary course of business or (b) with the Company's approval by its Board of Directors, which limitation is applicable only to property or Capital Stock that are subject to such agreements;
- (11) restrictions on cash, Cash Equivalents or other deposits or net worth imposed by customers or suppliers under contracts entered into in the ordinary course of business;
- (12) restrictions on the sale, lease or transfer of property or assets arising or agreed to in the ordinary course of business, not relating to any Indebtedness, and that do not, individually or in the aggregate, detract from the value of property or assets of the Company or any Restricted Subsidiary in any manner material to the Company and the Restricted Subsidiaries taken as a whole;

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- (13) Hedging Obligations permitted to be incurred under the covenant described under the caption Limitation on incurrence of Indebtedness and issuance of preferred stock;
- (14) with respect to any Restricted Subsidiary incorporated or organized outside the United States, any encumbrance or restriction contained in the terms of any Indebtedness or any agreement pursuant to which such Indebtedness was incurred if either (a) the encumbrance or restriction applies only in the event of a payment default or a default with respect to a financial covenant in such Indebtedness or agreement or (b) the Company determines that any such encumbrance or restriction will not materially affect the Company's ability to make principal or interest payments on the notes, as determined in good faith by the Board of Directors of the Company, whose determination shall be conclusive; and
- (15) encumbrances or restrictions contained in agreements governing Indebtedness, Disqualified Stock, or preferred stock, as applicable, of the Company or any of its Restricted Subsidiaries permitted to be incurred pursuant to an agreement entered into subsequent to the Issue Date in accordance with the covenant described under the caption Limitation on incurrence of Indebtedness and issuance of preferred stock; *provided* that the provisions relating to such encumbrance or restriction contained in such Indebtedness, Disqualified Stock or preferred stock, as the case may be, are not materially less favorable to the Company taken as a whole, as determined by the Board of Directors of the Company in good faith, than the provisions contained in the Credit Agreement and in the indenture governing the notes as in effect on the Issue Date.

***Merger, consolidation or sale of assets***

The Company may not, directly or indirectly: (1) consolidate or merge with or into another Person (whether or not the Company is the surviving entity); or (2) sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of the properties or assets of the Company and its Restricted Subsidiaries taken as a whole, in one or more related transactions, to another Person, unless:

- (1) either: (a) the Company is the surviving Person; or (b) the Person formed by or surviving any such consolidation or merger (if other than the Company) or to which such sale, assignment, transfer, lease, conveyance or other disposition has been made is an entity organized or existing under the laws of the United States, any state of the United States or the District of Columbia; *provided* that if the Company or such other Person is not a corporation, a Restricted Subsidiary of the Company that is a corporation organized or existing under the laws of the United States, any state of the United States or the District of Columbia shall assume by supplemental indenture all obligations of the Company under the notes and the indenture as a co-issuer of the notes;
- (2) the Person formed by or surviving any such consolidation or merger (if other than the Company) or the Person to which such sale, assignment, transfer, lease, conveyance or other disposition has been made assumes by supplemental indenture in a form satisfactory to the trustee all the obligations of the Company under the notes and the indenture and assumes by written agreement all obligations of the Company under the Registration Rights Agreement;
- (3) immediately after such transaction no Default or Event of Default exists;

- (4) the Company or the Person formed by or surviving any such consolidation or merger (if other than the Company), or to which such sale, assignment, transfer, lease, conveyance or other disposition has been made will, on the date of such transaction after giving pro forma effect thereto and any related financing transactions as if the same had occurred at the beginning of the applicable four-quarter period, either (a) be permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in the first paragraph of the covenant described above under the caption Limitation on incurrence of Indebtedness and issuance of preferred stock or (b) have a Fixed Charge Coverage Ratio that is equal to or greater than the Fixed Charge Coverage Ratio of the Company immediately prior to such consolidation, merger, sale, assignment, transfer, lease, conveyance or other disposition;



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- (5) each Guarantor (unless it is the other party to the transactions described above, in which case the third paragraph above under *Subsidiary guarantees* shall apply) shall have by supplemental indenture confirmed that its *Subsidiary Guarantee* shall apply to such successor Person's obligations under the indenture and the notes; and
- (6) the Company shall have delivered to the trustee an officers' certificate and an opinion of counsel, each stating that such consolidation, merger or disposition and such supplemental indenture (if any) comply with the indenture.

This *Merger, consolidation or sale of assets* covenant will not apply to any sale, assignment, transfer, lease, conveyance or other disposition of assets between or among the Company and its *Restricted Subsidiaries*. Clauses (3) and (4) of the first paragraph of this covenant will not apply to any merger or consolidation of the Company (a) with or into one of its *Restricted Subsidiaries* for any purpose or (b) with or into an *Affiliate* solely for the purpose of reincorporation (or the substantial equivalent) of the Company in another jurisdiction.

Although there is a limited body of case law interpreting the phrase *substantially all*, there is no precise established definition of the phrase under applicable law. Accordingly, in certain circumstances there may be a degree of uncertainty as to whether a particular transaction would involve *all* or *substantially all* of the properties or assets of a *Person*.

***Limitation on transactions with affiliates***

The Company will not, and will not permit any of its *Restricted Subsidiaries* to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any *Affiliate* (each, an *Affiliate Transaction*) involving aggregate consideration in excess of \$5.0 million, unless:

- (1) the *Affiliate Transaction* is on terms that are not materially less favorable to the Company or the relevant *Restricted Subsidiary* than those that would have been obtained in a comparable transaction by the Company or such *Restricted Subsidiary* with an unrelated *Person* or, if in the good faith judgment of the Company's Board of Directors, no comparable transaction is available with which to compare such *Affiliate Transaction*, such *Affiliate Transaction* is otherwise fair to the Company or the relevant *Restricted Subsidiary* from a financial point of view; and
- (2) the Company delivers to the trustee:
  - (a) with respect to any *Affiliate Transaction* or series of related *Affiliate Transactions* involving aggregate consideration in excess of \$20.0 million but less than or equal to \$50.0 million, an officers' certificate certifying that such *Affiliate Transaction* complies with this covenant; and
  - (b) with respect to any *Affiliate Transaction* or series of related *Affiliate Transactions* involving aggregate consideration in excess of \$50.0 million, an officers' certificate certifying that such *Affiliate Transaction* complies with this covenant and has been approved by the resolution of a majority of the disinterested members of the Board of Directors.

The following items will not be deemed to be Affiliate Transactions and, therefore, will not be subject to the provisions of the prior paragraph:

- (1) any employment, severance or consulting agreement or other compensation agreement, arrangement or plan or any amendment thereto, any issuance of Capital Stock (other than Disqualified Stock) or other payments, awards or grants in cash, Capital Stock (other than Disqualified Stock) or otherwise pursuant to, or the funding of, employment, severance or consulting agreements and other compensation agreements, arrangements and plans, options to purchase Capital Stock (other than Disqualified Stock) of the Company, restricted stock plans, long-term incentive plans, stock appreciation rights plans,

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participation plans or similar employee benefits plans, in each case arising in the ordinary course of business of the Company or any of its Restricted Subsidiaries;

- (2) transactions between or among any of the Company and its Restricted Subsidiaries;
- (3) transactions with a Person that is an Affiliate of the Company solely because the Company owns an Equity Interest in such Person, including, without limitation, any transaction with a joint venture or similar entity (other than an Unrestricted Subsidiary);
- (4) payment of reasonable directors' fees, consulting fees and other benefits to persons who are not otherwise Affiliates of the Company;
- (5) provision of officers' and directors' indemnification and insurance in the ordinary course of business to the extent permitted by law;
- (6) sales of Equity Interests (other than Disqualified Stock) to Affiliates of the Company;
- (7) Permitted Investments and Restricted Payments that are permitted by the provisions of the indenture described above under the caption "Limitation on restricted payments";
- (8) any transaction in which the Company or its Restricted Subsidiaries, as the case may be, deliver to the trustee a letter from an accounting, appraisal or investment banking firm of national standing stating that such transaction is fair to the Company or its Restricted Subsidiary from a financial point of view or that such transaction meets the requirements of clause (1) of the first paragraph of this covenant;
- (9) transactions with Unrestricted Subsidiaries, Affiliates, customers, clients, suppliers or purchasers or sellers of goods or services, or lessors or lessees of property, in each case in the ordinary course of business and otherwise in compliance with the terms of the indenture which are, in the aggregate (taking into account all the costs and benefits associated with such transactions) materially no less favorable to the Company or its Restricted Subsidiaries than those that would have been obtained in a comparable transaction by the Company or such Restricted Subsidiary with an unrelated person, in the good faith determination of the Company's Board of Directors, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party; and
- (10) transactions between the Company or any of its Restricted Subsidiaries and any Person, a director of which is also a director of the Company or any direct or indirect parent of the Company; *provided, however*, that such director abstains from voting as a director of the Company or such direct or indirect parent, as the case may be, on any matter involving such other Person.

***Limitation on designation of restricted and unrestricted subsidiaries***

The Board of Directors of the Company may designate any Subsidiary (including any acquired or newly formed Subsidiary) of the Company to be an Unrestricted Subsidiary if that designation would not cause a Default. If a Restricted Subsidiary of the Company is designated as an Unrestricted Subsidiary, the aggregate fair market value of all outstanding Investments owned by the Company and its Restricted Subsidiaries in the Subsidiary properly designated will be deemed to be an Investment made as of the time of the designation and will reduce the amount available for Restricted Payments under the first paragraph of the covenant described above under the caption

Limitation on restricted payments or represent Permitted Investments, as determined by the Company. That designation will only be permitted if the Investment would be permitted at that time and if the Subsidiary so designated otherwise meets the definition of an Unrestricted Subsidiary.

The Board of Directors of the Company may at any time designate any Unrestricted Subsidiary to be a Restricted Subsidiary of the Company; *provided* that such designation will be deemed to be an incurrence of Indebtedness by a Restricted Subsidiary of the Company of any outstanding Indebtedness of such Unrestricted Subsidiary and such designation will only be permitted if (1) such Indebtedness is permitted under the Fixed Charge Coverage Ratio test set forth in the first paragraph of the covenant described above under the caption

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Limitation on incurrence of Indebtedness and issuance of preferred stock, calculated on a pro forma basis as if such designation had occurred at the beginning of the four-quarter reference period, and (2) no Default or Event of Default would be in existence immediately following such designation.

***Additional subsidiary guarantees***

If the Company or any of its Restricted Subsidiaries acquires or creates another Material Domestic Subsidiary after the Issue Date, or if any Non-Guarantor Subsidiary either (a) becomes a borrower or guarantees any Indebtedness of the Company or another Restricted Subsidiary of the Company under the Credit Agreement or (b)(i) guarantees any other Capital Markets Indebtedness of the Company or any Restricted Subsidiary (including the Existing Senior Notes), or (ii) incurs any Capital Markets Indebtedness, then in each case that Subsidiary will become a Guarantor by executing a supplemental indenture and delivering it to the trustee within 20 Business Days of the date on which it was acquired or created or guaranteed or incurred such Indebtedness, as the case may be.

***Reports***

Whether or not required by the Commission, so long as any notes are outstanding, the Company will file with the Commission for public availability within the time period specified (after giving effect to all applicable grace periods) in the Commission's rules and regulations (unless the Commission will not accept such a filing), and the Company will furnish to the trustee and, upon its request, to any of the Holders, within ten Business Days of filing the same with the Commission:

- (1) all quarterly and annual financial and other information with respect to the Company and its Subsidiaries that would be required to be contained in a filing with the Commission on Forms 10-Q and 10-K if the Company were required to file such Forms, including a Management's Discussion and Analysis of Financial Condition and Results of Operations and, with respect to the annual information only, a report on the annual financial statements by the Company's certified independent accountants and summary data relating to proved reserves required by the Commission's rules; and
- (2) all current reports that would be required to be filed with the Commission on Form 8-K if the Company were required to file such reports.

The Company's filing of any such information, document or report with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval (or EDGAR) system or any successor thereto shall satisfy the reporting obligations described above.

If the Company has designated any of its Subsidiaries as Unrestricted Subsidiaries, then the quarterly and annual financial information required by the preceding paragraph will include a reasonably detailed presentation, either on the face of the financial statements or in the footnotes thereto, and in Management's Discussion and Analysis of Financial Condition and Results of Operations, of the financial condition and results of operations of the Company and its Restricted Subsidiaries separate from the financial condition and results of operations of the Unrestricted Subsidiaries of the Company.

If, at any time, the Company is not subject to the reporting requirements of the Exchange Act, it will, so long as any of the notes will, at such time, constitute restricted securities within the meaning of Rule 144(a)(3) under the Securities Act, upon the written request of a holder, beneficial owner or prospective purchaser of the notes, promptly furnish

such holder, beneficial owner or prospective purchaser the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act to facilitate the resale of the notes pursuant to Rule 144A, as such rule may be amended from time to time. The Company will take such further action as any holder or beneficial owner of such notes may reasonably request to the extent from time to time required to enable such holder or beneficial owner to sell the notes in accordance with Rule 144A.

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***Covenant termination***

If at any time (a) the rating assigned to the notes by both S&P and Moody's is an Investment Grade Rating and (b) no Default has occurred and is continuing under the indenture (excluding, for the avoidance of doubt, any Default under one or more of the provisions listed below, *provided* that such Default did not exist immediately prior to the transaction or series of related transactions resulting in the applicable change in ratings), then upon delivery by the Company to the trustee of an officers' certificate to the foregoing effect, the Company and its Restricted Subsidiaries will no longer be subject to the provisions of the indenture described above under the caption "Repurchase at the option of holders - Asset sales" and the following provisions of the indenture described above under the caption "Certain covenants":

Limitation on restricted payments,

Limitation on incurrence of Indebtedness and issuance of preferred stock,

Limitation on dividend and other payment restrictions affecting subsidiaries,

Clause (4) of the second paragraph of "Merger, consolidation or sale of assets," and

Limitation on transactions with affiliates.

However, the Company and its Restricted Subsidiaries will remain subject to the provisions of the indenture described above under the caption "Repurchase at the option of holders - Change of control triggering event," and the following provisions of the indenture described above under the caption "Covenants":

Limitation on liens,

Merger, consolidation or sale of assets (other than clause (4) of the second paragraph of such covenant),

Limitation on designation of restricted and unrestricted subsidiaries,

Additional subsidiary guarantees, and

Reports.

For the avoidance of doubt, upon covenant termination as set forth in this section, the Company will continue to be able to incur secured Indebtedness as set forth under "Limitation on liens."

*Events of default and remedies*

Each of the following is an Event of Default with respect to the notes:

- (1) default for 30 days in the payment when due of interest on the notes;
- (2) default in payment when due of the principal of, or premium, if any, on the notes, whether upon Stated Maturity, redemption or otherwise;
- (3) failure by the Company to comply with the provisions described under the captions Certain covenants Merger, consolidation or sale of assets or to consummate a purchase of notes when required pursuant to the covenants described under the captions Repurchase at the option of holders Asset sales or Repurchase at the option of holders Change of control triggering event;
- (4) failure by the Company to comply for 30 days after notice by the trustee or Holders of 25% of the outstanding principal amount of the notes with the provisions described under the captions Certain covenants Limitation on restricted payments, Certain covenants Limitation on incurrence of Indebtedness and issuance of preferred stock or, except in the case of a failure to purchase notes when required described in clause (3) above, Repurchase at the option of holders Asset sales or Repurchase at the option of holders Change of control triggering event;



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- (5) failure by the Company or any Guarantor for 60 days (or 180 days in the case of a Reporting Failure) after notice by the trustee or Holders of 25% of the outstanding principal amount of the notes to comply with any of the other agreements in the indenture;
- (6) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by the Company or any of its Restricted Subsidiaries (or the payment of which is guaranteed by the Company or any of its Restricted Subsidiaries), whether such Indebtedness or guarantee now exists, or is created after the Issue Date, if that default:
- (a) is caused by a failure to pay principal of, or interest or premium, if any, on such Indebtedness prior to the expiration of the grace period provided in such Indebtedness (a Payment Default ); or
- (b) results in the acceleration of such Indebtedness prior to its Stated Maturity,

and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a Payment Default or the maturity of which has been so accelerated, aggregates \$100.0 million or more; *provided*, that if any such default is cured or waived or any such acceleration is rescinded, or such Indebtedness is repaid, within a period of 20 days from the continuation of such default beyond the applicable grace period or the occurrence of such acceleration, as the case may be, such Event of Default under the indenture and any consequential acceleration of the notes shall be automatically rescinded unless such rescission would conflict with any judgment or decree of a court of competent jurisdiction;

- (7) failure by the Company or any of its Significant Subsidiaries to pay final judgments aggregating in excess of \$100.0 million, which judgments are not paid, discharged or stayed (including a stay pending appeal) for a period of 60 days after the date of such final judgment (or, if later, the date when payment is due pursuant to such judgment);
- (8) except as permitted by the indenture, any Subsidiary Guarantee shall be held in any judicial proceeding to be unenforceable or invalid or shall cease for any reason to be in full force and effect or any Guarantor, or any Person acting on behalf of any Guarantor, shall deny or disaffirm its obligations under its Subsidiary Guarantee (other than by reason of release of a Guarantor from its Subsidiary Guarantee in accordance with the terms of the indenture); and
- (9) certain events of bankruptcy, insolvency or reorganization described in the indenture with respect to the Company or any of its Significant Subsidiaries or any group of Subsidiaries of the Company that, taken as a whole, would constitute a Significant Subsidiary.

In the case of an Event of Default arising from certain events of bankruptcy, insolvency or reorganization, with respect to the Company, any Subsidiary of the Company that is a Significant Subsidiary or any group of Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary, all outstanding notes will become due and payable immediately without further action or notice. If any other Event of Default occurs and is continuing, the trustee or the Holders of at least 25% in aggregate principal amount of the then outstanding notes may declare all the notes to be due and payable immediately. An Event of Default for the notes will not necessarily constitute an Event of Default for any other series of debt securities that may be issued under the indenture in the future and vice versa.

Holders of the notes may not enforce the indenture or the notes except as provided in the indenture. Subject to certain limitations, Holders of a majority in principal amount of the then outstanding notes may direct the trustee in its exercise of any trust or power. The trustee may withhold from Holders notice of any continuing Default or Event of Default with respect to the notes if it determines that withholding notice is in their interest, except a Default or Event of Default relating to the payment of principal of, or interest or premium, if any, on, the notes.

The Holders of a majority in principal amount of the notes then outstanding by notice to the trustee may on behalf of the Holders of all of the notes waive any past Default or Event of Default with respect to the notes and

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its consequences under the indenture except a continuing Default or Event of Default in the payment of principal of, or interest or premium, if any, on the notes or in respect of a covenant that cannot be amended without the consent of each Holder of the notes.

The Company is required to deliver to the trustee annually a statement regarding compliance with the indenture. Upon becoming aware of any Default or Event of Default with respect to the notes, the Company is required to deliver to the trustee a statement specifying such Default or Event of Default.

### ***No personal liability of directors, officers, employees and stockholders***

No director, officer, employee, incorporator or stockholder or other owner of Capital Stock of the Company or any Guarantor, as such, will have any liability for any obligations of the Company or any Guarantor under the notes, the indenture or the Subsidiary Guarantees, or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of notes by accepting a note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the notes and the Subsidiary Guarantees. The waiver may not be effective to waive liabilities under the federal securities laws.

### ***Legal defeasance and covenant defeasance***

The Company may, at its option and at any time, elect to have all of its obligations discharged with respect to the outstanding notes and all obligations of the Guarantors discharged with respect to their Subsidiary Guarantees of such notes ( Legal Defeasance ) except for:

- (1) the rights of Holders of outstanding notes to receive payments in respect of the principal of, and interest or premium, if any, on such notes when such payments are due from the trust referred to below;
- (2) the Company's obligations with respect to the notes concerning issuing temporary notes, registration of notes, mutilated, destroyed, lost or stolen notes and the maintenance of an office or agency for payment and money for security payments held in trust;
- (3) the rights, powers, trusts, duties and immunities of the trustee, and the Company's obligations in connection therewith; and
- (4) the Legal Defeasance provisions of the indenture.

In addition, the Company may, at its option and at any time, elect to have its obligations released with respect to certain covenants (including the obligation to make a Change of Control Offer and Asset Sale Offer) that are described in the indenture ( Covenant Defeasance ) and thereafter any omission to comply with those covenants will not constitute a Default or Event of Default with respect to the notes. In the event Covenant Defeasance occurs, certain events (not including non-payment, bankruptcy, insolvency or reorganization events) described under Events of default and remedies will no longer constitute an Event of Default with respect to the notes. If the Company exercises either its Legal Defeasance or Covenant Defeasance option, each Guarantor will be released and relieved of any obligations under its Subsidiary Guarantee and any security for such notes (other than the trust) will be released.

In order to exercise either Legal Defeasance or Covenant Defeasance with respect to the notes:

- (1) the Company must irrevocably deposit with the trustee, in trust, for the benefit of the Holders of such notes, cash in U.S. dollars, non-callable Government Securities, or a combination of cash in U.S. dollars and non-callable Government Securities, in amounts as will be sufficient, in the opinion of a nationally recognized investment bank, appraisal firm or firm of independent public accountants, without consideration of any reinvestment, to pay the principal of, and interest and premium, if any, on the outstanding notes on the Stated Maturity or on the applicable redemption date, as the case may be, and the Company must specify whether such notes are being defeased to the Stated Maturity or to a particular redemption date;

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- (2) in the case of Legal Defeasance, the Company has delivered to the trustee an opinion of counsel from counsel who is reasonably acceptable to the trustee confirming that:
- (a) the Company has received from, or there has been published by, the Internal Revenue Service a ruling; or
- (b) since the Issue Date, there has been a change in the applicable federal income tax law,
- in either case to the effect that, and based thereon such opinion of counsel will confirm that, the Holders and beneficial owners of the outstanding notes will not recognize income, gain or loss for federal income tax purposes as a result of such Legal Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;
- (3) in the case of Covenant Defeasance, the Company has delivered to the trustee an opinion of counsel from counsel who is reasonably acceptable to the trustee confirming that the Holders and beneficial owners of the outstanding notes will not recognize income, gain or loss for federal income tax purposes as a result of such Covenant Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;
- (4) no Default or Event of Default has occurred and is continuing on the date of such deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit and any similar concurrent deposit relating to other Indebtedness, and the granting of Liens to secure such borrowing);
- (5) such Legal Defeasance or Covenant Defeasance will not result in a breach or violation of, or constitute a default under, any material agreement or instrument (other than the indenture and the agreements governing any other Indebtedness being defeased, discharged or replaced) to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound;
- (6) the Company must deliver to the trustee an officers certificate stating that the deposit was not made by the Company with the intent of preferring the Holders of such notes over the other creditors of the Company or with the intent of defeating, hindering, delaying or defrauding creditors of the Company or others; and
- (7) the Company must deliver to the trustee an officers certificate and an opinion of counsel, each stating that all conditions precedent relating to the Legal Defeasance or the Covenant Defeasance have been complied with. In the event of a bankruptcy of the Company within 90 days of the defeasance of the notes issued under an indenture, creditors of the bankrupt estate may allege that the deposit to defease the notes constituted a preference under U.S. bankruptcy laws.

**Amendment, supplement and waiver**

Except as provided in the next two succeeding paragraphs, the indenture, the notes or the Subsidiary Guarantees may be amended or supplemented with the consent of the Holders of at least a majority in aggregate principal amount of the notes then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender

offer or exchange offer for, notes), and any existing default or compliance with any provision of the indenture, the notes or the Subsidiary Guarantees may be waived with the consent of the Holders of at least a majority in aggregate principal amount of the then outstanding notes (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, notes).

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Without the consent of each Holder affected, an amendment, supplement or waiver may not (with respect to any notes held by a non-consenting Holder):

- (1) reduce the principal amount of notes whose Holders must consent to an amendment, supplement or waiver;
- (2) reduce the principal of or change the Stated Maturity of any note or reduce the premium payable upon the redemption of any note as described above under Optional redemption, change the time at which any note may be redeemed as described above under Optional redemption or make any change relative to our obligation to make an offer to purchase the notes as a result of a Change of Control Triggering Event or Asset Sale as described above under Repurchase at the option of holders after (but not before) the occurrence of the applicable Change of Control Triggering Event or Asset Sale;
- (3) reduce the rate of or change the time for payment of interest on any note;
- (4) waive a Default or Event of Default in the payment of principal of, or interest or premium, if any, on the notes (except a rescission of acceleration of the notes by the Holders of at least a majority in principal amount of the notes and a waiver of the payment default that resulted from such acceleration);
- (5) make any note payable in currency other than that stated in the notes;
- (6) make any change in the provisions of the indenture relating to waivers of past Defaults or the rights of Holders to receive payments of principal of, or interest or premium, if any, on the notes (other than as permitted in clause (7) below);
- (7) waive a redemption or repurchase payment with respect to any note (other than a payment required by one of the covenants described above under the caption Repurchase at the option of holders );
- (8) release any Guarantor from any of its obligations under its Subsidiary Guarantee or the indenture, except in accordance with the terms of the indenture; or
- (9) make any change in the preceding amendment, supplement and waiver provisions.

Notwithstanding the preceding, without the consent of any Holder of notes, the Company, the Guarantors and the trustee may amend or supplement the indenture, the notes or Subsidiary Guarantees:

- (1) to cure any ambiguity, omission, defect or inconsistency;

- (2) to provide for uncertificated notes in addition to or in place of certificated notes;
- (3) to provide for the assumption of the Company's or a Guarantor's obligations to Holders in accordance with Certain covenants Merger, consolidation or sale of assets;
- (4) to make any change that would provide any additional rights or benefits to the Holders or that does not adversely affect the legal rights under the indenture of any Holder;
- (5) to secure the notes or the Subsidiary Guarantees;
- (6) to provide for the issuance of additional notes in accordance with the limitations set forth in the indenture;
- (7) to add any additional Guarantor or to evidence the release of any Guarantor from its Subsidiary Guarantee, in each case as provided in the indenture;
- (8) to comply with requirements of the Commission in order to effect or maintain the qualification of the indenture under the Trust Indenture Act;
- (9) to evidence or provide for the acceptance of appointment under the indenture of a successor trustee;



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- (10) to provide for the issuance of exchange notes or private exchange notes (which shall be identical to exchange notes except that they will not be freely transferable) and which shall be treated, together with any outstanding notes, as a single class of securities;
- (11) to conform the text of the indenture, the notes or the Subsidiary Guarantees to any provision of the Description of Notes in the offering memorandum relating to the offering of the original notes; or
- (12) make any amendment to the provisions of the indenture relating to the transfer and legending of notes as permitted by the indenture, including, without limitation, to facilitate the issuance and administration of the notes, the exchange notes or, if incurred in compliance with the indenture, additional notes; *provided, however*, that (A) compliance with the indenture as so amended would not result in notes being transferred in violation of the Securities Act or any applicable securities law and (B) such amendment does not materially and adversely affect the rights of Holders to transfer notes.

The consent of the Holders is not necessary under the indenture to approve the particular form of any proposed amendment. It is sufficient if such consent approves the substance of the proposed amendment.

Neither the Company nor any of its Subsidiaries shall, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to any Beneficial Owner or Holder of any notes for or as an inducement to any consent to any waiver, supplement or amendment of any terms or provisions of the indenture or the notes, unless such consideration is offered to be paid or agreed to be paid to all Beneficial Owners and Holders of the notes which so consent in the time frame set forth in solicitation documents relating to such consent.

## **Satisfaction and Discharge**

The indenture will be discharged and will cease to be of further effect as to all notes (except as to surviving rights of registration of transfer or exchange of the notes and as otherwise specified in the indenture) when:

- (1) either:
- (a) all outstanding notes that have been authenticated (except lost, stolen or destroyed notes that have been replaced or paid and notes for whose payment money has theretofore been deposited in trust and thereafter repaid to us) have been delivered to the trustee for cancellation; or
- (b) all outstanding notes that have not been delivered to the trustee for cancellation have become due and payable or will become due and payable at their maturity within one year or are to be called for redemption within one year under arrangements satisfactory to the trustee and in any case we have irrevocably deposited with the trustee as trust funds money in an amount sufficient, without consideration of any reinvestment of interest, to pay the entire indebtedness of such notes not delivered to the trustee for cancellation, for principal, premium, if any, and accrued interest to the maturity or redemption date;
- (2) we have paid or caused to be paid all other sums payable by us under the indenture with respect to the notes; and

- (3) we have delivered an officers certificate and an opinion of counsel to the trustee stating that all conditions precedent to satisfaction and discharge of the indenture with respect to the notes have been satisfied.

**Concerning the trustee**

The trustee, The Bank of New York Mellon Trust Company, N. A., also acts as trustee under the indenture for the Existing Senior Notes.

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If the trustee becomes a creditor of the Company or any Guarantor, the indenture limits its right to obtain payment of claims in certain cases, or to realize on certain property received in respect of any such claim as security or otherwise. The trustee will be permitted to engage in other transactions; however, if it acquires any conflicting interest (as defined in the Trust Indenture Act) after a Default has occurred and is continuing, it must eliminate such conflict within 90 days, apply to the Commission for permission to continue or resign.

The Holders of a majority in principal amount of the then outstanding notes will have the right to direct the time, method and place of conducting any proceeding for exercising any remedy available to the trustee with respect to the notes, subject to certain exceptions. The indenture provides (by reference to the Trust Indenture Act) that in case an Event of Default occurs and is continuing, the trustee will be required, in the exercise of its power, to use the degree of care of a prudent man in the conduct of his own affairs. Subject to such provisions, the trustee will be under no obligation to exercise any of its rights or powers under the indenture at the request of any Holder of notes, unless such Holder has offered to the trustee security or indemnity satisfactory to the trustee against any cost, expense or liability the trustee might incur.

### **Governing law**

The indenture, the notes and the Subsidiary Guarantees will be governed by, and construed in accordance with, the laws of the State of New York.

### **Certain definitions**

Set forth below are certain defined terms used with respect to the notes in the indenture. Reference is made to the indenture for a full disclosure of all such terms, as well as any other capitalized terms used herein for which no definition is provided.

*ACNTA* (Adjusted Consolidated Net Tangible Assets) means (without duplication), as of the date of determination:

(1) the sum of:

(a) discounted future net revenue from proved crude oil and natural gas reserves of the Company and its Restricted Subsidiaries calculated in accordance with Commission guidelines before any state or federal income taxes, as estimated in a reserve report prepared as of the end of the Company's most recently completed fiscal year, or, at the Company's option, the most recently completed fiscal quarter for which financial statements are available, which reserve report is prepared or reviewed by independent petroleum engineers as to reserves accounting for at least 80% of all such discounted future net revenue and by the Company's petroleum engineers with respect to any other such reserves covered by such report, as increased by, as of the date of determination, the discounted future net revenue from:

(i) estimated proved crude oil and natural gas reserves of the Company and its Restricted Subsidiaries attributable to acquisitions consummated since the date of such year-end or quarterly reserve report, as applicable, and

(ii) estimated proved crude oil and natural gas reserves of the Company and its Restricted Subsidiaries attributable to extensions, discoveries and other additions and upward determinations of estimates of proved crude oil and natural gas reserves (including previously estimated development costs incurred during the period and the accretion of discount since the prior year end) due to exploration, development or exploitation, production or other activities which reserves were not reflected in such year-end or quarterly reserve report, as applicable,



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in each case calculated in accordance with Commission guidelines (utilizing the prices utilized in such year-end or quarterly reserve report, as applicable), and decreased by, as of the date of determination, the discounted future net revenue attributable to

(iii) estimated proved crude oil and natural gas reserves of the Company and its Restricted Subsidiaries reflected in such year-end or quarterly reserve report, as applicable, produced or disposed of since the date of such year-end or quarterly reserve report, as applicable, and

(iv) reductions in the estimated proved crude oil and natural gas reserves of the Company and its Restricted Subsidiaries reflected in such year-end or quarterly reserve report, as applicable, since the date of such year-end or quarterly reserve report, as applicable, attributable to downward determinations of estimates of proved crude oil and natural gas reserves due to exploration, development or exploitation, production or other activities conducted or otherwise occurring since the date of such year-end or quarterly reserve report, as applicable,

in each case calculated in accordance with Commission guidelines (utilizing the prices utilized in such year-end or quarterly reserve report, as applicable); *provided, however*, that, in the case of each of the determinations made pursuant to clauses (i) through (iv), such increases and decreases shall be as estimated by the Company's engineers, except that if as a result of such acquisitions, dispositions, discoveries, extensions or revisions, there is a Material Change, then such increases and decreases in the discounted future net revenue shall be confirmed in writing by an independent petroleum engineer;

(b) the capitalized costs that are attributable to crude oil and natural gas properties of the Company and its Restricted Subsidiaries to which no proved crude oil and natural gas reserves are attributed, based on the Company's books and records as of a date no earlier than the date of the Company's latest annual or quarterly financial statements;

(c) the Net Working Capital on a date no earlier than the date of the Company's latest annual or quarterly financial statements; and

(d) the greater of (I) the net book value on a date no earlier than the date of the Company's latest annual or quarterly financial statements and (II) the appraised value, as estimated by independent appraisers, of other tangible assets of the Company and its Restricted Subsidiaries as of a date no earlier than the date of the Company's latest annual or quarterly financial statements, as applicable;

(2) minus, to the extent not otherwise taken into account in the immediately preceding clause (1), the sum of:

(a) noncontrolling interests;

(b) any net gas balancing liabilities of the Company and its Restricted Subsidiaries reflected in the Company's latest annual or quarterly financial statements, as applicable;

(c) the discounted future net revenue, calculated in accordance with Commission guidelines (utilizing the same prices utilized in the Company's year-end or quarterly reserve report, as applicable), attributable to reserves subject to participation interests, overriding royalty interests or other interests of third parties, pursuant to participation, partnership, vendor financing or other agreements then in effect, or which otherwise are required to be delivered to third parties;

(d) the discounted future net revenue, calculated in accordance with Commission guidelines (utilizing the same prices utilized in the Company's year-end or quarterly reserve report, as applicable), attributable to reserves that are required to be delivered to third parties to fully satisfy the obligations of the Company and its Restricted Subsidiaries with respect to Volumetric Production Payments on the schedules specified with respect thereto; and

(e) the discounted future net revenue, calculated in accordance with Commission guidelines, attributable to reserves subject to Dollar-Denominated Production Payments that, based on the estimates of production included in determining the discounted future net revenue specified in the

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immediately preceding clause (1)(a) (utilizing the same prices utilized in the Company's year-end or quarterly reserve report, as applicable), would be necessary to satisfy fully the obligations of the Company and its Restricted Subsidiaries with respect to Dollar-Denominated Production Payments on the schedules specified with respect thereto.

Any calculation of Adjusted Consolidated Net Tangible Assets shall be determined on a pro forma basis in a manner consistent with the pro forma adjustments contained in the definition of Fixed Charge Coverage Ratio. If the Company changes its method of accounting for its oil and gas properties from the successful efforts method to the full cost method or a similar method of accounting, ACNTA will continue to be calculated as if the Company were still using the successful efforts method of accounting. For the avoidance of doubt, the financial statements referred to in the calculation of ACNTA would relate to the same annual or quarterly period as the reserve report.

*Acquired Debt* means, with respect to any specified Person:

- (1) Indebtedness, Disqualified Stock or preferred stock of any other Person existing at the time such other Person was merged with or into or became a Subsidiary of such specified Person, whether or not such Indebtedness, Disqualified Stock or preferred stock is incurred or issued in connection with, or in contemplation of, such other Person merging with or into, or becoming a Subsidiary of, such specified Person; *provided, however*, that Indebtedness, Disqualified Stock or preferred stock of such acquired person which is redeemed, defeased, retired or otherwise repaid at the time of or substantially contemporaneously with the consummation of the transactions by which such Person merges with or into or becomes a Subsidiary of such Person shall not be Acquired Debt; and
- (2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

*Additional Assets* means:

- (1) any assets used or useful in the Oil and Gas Business;
- (2) the Capital Stock of a Person that becomes a Restricted Subsidiary as a result of the acquisition of such Capital Stock by the Company or another Restricted Subsidiary; or
- (3) Capital Stock constituting a minority in any Person that at such time is a Restricted Subsidiary; *provided, however*, that any such Restricted Subsidiary described in clause (2) or (3) is primarily engaged in the Oil and Gas Business.

*Affiliate* of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, control, as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise. For purposes of this definition, the terms controlling, controlled by and under common control with have correlative meanings.

*Asset Sale* means:

- (1) the sale, lease, conveyance or other disposition of any properties or assets (including by way of a Production Payment or sale and leaseback transaction); *provided* that the sale, lease, conveyance or other disposition of all or substantially all of the properties or assets of the Company and its Restricted Subsidiaries taken as a whole will be governed by the provisions of the indenture described above under the caption Repurchase at the option of holders Change of control triggering event and/or the provisions described above under the caption Certain covenants Merger, consolidation or sale of assets and not by the provisions of the Asset Sale covenant; and
- (2) the issuance of Equity Interests in any of the Company's Restricted Subsidiaries or the sale by the Company or any of the Company's Restricted Subsidiaries of Equity Interests in any of the Company's



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Restricted Subsidiaries (other than directors' qualifying shares or shares required by applicable law to be held by a Person other than the Company or a Restricted Subsidiary).

Notwithstanding the preceding, the following items will not be deemed to be Asset Sales:

- (1) any single transaction or series of related transactions that involves properties or assets having a fair market value of less than \$25.0 million;
- (2) a transfer of assets between or among any of the Company and its Restricted Subsidiaries;
- (3) an issuance or sale of Equity Interests by a Restricted Subsidiary to the Company or to another Restricted Subsidiary;
- (4) the sale, lease or other disposition of equipment, inventory, accounts receivable or other properties or assets in the ordinary course of business, including, without limitation, any abandonment, farm-in, farm-out, lease or sublease of any oil and gas properties or the forfeiture or other disposition of such properties pursuant to standard form operating agreements, or any operating lease or sublease in each case in the ordinary course of business in a manner customary in the Oil and Gas Business, but excluding from this clause (4) any disposition as a result of the creation of a Production Payment;
- (5) the sale or other disposition of cash or Cash Equivalents;
- (6) a Restricted Payment that is permitted by the covenant described above under the caption "Certain covenants - Limitation on restricted payments" or a Permitted Investment;
- (7) any trade or exchange by the Company or any Restricted Subsidiary of oil and gas properties or other properties or assets for oil and gas properties or other properties or assets owned or held by another Person; *provided* that the fair market value of the properties or assets traded or exchanged by the Company or such Restricted Subsidiary (together with any cash) is reasonably equivalent to the fair market value of the properties or assets (together with any cash) to be received by the Company or such Restricted Subsidiary; *provided, further*, that any cash received must be applied in accordance with the provisions described above under the caption "Repurchase at the option of holders - Asset sales" as if such transaction were an Asset Sale;
- (8) the creation or perfection of a Lien (but not the sale or other disposition of the properties or assets subject to such Lien);
- (9) surrender or waiver of contract rights or the settlement, release or surrender of contract, tort or other claims of any kind;

- (10) any sale or other disposition of damaged, worn-out or obsolete assets in the ordinary course of business (including the assignment, cancellation or abandonment or other disposition of intellectual property that is, in the reasonable judgment of the Company, no longer economically practicable to maintain or useful in any material respect in the conduct of the business of the Company and its Restricted Subsidiaries taken as a whole); and
- (11) any Production Payments; *provided* that all such Production Payments (other than incentive compensation programs on terms that are reasonably customary in the Oil and Gas Business for geologists, geophysicists and other providers of technical services to the Company or a Restricted Subsidiary) shall have been created, incurred, issued, assumed or guaranteed no later than 60 days after the acquisition of, the properties that are subject thereto.

*Beneficial Owner* has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular person (as that term is used in Section 13(d)(3) of the Exchange Act), such person will be deemed to have beneficial ownership of all securities that such person has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only upon the passage of time or the occurrence of a subsequent

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condition. The terms *Beneficially Owns*, *Beneficially Owned* and *Beneficially Owning* have correlative meanings.

*Board of Directors* means:

- (1) with respect to a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board;
- (2) with respect to a partnership, the Board of Directors of the general partner of the partnership;
- (3) with respect to a limited liability company, the Board of Directors of the managing member, if the managing member is an entity, or the managing member or members or any controlling committee of managing members thereof, if the managing members are individuals; and
- (4) with respect to any other Person, the board or committee of such Person serving a similar function.

*Board Resolution* means a copy of a resolution certified by the Secretary or an Assistant Secretary of the applicable Person to have been duly adopted by the Board of Directors of such Person and to be in full force and effect on the date of such certification, and delivered to the trustee.

*Business Day* means each day that is not a Saturday, Sunday or other day on which banking institutions in Chicago, Illinois, Denver, Colorado or New York, New York or another place of payment are authorized or required by law, regulation or executive order to close.

*Capital Lease Obligation* means, at the time any determination is to be made, the amount of the liability in respect of a capital lease that would at that time be required to be capitalized on a balance sheet in accordance with GAAP, and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be prepaid by the lessee without payment of a penalty. Notwithstanding the foregoing, any lease existing on the Issue Date or entered into thereafter that would have been classified as an operating lease pursuant to GAAP as in effect on the Issue Date (excluding the future phase-in of the effectiveness of any amendments to GAAP that have been adopted as of the Issue Date) will be deemed not to be a capital lease or a financing lease.

*Capital Markets Indebtedness* means any Indebtedness incurred in or under (i) any registered offering of debt securities under the Securities Act or (ii) any private placement of debt securities (including under Rule 144A of the Securities Act) pursuant to an exemption from the registration requirements of the Securities Act.

*Capital Stock* means:

- (1) in the case of a corporation, corporate stock;
- (2)

in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

- (3) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and
- (4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing Convertible Securities regardless of whether such Convertible Securities include any right of participation with Capital Stock.

*Cash Equivalents* means:

- (1) United States dollars;

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- (2) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality of the United States government (provided that the full faith and credit of the United States is pledged in support of those securities) having maturities of not more than one year from the date of acquisition;
- (3) certificates of deposit and eurodollar time deposits with maturities of one year or less from the date of acquisition, bankers' acceptances with maturities not exceeding one year and overnight bank deposits, in each case, with any lender party to the Credit Agreement or with any domestic commercial bank;
- (4) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (2) and (3) above entered into with any financial institution meeting the qualifications specified in clause (3) above;
- (5) commercial paper having one of the two highest ratings obtainable from Moody's or S&P and in each case maturing within one year after the date of acquisition;
- (6) money market funds the assets of which primarily constitute Cash Equivalents of the kinds described in clauses (1) through (5) of this definition; and
- (7) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clause (1) above entered into with any financial institution meeting the qualifications specified in clause (3) above.

*Change of Control Triggering Event* means the occurrence of any of the following:

- (1) the direct or indirect sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets (including Capital Stock of the Restricted Subsidiaries) of the Company and its Restricted Subsidiaries taken as a whole, to any person or group (as such terms are used in Section 13(d)(3) of the Exchange Act), which occurrence is followed by a Rating Decline within 60 days thereof;
- (2) the adoption of a plan relating to the liquidation or dissolution of the Company;
- (3) the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that any person or group (as such terms are used in Section 13(d)(3) of the Exchange Act) becomes the Beneficial Owner, directly or indirectly, of more than 50% of the Voting Stock of the Company, measured by voting power rather than number of shares, which occurrence is followed by a Rating Decline within 60 days thereof; or

- (4) the occurrence of a change of control as defined under the indenture governing the Existing Senior Notes, which occurrence is followed by a Rating Decline within 60 days thereof.

Notwithstanding the foregoing, a transaction will not be deemed to involve a change of control if (1) the Company becomes a direct or indirect wholly owned Subsidiary of a holding company and (2)(A) the direct or indirect holders of the Voting Stock of such holding company immediately following that transaction are substantially the same as the holders of the Company's Voting Stock immediately prior to that transaction or (B) immediately following that transaction, no Person (other than a holding company satisfying the requirements of this sentence) is the Beneficial Owner, directly or indirectly, of more than 50% of the Voting Stock of such holding company.

For purposes of clause (3) of this definition, a Person shall not be deemed to beneficially own securities that are the subject of a stock purchase agreement, merger agreement or similar agreement until consummation of the transactions or, as applicable, series of related transactions contemplated thereby.

*Commission* or SEC means the Securities and Exchange Commission.

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*Consolidated Cash Flow* means, with respect to any specified Person for any period, the Consolidated Net Income of such Person for such period *plus*, without duplication:

- (1) an amount equal to any extraordinary loss plus any net loss realized by such Person or any of its Restricted Subsidiaries in connection with an Asset Sale, to the extent such losses were deducted in computing such Consolidated Net Income; *plus*
- (2) provision for taxes based on income or profits of such Person and its Restricted Subsidiaries for such period, to the extent that such provision for taxes was deducted in computing such Consolidated Net Income; *plus*
- (3) consolidated interest expense of such Person and its Restricted Subsidiaries for such period, whether paid or accrued and whether or not capitalized (excluding any interest attributable to Dollar-Denominated Production Payments and any non-cash interest on any convertible or exchangeable notes that exists by virtue of the bifurcation of the debt and equity components of such convertible or exchangeable notes in accordance with GAAP, but including, without limitation, amortization of debt issuance costs and original issue discount, non-cash interest payments (other than as provided above), the interest component of any deferred payment obligations, the interest component of all payments associated with Capital Lease Obligations, commissions, discounts and other fees and charges incurred in respect of letter of credit or bankers acceptance financings), and net of the effect of all payments made or received pursuant to Hedging Obligations, to the extent that any such expense was deducted in computing such Consolidated Net Income; *plus*
- (4) depreciation, depletion and amortization (including amortization of intangibles but excluding amortization of prepaid cash expenses that were paid in a prior period), impairment and other non-cash expenses (excluding any such non-cash expense to the extent that it represents an accrual of or reserve for cash expenses in any future period or amortization of a prepaid cash expense that was paid in a prior period) of such Person and its Restricted Subsidiaries for such period to the extent that such depreciation, depletion and amortization, impairment and other non-cash expenses were deducted in computing such Consolidated Net Income; *plus*
- (5) unrealized non-cash losses resulting from foreign currency balance sheet adjustments required by GAAP to the extent such losses were deducted in computing such Consolidated Net Income; *minus*
- (6) non-cash items increasing such Consolidated Net Income for such period, other than items that were accrued in the ordinary course of business; *minus* (to the extent included in determining Consolidated Net Income); and
- (7) the sum of (x) the amount of deferred revenues that are amortized during such period and are attributable to reserves that are subject to Volumetric Production Payments and (y) amounts recorded in accordance with GAAP as repayments of principal and interest pursuant to Dollar-Denominated Production Payments, in each case, on a consolidated basis and determined in accordance with GAAP.

*Consolidated Net Income* means, with respect to any specified Person for any period, the aggregate of the Net Income of such Person and its Restricted Subsidiaries for such period, on a consolidated basis, determined in accordance with GAAP; provided that:

- (1) the Net Income (but not loss) of any Person that is not a Restricted Subsidiary or that is accounted for by the equity method of accounting will be included, but only to the extent of the amount of dividends or distributions paid in cash to the specified Person or a Restricted Subsidiary of the Person;
- (2) the Net Income of any Restricted Subsidiary will be excluded to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of that Net Income is not at the date of determination permitted without any prior governmental approval (that has not been



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obtained) or, directly or indirectly, by operation of the terms of its charter or any instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary or its stockholders, partners or members;

- (3) the cumulative effect of a change in accounting principles will be excluded;
- (4) income resulting from transfers of assets (other than cash) between the Company or any of its Restricted Subsidiaries, on the one hand, and an Unrestricted Subsidiary, on the other hand, will be excluded;
- (5) any write-downs of non-current assets will be excluded; *provided* that any ceiling limitation write-downs under Commission guidelines shall be treated as capitalized costs, as if such write-downs had not occurred; and
- (6) any unrealized non-cash gains or losses or charges in respect of hedge or non-hedge derivatives (including those resulting from the application of FASB Accounting Standards Codification Topic 815) will be excluded.

In addition, notwithstanding the preceding, for the purposes of the covenant described under *Certain covenants Limitation on restricted payments* only, there shall be excluded from Consolidated Net Income any nonrecurring charges relating to any premium or penalty paid, write off of deferred finance costs or other charges in connection with redeeming or retiring any Indebtedness prior to its Stated Maturity.

*Convertible Securities* means debt securities of the Company of any of its Restricted Subsidiaries that are convertible or exchangeable for Equity Interests of the Company (including the Existing Convertible Notes).

*Credit Agreement* means that certain Sixth Amended and Restated Credit Agreement, dated as of August 27, 2014, as amended, among Whiting Oil and Gas Corporation, the Guarantors, JPMorgan Chase Bank, N.A., as administrative agent, the other financial institutions and lenders parties thereto from time to time, providing for revolving credit borrowings, including any related notes, guarantees, collateral documents, instruments and agreements executed in connection therewith, and in each case as amended, modified, supplemented, restated, refinanced, renewed, refunded, replaced (whether at maturity, upon early repayment and termination or thereafter) in whole or in part from time to time including by or pursuant to one or more agreements or indentures, or by means of issuance of debt securities to institutional investors, including any agreement or indenture that extends the maturity of any Indebtedness thereunder, or increases the amount of available borrowings thereunder (*provided* any increase in amounts drawn is otherwise permitted under *Certain Covenants Limitations on incurrence of Indebtedness and issuance of preferred stock* ), or adds or changes the borrower or guarantor and whether by the same or any other agent, lender, group of lenders, purchasers or debt holders.

*Credit Facilities* means one or more debt facilities (including, without limitation, the Credit Agreement), indentures, commercial paper facilities or capital markets financings, in each case with banks or other institutional lenders or institutional investors providing for revolving credit loans, term loans, receivables financing (including through the sale of receivables to such lenders or to special purpose entities formed to borrow from (or sell receivables to) such lenders against such receivables) or letters of credit, in each case, as amended, restated, modified, renewed, refunded, replaced or refinanced (including refinancing with any capital markets transaction or by means of sales of debt securities) in whole or in part from time to time (and whether or not with the original administrative agent, lenders or

trustee or another administrative agent or agents, other lenders or another trustee and whether provided under the original Credit Agreement or any other credit or other agreement or indenture).

*Default* means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

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*Designated Non-cash Consideration* means the fair market value of non-cash consideration received by the Company or a Restricted Subsidiary in connection with an Asset Sale that is so designated as Designated Non-cash Consideration pursuant to an officer's certificate, setting forth the basis of such valuation, less the amount of cash or Cash Equivalents received in connection with a subsequent sale of or collection on such Designated Non-cash Consideration.

*Disqualified Stock* means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder of the Capital Stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the Capital Stock, in whole or in part, on or prior to the date that is 91 days after the date on which the notes mature. Notwithstanding the preceding sentence, any Capital Stock that would constitute Disqualified Stock solely because the holders of the Capital Stock have the right to require the Company to repurchase or redeem such Capital Stock upon the occurrence of a change of control or an asset sale will not constitute Disqualified Stock if the terms of such Capital Stock provide that the Company may not repurchase or redeem any such Capital Stock pursuant to such provisions unless such repurchase or redemption complies with the covenant described above under the caption "Certain covenants - Limitation on restricted payments."

*Dollar-Denominated Production Payments* means production payment obligations recorded as liabilities in accordance with GAAP, together with all undertakings and obligations in connection therewith.

*Domestic Subsidiary* means any Restricted Subsidiary of the Company other than a Foreign Subsidiary.

*Equity Interests* means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

*Exchange Act* means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

*exchange notes* means notes issued in a registered exchange offer pursuant to the Registration Rights Agreement.

*Existing Convertible Notes* means the 1.25% convertible senior notes of the Company due April 2020, which are convertible into common stock of the Company and/or cash based on the value of such common stock and were offered in an offering which closed in March 2015.

*Existing Indebtedness* means the aggregate principal amount of Indebtedness of the Company and its Restricted Subsidiaries (including the Existing Senior Notes and the Existing Convertible Notes but excluding any Indebtedness under the Credit Agreement which is considered incurred under the first paragraph under the covenant entitled "Limitation on incurrence of Indebtedness and issuance of preferred stock") in existence on the Issue Date, until such amounts are repaid.

*Existing Senior Notes* means, collectively, the \$1.1 billion original aggregate principal amount 5% Senior Notes due 2019, the \$1.2 billion original aggregate principal amount 5.75% Senior Notes due 2021, and the \$750 million original aggregate principal amount 6.25% Senior Notes due 2023, each issued by the Company.

*Fixed Charge Coverage Ratio* means with respect to any specified Person for any four-quarter reference period, the ratio of the Consolidated Cash Flow of such Person for such period to the Fixed Charges of such Person for such period. In the event that the specified Person or any of its Restricted Subsidiaries incurs, assumes, guarantees, repays, repurchases or redeems any Indebtedness (other than ordinary working capital borrowings) or issues, repurchases or

redeems preferred stock subsequent to the commencement of the applicable four-quarter reference period and on or prior to the date on which the event for which the calculation of the Fixed

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Charge Coverage Ratio is made (the Calculation Date ), then the Fixed Charge Coverage Ratio will be calculated giving pro forma effect to such incurrence, assumption, guarantee, repayment, repurchase or redemption of Indebtedness, or such issuance, repurchase or redemption of preferred stock, and the use of the proceeds therefrom as if the same had occurred at the beginning of such period.

In addition, for purposes of calculating the Fixed Charge Coverage Ratio:

- (1) acquisitions that have been made by the specified Person or any of its Restricted Subsidiaries, including through mergers or consolidations and including any related financing transactions, subsequent to the commencement of the applicable four-quarter reference period and on or prior to the Calculation Date will be given pro forma effect as if they had occurred on the first day of such period, including any Consolidated Cash Flow and any pro forma expense and cost reductions that have occurred or are reasonably expected to occur, in the reasonable judgment of the chief financial or accounting officer of the Company (regardless of whether those cost savings or operating improvements could then be reflected in pro forma financial statements in accordance with Regulation S-X promulgated under the Securities Act or any other regulation or policy of the Commission related thereto);
- (2) the Consolidated Cash Flow attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses disposed of prior to the Calculation Date, will be excluded; and
- (3) the Fixed Charges attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses disposed of prior to the Calculation Date, will be excluded, but only to the extent that the obligations giving rise to such Fixed Charges will not be obligations of the specified Person or any of its Restricted Subsidiaries following the Calculation Date.

*Fixed Charges* means, with respect to any specified Person for any period, the sum, without duplication, of:

- (1) the consolidated interest expense of such Person and its Restricted Subsidiaries for such period, whether paid or accrued (excluding any interest attributable to Dollar-Denominated Production Payments and any non-cash interest on any convertible or exchangeable notes that exists by virtue of the bifurcation of the debt and equity components of such convertible or exchangeable notes in accordance with GAAP, but including, without limitation, amortization of debt issuance costs and original issue discount, non-cash interest payments (other than as provided above), the interest component of any deferred payment obligations, the interest component of all payments associated with Capital Lease Obligations, commissions, discounts and other fees and charges incurred in respect of letter of credit or bankers' acceptance financings), and net of the effect of all payments made or received pursuant to Hedging Obligations; *plus*
- (2) the consolidated interest expense of such Person and its Restricted Subsidiaries that was capitalized during such period; *plus*
- (3)

any interest expense on Indebtedness of another Person that is guaranteed by such Person or one of its Restricted Subsidiaries or secured by a Lien on assets of such Person or one of its Restricted Subsidiaries, whether or not such guarantee or Lien is called upon; *plus*

- (4) all dividends, whether paid or accrued and whether or not in cash, on any series of preferred stock of such Person or any of its Restricted Subsidiaries, other than dividends on Equity Interests payable solely in Equity Interests of the Company (other than Disqualified Stock) or to the Company or a Restricted Subsidiary of the Company,  
in each case, on a consolidated basis and in accordance with GAAP.

*Foreign Subsidiary* means any Restricted Subsidiary of the Company that was not formed under the laws of the United States or any state of the United States or the District of Columbia.

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*GAAP* means generally accepted accounting principles in the United States, which are in effect on the Issue Date.

The term *guarantee* means a guarantee other than by endorsement of negotiable instruments for collection in the ordinary course of business, direct or indirect, in any manner including, without limitation, by way of a pledge of assets or through letters of credit or reimbursement agreements in respect thereof, of all or any part of any Indebtedness. When used as a verb, *guarantee* has a correlative meaning.

*Guarantors* means each of (1) Whiting Oil and Gas Corporation, a Delaware corporation, Whiting US Holding Company, a Delaware corporation, Whiting Canadian Holding Company ULC, a British Columbia unlimited liability company, and Whiting Resources Corporation, a Colorado corporation, and (2) any other Restricted Subsidiary of the Company that becomes a Guarantor in accordance with the provisions of the indenture, and each of their respective successors and assigns.

*Hedging Obligations* means, with respect to any specified Person, the obligations of such Person incurred in the normal course of business and consistent with past practices and not for speculative purposes under:

- (1) interest rate swap agreements, interest rate cap agreements and interest rate collar agreements entered into with one of more financial institutions and designed to protect the Person or any of its Restricted Subsidiaries entering into the agreement against fluctuations in interest rates with respect to Indebtedness incurred and not for purposes of speculation;
- (2) foreign exchange contracts and currency protection agreements entered into with one of more financial institutions and designed to protect the Person or any of its Restricted Subsidiaries entering into the agreement against fluctuations in currency exchanges rates with respect to Indebtedness incurred and not for purposes of speculation;
- (3) any commodity futures contract, commodity option or other similar agreement or arrangement designed to protect against fluctuations in the price of oil, natural gas or other commodities used, produced, processed or sold by that Person or any of its Restricted Subsidiaries at the time; and
- (4) other agreements or arrangements designed to protect such Person or any of its Restricted Subsidiaries against fluctuations in interest rates, commodity prices or currency exchange rates.

*Holder* means a Person in whose name a note is registered.

*Indebtedness* means, with respect to any specified Person, any indebtedness of such Person, whether or not contingent:

- (1) in respect of borrowed money;
- (2) evidenced by bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements in respect thereof);

- (3) in respect of bankers' acceptances;
  - (4) representing Capital Lease Obligations;
  - (5) representing the balance deferred and unpaid of the purchase price of any property, except any such balance that constitutes an accrued expense or trade payable; or
  - (6) representing any Hedging Obligations,
- if and to the extent any of the preceding items (other than letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet of the specified Person prepared in accordance with GAAP. In addition, the term Indebtedness includes all Indebtedness of others secured by a Lien on any asset of the specified Person (whether or not such Indebtedness is assumed by the specified Person) and, to the extent not otherwise



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included, the guarantee by the specified Person of any Indebtedness of any other Person (including, with respect to any Production Payment, any warranties or guarantees of production or payment by such Person with respect to such Production Payment, but excluding other contractual obligations of such Person with respect to such Production Payment). Subject to the preceding sentence, neither Dollar-Denominated Production Payments nor Volumetric Production Payments shall be deemed to be Indebtedness. Notwithstanding the foregoing, Indebtedness shall exclude indebtedness that has been defeased, satisfied and discharged, repaid, retired, repurchased or redeemed in accordance with its terms and, to the extent such defeasance, satisfaction and discharge, repayment, retirement, repurchase or redemption constitutes a Restricted Payment, in accordance with the provisions of Certain covenants Limitation on restricted payments set forth above.

The amount of any Indebtedness outstanding as of any date will be:

- (1) the accreted value of the Indebtedness, in the case of any Indebtedness issued with original issue discount;
- (2) in the case of any Hedging Obligation, the termination value of the agreement or arrangement giving rise to such Hedging Obligation that would be payable by such Person at such date; and
- (3) the principal amount of the Indebtedness, together with any interest on the Indebtedness that is more than 30 days past due, in the case of any other Indebtedness.

*Investment Grade Rating* means a rating equal to or higher than Baa3 (or the equivalent) by Moody's and BBB- (or the equivalent) by S&P.

*Issue Date* means December 27, 2017.

*Investments* means, with respect to any Person, all direct or indirect investments by such Person in other Persons (including Affiliates) in the forms of loans (including guarantees or other obligations), advances or capital contributions (excluding commission, travel and similar advances to officers and employees made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities, together with all items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP. If the Company or any Restricted Subsidiary of the Company sells or otherwise disposes of any Equity Interests of any direct or indirect Restricted Subsidiary of the Company such that, after giving effect to any such sale or disposition, such Person is no longer a Restricted Subsidiary of the Company, the Company will be deemed to have made an Investment on the date of any such sale or disposition in an amount equal to the fair market value of the Equity Interests of such Restricted Subsidiary not sold or disposed of in an amount determined as provided in the final paragraph of the covenant described above under the caption Certain covenants Limitation on restricted payments. The acquisition by the Company or any Subsidiary of the Company of a Person that holds an Investment in a third Person will be deemed to be an Investment made by the Company or such Subsidiary in such third Person in an amount equal to the fair market value of the Investment held by the acquired Person in such third Person on the date of any such acquisition in an amount determined as provided in the final paragraph of the covenant described above under the caption Certain covenants Limitation on restricted payments.

*Lien* means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell

or give a security interest in and any valid and effective filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction other than a precautionary financing statement not intended as a security agreement.

*Material Change* means an increase or decrease (excluding changes that result solely from changes in prices and changes resulting from the incurrence of previously estimated future development costs) of more than

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25% during a fiscal quarter in the discounted future net revenues from proved crude oil and natural gas reserves of the Company and its Restricted Subsidiaries, calculated in accordance with clause (1)(a) of the definition of ACNTA; *provided, however*, that the following will be excluded from the calculation of Material Change:

- (1) any acquisitions during the fiscal quarter of oil and gas reserves that have been estimated by independent petroleum engineers and with respect to which a report or reports of such engineers exist; and
- (2) any disposition of oil and gas properties existing at the beginning of such fiscal quarter that have been disposed of in compliance with the covenant described under Repurchase at the option of holders Asset sales.

*Material Domestic Subsidiary* means any wholly-owned Domestic Subsidiary that is not a Guarantor at the time of determination and that at such time together with its Subsidiaries holds assets in excess of 5.0% of the consolidated assets of the Company and its Restricted Subsidiaries, in each case based upon the most recent quarterly financial statements available to the Company, but excluding the value of the Equity Interests of all of its Domestic Subsidiaries and intercompany debt owed to such Domestic Subsidiary from any other Domestic Subsidiary or the Company.

*Moody's* means Moody's Investors Service, Inc. or any successor to the rating agency business thereof.

*Net Income* means, with respect to any specified Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of preferred stock dividends, excluding, however:

- (1) any gain (but not loss), together with any related provision for taxes on such gain (but not loss), realized in connection with: (a) any Asset Sale; or (b) the disposition of any securities by such Person or any of its Subsidiaries or the extinguishment of any Indebtedness of such Person or any of its Subsidiaries; and
- (2) any extraordinary gain (but not loss), together with any related provision for taxes on such extraordinary gain (but not loss).

*Net Cash Proceeds*, with respect to any issuance or sale of Capital Stock, means the cash proceeds of such issuance or sale, net of attorneys' fees, accountants' fees, underwriters' or placement agents' fees, listing fees, discounts or commissions and brokerage, consultant and other fees and charges actually incurred in connection with such issuance or sale and net of taxes paid or payable as a result of such issuance or sale (after taking into account any available tax credit or deductions and any tax sharing arrangements).

*Net Proceeds* means the aggregate cash proceeds and Cash Equivalents received by the Company or any of its Restricted Subsidiaries in respect of any Asset Sale (including, without limitation, any cash or Cash Equivalents received upon the sale or other disposition of any non-cash consideration received in any Asset Sale), net of:

- (1) the direct costs relating to such Asset Sale, including, without limitation, legal, accounting and investment banking fees, and sales commissions, and any relocation expenses incurred as a result of the Asset Sale,

- (2) taxes paid or payable as a result of the Asset Sale, in each case, after taking into account any available tax credits or deductions and any tax sharing arrangements,
- (3) amounts required to be applied to the repayment of Indebtedness, other than under the Credit Facilities, secured by a Lien on the properties or assets that were the subject of such Asset Sale, and
- (4) any reserve for adjustment in respect of the sale price of such properties or assets established in accordance with GAAP.

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*Net Working Capital* means:

- (1) all current assets of the Company and its Restricted Subsidiaries, minus
  - (2) all current liabilities of the Company and its Restricted Subsidiaries, except current liabilities included in Indebtedness;
- in each case, on a consolidated basis and determined in accordance with GAAP.

*Non-Guarantor Subsidiary* means any Restricted Subsidiary of the Company that is not a Guarantor.

*Non-Recourse Debt* means Indebtedness:

- (1) as to which neither the Company nor any of its Restricted Subsidiaries (a) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness), or (b) is directly or indirectly liable as a guarantor or otherwise;
- (2) no default with respect to which (including any rights that the holders of the Indebtedness may have to take enforcement action against an Unrestricted Subsidiary) would permit upon notice, lapse of time or both any holder of any other Indebtedness (other than the notes) of the Company or any of its Restricted Subsidiaries to declare a default on such other Indebtedness or cause the payment of the Indebtedness to be accelerated or payable prior to its Stated Maturity; and
- (3) the explicit terms of which provide there is no recourse to the stock or assets of the Company or any of its Restricted Subsidiaries, except solely in circumstances customarily excluded by lenders from exculpation provisions and/or included in separate guaranty or indemnification agreements in non-recourse financings.

*Obligations* means any principal, premium, if any, interest (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization, whether or not a claim for post-filing interest is allowed in such proceeding), penalties, fees, charges, expenses, indemnifications, reimbursement obligations, damages, guarantees, and other liabilities or amounts payable under the documentation governing any Indebtedness or in respect thereto.

*Oil and Gas Business* means:

- (1) the acquisition, exploration, development, operation and disposition of interests in minerals, oil, natural gas and other hydrocarbon properties;
- (2) the gathering, marketing, treating, processing (but not refining), storage, selling and transporting of any production from those interests; and

(3) any activity necessary, appropriate or incidental to the activities described above.

*Pari Passu Indebtedness* means Indebtedness that ranks equally in right of payment to the notes, in the case of the Company, or the Subsidiary Guarantees, in the case of any Guarantor (without giving effect to collateral arrangements).

*Permitted Business Investments* means Investments made in the ordinary course of, and of a nature that is or shall have become customary in, the Oil and Gas Business, including through agreements, transactions, interests or arrangements that permit one to share risk or costs, comply with regulatory requirements regarding local ownership or satisfy other objectives customarily achieved through the conduct of the Oil and Gas Business jointly with third parties, including without limitation:

- (1) direct or indirect ownership of crude oil, natural gas, other related hydrocarbon and mineral properties or any interest therein or gathering, transportation, processing, storage or related systems; and

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- (2) the entry into operating agreements, joint ventures, processing agreements, working interests, royalty interests, mineral leases, Farm-In agreements, Farm-Out agreements, development agreements, production sharing agreements, area of mutual interest agreements, contracts for the sale, transportation or exchange of crude oil and natural gas and related hydrocarbons and minerals, unitization agreements, pooling arrangements, joint bidding agreements, service contracts, partnership agreements (whether general or limited), or other similar or customary agreements, transactions, properties, interests or arrangements and Investments and expenditures in connection therewith or pursuant thereto, in each case made or entered into in the ordinary course of the Oil and Gas Business.

*Permitted Investments* means:

- (1) any Investment in the Company or in a Restricted Subsidiary of the Company;
- (2) any Investment in Cash Equivalents;
- (3) any Investment by the Company or any Restricted Subsidiary of the Company in a Person, if as a result of such Investment:
  - (a) such Person becomes a Restricted Subsidiary of the Company; or
  - (b) such Person is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its properties or assets to, or is liquidated into, the Company or a Restricted Subsidiary of the Company;
- (4) any Investment made as a result of the receipt of non-cash consideration from an Asset Sale that was made pursuant to and in compliance with the covenant described above under the caption *Repurchase at the option of holders* *Asset sales*;
- (5) any Investment in any Person solely in exchange for the issuance of Equity Interests (other than Disqualified Stock) of the Company;
- (6) any Investments received in compromise of obligations of trade creditors or customers that were incurred in the ordinary course of business, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer, or as a result of foreclosure by the Company or any of its Restricted Subsidiaries with respect to any secured Investment in default;
- (7) Hedging Obligations permitted to be incurred under the covenant described under the caption *Certain covenants* *Limitation on incurrence of Indebtedness and issuance of preferred stock*;

- (8) Permitted Business Investments;
- (9) Investments of a Restricted Subsidiary of the Company acquired after the Issue Date or of an entity merged or consolidated with or into the Company or such Restricted Subsidiary in a transaction that is not prohibited by the covenant described under the caption Certain covenants Merger, consolidation or sale of assets after the Issue Date to the extent that such Investments were not made in contemplation of such acquisition, merger or consolidation and were in existence on the date of such acquisition, merger or consolidation;
- (10) receivables owing to the Company or any Restricted Subsidiary created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms; *provided, however*, that such trade terms may include such concessionary trade terms as the Company or any such Restricted Subsidiary deems reasonable under the circumstances;
- (11) payroll, commission, travel, relocation and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and that are made in the ordinary course of business;
- (12) loans or advances to directors, officers, employees or consultants of the Company or any Restricted Subsidiary of the Company, made in the ordinary course of business consistent with past practices, and



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as permitted by Section 402 of the Sarbanes-Oxley Act of 2002, the proceeds of which are used to purchase Capital Stock of the Company, or to refinance loans or advances made pursuant to this clause (12), in an aggregate principal amount not in excess of \$4.0 million at any one time outstanding;

- (13) Investments in any Person to the extent such Investments consist of prepaid expenses, negotiable instruments held for collection and lease, utility and workers' compensation, performance and other similar deposits made in the ordinary course of business by the Company or any Restricted Subsidiary;
- (14) Guarantees of performance or other obligations (other than Indebtedness) arising in the ordinary course in the Oil and Gas Business, including obligations under oil and natural gas exploration, development, joint operating, and related agreements and licenses, concessions or operating leases related to the Oil and Gas Business;
- (15) Investments in the notes as contemplated by the provision described above under "Optional redemption" or by tender offer, open market purchase, negotiated transaction or otherwise in accordance with applicable securities laws;
- (16) Investments in existence on the Issue Date; and
- (17) other Investments in any Person having an aggregate fair market value (measured on the date each such Investment was made and without giving effect to subsequent changes in value), when taken together with all other Investments made pursuant to this clause (17) that are at the time outstanding, not to exceed the greater of (a) \$250.0 million and (b) 2.5% of ACNTA.

*Permitted Liens* means:

- (1) Liens securing any Indebtedness under any Credit Facility;
- (2) Liens in favor of the Company or the Guarantors;
- (3) Liens on property of a Person existing at the time such Person is merged with or into or consolidated with the Company or any Restricted Subsidiary of the Company, provided that such Liens were in existence prior to the contemplation of such merger or consolidation and do not extend to any assets other than those of the Person merged into or consolidated with the Company or the Restricted Subsidiary;
- (4) Liens on property (including Capital Stock) existing at the time of acquisition of the property by the Company or any Restricted Subsidiary of the Company, provided that such Liens were in existence prior to the contemplation of such acquisition;

- (5) Liens securing Indebtedness (including Capital Lease Obligations) incurred in connection with the acquisition by the Company or any Restricted Subsidiary of assets used in the Oil and Gas Business (including the office buildings and other real property used by the Company or such Restricted Subsidiary in conducting its operations); *provided* that (i) such Liens attach only to the assets acquired with the proceeds of such Indebtedness, and (ii) such Indebtedness is not in excess of the purchase price of such fixed assets;
- (6) Liens existing on the Issue Date (other than under the Credit Agreement);
- (7) Liens securing Hedging Obligations of the Company or any of its Restricted Subsidiaries;
- (8) any Lien incurred in the ordinary course of business incidental to the conduct of the business of the Company or its Restricted Subsidiaries or the ownership of their property (including (a) easements, rights of way and similar encumbrances, (b) rights or title of lessors under leases (other than Capital Lease Obligations), (c) rights of collecting banks having rights of setoff, revocation, refund or chargeback with respect to money or instruments of the Company or the Restricted Subsidiaries on deposit with or in the possession of such banks, (d) Liens imposed by law, including Liens under

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workers compensation or similar legislation and mechanics , carriers , warehousemen s, materialmen s, suppliers and vendors Liens, (e) Liens incurred to secure performance of obligations with respect to statutory or regulatory requirements, performance or return-of-money bonds, surety bonds or other obligations of a like nature and incurred in a manner consistent with industry practice, or (f) operators Liens under joint operating agreements or similar customary agreements in the Oil and Gas Business);

- (9) Liens securing all outstanding notes and the Subsidiary Guarantees thereof;
- (10) Liens securing Indebtedness incurred to refinance Indebtedness incurred under clauses (3), (4) or (5) that was previously so secured, provided that any such Lien is limited to all or part of the same property or assets (plus improvements, accessions, proceeds or dividends or distributions in respect thereof) that secured (or, under the written arrangements under which the original Lien arose, could secure) the Indebtedness being refinanced or is in respect of property that is the security for a Permitted Lien hereunder;
- (11) Liens incurred in the ordinary course of business of the Company or any Restricted Subsidiary of the Company with respect to obligations that do not exceed, at the time of incurrence of such Lien, the greater of (a) \$250.0 million and (b) 2.5% of ACNTA at any one time outstanding; and
- (12) Liens on Cash Equivalents or other property arising in connection with the defeasance, discharge or redemption of Indebtedness.

*Permitted Refinancing Indebtedness* means any Indebtedness of the Company or any of its Restricted Subsidiaries issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund other Indebtedness of the Company or any of its Restricted Subsidiaries (other than intercompany Indebtedness); *provided that:*

- (1) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded (plus all accrued interest on the Indebtedness and the amount of all expenses and premiums incurred in connection therewith);
- (2) such Permitted Refinancing Indebtedness has a final maturity date later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded;
- (3) if the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded is subordinated in right of payment to the notes or the Subsidiary Guarantees, such Permitted Refinancing Indebtedness is subordinated in right of payment to the notes or the Subsidiary Guarantees on terms at least as favorable to the Holders as those contained in the documentation governing the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded; and

- (4) such Indebtedness is not incurred by a Restricted Subsidiary of the Company if the Company is the obligor on the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded; *provided, however*, that a Restricted Subsidiary that is also a Guarantor may guarantee Permitted Refinancing Indebtedness incurred by the Company, whether or not such Restricted Subsidiary was an obligor or guarantor of the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded.

Notwithstanding the preceding, any Indebtedness incurred under Credit Facilities pursuant to the covenant described under the caption *Certain covenants* *Limitation on incurrence of Indebtedness and issuance of preferred stock* shall be subject only to the refinancing provision in the definition of Credit Facilities and not pursuant to the requirements set forth in the definition of Permitted Refinancing Indebtedness.

*Person* means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company or government or other entity.

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*Production Payments* means, collectively, Dollar-Denominated Production Payments, Volumetric Production Payments and any other grant or transfer by the Company or a Restricted Subsidiary to any Person of a royalty, overriding royalty, net profits interest, partnership or other interest in Oil and Gas Properties, reserves or the right to receive all or a portion of the production or the proceeds from the sale of production attributable to such properties where the holder of such interest has recourse solely to such production or proceeds of production, subject to the obligation of the grantor or transferor to operate and maintain, or cause the subject interests to be operated and maintained, in a reasonably prudent manner or other customary standard or subject to the obligation of the grantor or transferor to indemnify for environmental, title or other matters customary in the Oil and Gas Business, including any such grants or transfers pursuant to incentive compensation programs on terms that are reasonably customary in the Oil and Gas Business for geologists, geophysicists or other providers of technical services to the Company or a Restricted Subsidiary.

*Rating Agency* means each of S&P and Moody's, or if S&P or Moody's or both shall not make a rating on the notes publicly available, a nationally recognized statistical rating agency or agencies, as the case may be, selected by the Company (as certified by a Board Resolution) which shall be substituted for S&P or Moody's, or both, as the case may be.

*Rating Decline* means the occurrence of a decrease of one or more gradations (including gradations within rating categories as well as between rating categories) in the rating of the notes by either Rating Agency.

*Registration Rights Agreement* means that certain Registration Rights Agreement dated as of the Issue Date by and among the Company, the Guarantors and the initial purchasers set forth therein and, with respect to any additional notes, one or more substantially similar registration rights agreements among the Company and the other parties thereto, as such agreements may be amended from time to time.

*Reporting Failure* means the failure of the Company to file with the Commission and make available or otherwise deliver to the trustee and each Holder, within the time periods specified in Certain covenants Reports (after giving effect to any grace period specified under Rule 12b-25 under the Exchange Act), the periodic reports, information, documents or other reports that the Company may be required to file with the Commission pursuant to such provision.

*Restricted Investment* means an Investment other than a Permitted Investment.

*Restricted Subsidiary* of a Person means any Subsidiary of the referent Person that is not an Unrestricted Subsidiary.

*S&P* refers to Standard & Poor's Ratings Services, or any successor to the rating agency business thereof.

*Significant Subsidiary* means any Subsidiary that would be a significant subsidiary as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such Regulation is in effect on the Issue Date.

*Stated Maturity* means, with respect to any installment of interest or principal on any series of Indebtedness, the date on which the payment of interest or principal was scheduled to be paid in the original documentation governing such Indebtedness, and will not include any contingent obligations to repay, redeem or repurchase any such interest or principal prior to the date originally scheduled for the payment thereof.

*Subsidiary* means, with respect to any specified Person:

- (1) any corporation, association or other business entity (other than a partnership) of which more than 50% of the total voting power of Voting Stock is at the time owned or controlled, directly or through another Subsidiary, by that Person or one or more of the other Subsidiaries of that Person (or a combination thereof); and

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- (2) any partnership (a) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are that Person or one or more Subsidiaries of that Person (or any combination thereof), but only if such Person and its Subsidiaries are entitled to receive more than 20% of the assets of such partnership upon its dissolution.

*Subsidiary Guarantee* means any guarantee by a Guarantor of the Company's payment Obligations under the indenture and on the notes.

*Unrestricted Subsidiary* means any Subsidiary of the Company (other than Whiting Oil and Gas Corporation) that is designated by the Board of Directors as an Unrestricted Subsidiary pursuant to a Board Resolution, but only to the extent that such Subsidiary:

- (1) has no Indebtedness other than Non-Recourse Debt;
- (2) is not party to any agreement, contract, arrangement or understanding with the Company or any Restricted Subsidiary of the Company unless the terms of any such agreement, contract, arrangement or understanding are no less favorable to the Company or such Restricted Subsidiary than those that might be obtained at the time from Persons who are not Affiliates of the Company;
- (3) is a Person with respect to which neither the Company nor any of its Restricted Subsidiaries has any direct or indirect obligation (a) to subscribe for additional Equity Interests or (b) to maintain or preserve such Person's financial condition or to cause such Person to achieve any specified levels of operating results; and
- (4) has not guaranteed or otherwise directly or indirectly provided credit support for any Indebtedness of the Company or any of its Restricted Subsidiaries.

Any designation of a Subsidiary of the Company as an Unrestricted Subsidiary will be evidenced to the trustee by filing with the trustee the Board Resolution giving effect to such designation and an officer's certificate certifying that such designation complied with the preceding conditions and was permitted by the covenant described above under the caption Certain covenants Limitation on restricted payments. If, at any time, any Unrestricted Subsidiary would fail to meet the preceding requirements as an Unrestricted Subsidiary, it will thereafter cease to be an Unrestricted Subsidiary for purposes of the indenture and any Indebtedness of such Subsidiary will be deemed to be incurred by a Restricted Subsidiary of the Company as of such date and, if such Indebtedness is not permitted to be incurred as of such date under the covenant described under the caption Certain covenants Limitation on incurrence of Indebtedness and issuance of preferred stock, the Company will be in default of such covenant.

*Volumetric Production Payments* means production payment obligations recorded as deferred revenue in accordance with GAAP, together with all related undertakings and obligations.

*Voting Stock* of any Person as of any date means the Capital Stock of such Person that is at the time entitled (without regard to the occurrence of any contingency) to vote in the election of the Board of Directors of such Person.

*Weighted Average Life to Maturity* means, when applied to any Indebtedness at any date, the number of years obtained by dividing:

- (1) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect of the Indebtedness, by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by
  
- (2) the then outstanding principal amount of such Indebtedness.



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**BOOK-ENTRY, DELIVERY AND FORM**

Except as set forth below, new notes will be issued in registered, global form. New notes will be issued at the closing of this exchange offer only in exchange for properly tendered and accepted original notes.

Initially, the new notes will be represented by one or more permanent global notes in registered form without interest coupons (collectively, the Global Notes ). The Global Notes will be deposited upon issuance with the trustee as custodian for The Depository Trust Company ( DTC ) and registered in the name of DTC 's nominee, Cede & Co., for credit to an account of a direct or indirect participant in DTC as described below. Beneficial interests in the Global Notes may be held through the Euroclear System ( Euroclear ) and Clearstream Banking, S.A. ( Clearstream ) (as indirect participants in DTC).

The Global Notes may be transferred, in whole but not in part, only to another nominee of DTC or to a successor of DTC or its nominee. Beneficial interests in the Global Notes may not be exchanged for notes in registered, certificated form ( Certificated Notes ) except in the limited circumstances described below. See Exchange of global notes for certificated notes. In addition, transfers of beneficial interests in the Global Notes will be subject to the applicable rules and procedures of DTC and its direct or indirect participants (including, if applicable, those of Euroclear and Clearstream), which may change from time to time.

**Depository procedures**

The following description of the operations and procedures of DTC, Euroclear and Clearstream are provided solely as a matter of convenience. These operations and procedures are solely within the control of the respective settlement systems and are subject to changes by them. We take no responsibility for these operations and procedures and urge investors to contact the system or their participants directly to discuss these matters.

DTC has advised us that DTC is a limited-purpose trust company created to hold securities for its participating organizations (collectively, the Participants ) and to facilitate the clearance and settlement of transactions in those securities between Participants through electronic book-entry changes in accounts of its Participants. The Participants include securities brokers and dealers (including the initial purchasers), banks, trust companies, clearing corporations and certain other organizations. Access to DTC 's system is also available to other entities such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a Participant, either directly or indirectly (collectively, the Indirect Participants ). Persons who are not Participants may beneficially own securities held by or on behalf of DTC only through the Participants or the Indirect Participants. The ownership interests in, and transfers of ownership interests in, each security held by or on behalf of DTC are recorded on the records of the Participants and Indirect Participants.

DTC has also advised us that, pursuant to procedures established by it:

- (1) upon deposit of the Global Notes, DTC will credit the accounts of Participants designated by the initial purchasers with portions of the principal amount of the Global Notes; and
- (2) ownership of these interests in the Global Notes will be shown on, and the transfer of ownership of these interests will be effected only through, records maintained by DTC (with respect to the Participants) or by the Participants and the Indirect Participants (with respect to other owners of beneficial interests in the

Global Notes).

Investors in the Global Notes who are Participants in DTC's system may hold their interests therein directly through DTC. Investors in the Global Notes who are not Participants may hold their interests therein indirectly through organizations (including Euroclear and Clearstream) which are Participants in such system. Euroclear and Clearstream may hold interests in the Global Notes on behalf of their participants through customers' securities accounts in their respective names on the books of their respective depositories, which are Euroclear Bank S.A./N.V., as operator of Euroclear, and Citibank, N.A., as operator of Clearstream. All interests in a

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Global Note, including those held through Euroclear or Clearstream, may be subject to the procedures and requirements of DTC. Those interests held through Euroclear or Clearstream may also be subject to the procedures and requirements of such systems.

The laws of some states require that certain persons take physical delivery in definitive form of securities that they own. Consequently, the ability to transfer beneficial interests in a Global Note to such persons will be limited to that extent. Because DTC can act only on behalf of Participants, which in turn act on behalf of Indirect Participants, the ability of a person having beneficial interests in a Global Note to pledge such interests to persons that do not participate in the DTC system, or otherwise take actions in respect of such interests, may be affected by the lack of a physical certificate evidencing such interests.

Except as described below, owners of an interest in the Global Notes will not have new notes registered in their names, will not receive physical delivery of Certificated Notes and will not be considered the registered owners or Holders thereof under the indenture for any purpose.

Payments in respect of the principal of, and interest and premium, if any, on a Global Note registered in the name of DTC or its nominee will be payable to DTC in its capacity as the registered Holder under the indenture. Under the terms of the indenture, the Company and the trustee will treat the persons in whose names the new notes, including the Global Notes, are registered as the owners of the new notes for the purpose of receiving payments and for all other purposes. Consequently, neither the Company, the trustee nor any agent of the Company or the trustee has or will have any responsibility or liability for:

- (1) any aspect of DTC's records or any Participant's or Indirect Participant's records relating to or payments made on account of beneficial ownership interests in the Global Notes or for maintaining, supervising or reviewing any of DTC's records or any Participant's or Indirect Participant's records relating to the beneficial ownership interests in the Global Notes; or
- (2) any other matter relating to the actions and practices of DTC or any of its Participants or Indirect Participants.

DTC has advised us that its current practice, at the due date of any payment in respect of securities such as the new notes, is to credit the accounts of the relevant Participants with the payment on the payment date unless DTC has reason to believe it will not receive payment on such payment date. Each relevant Participant is credited with an amount proportionate to its beneficial ownership of an interest in the principal amount of the new notes as shown on the records of DTC. Payments by the Participants and the Indirect Participants to the beneficial owners of new notes will be governed by standing instructions and customary practices and will be the responsibility of the Participants or the Indirect Participants and will not be the responsibility of DTC, the trustee or the Company. Neither the Company nor the trustee will be liable for any delay by DTC or any of its Participants in identifying the beneficial owners of the new notes, and the Company and the trustee may conclusively rely on and will be protected in relying on instructions from DTC or its nominee for all purposes.

Transfers between Participants in DTC will be effected in accordance with DTC's procedures, and will be settled in same-day funds, and transfers between participants in Euroclear and Clearstream will be effected in accordance with their respective rules and operating procedures.

Cross-market transfers between the Participants in DTC, on the one hand, and Euroclear or Clearstream participants, on the other hand, will be effected through DTC in accordance with DTC's rules on behalf of Euroclear or Clearstream, as the case may be, by its depository; however, such cross-market transactions will require delivery of instructions to Euroclear or Clearstream, as the case may be, by the counterparty in such system in accordance with the rules and procedures and within the established deadlines (Brussels time) of such system. Euroclear or Clearstream, as the case may be, will, if the transaction meets its settlement requirements, deliver instructions to its respective depository to take action to effect final settlement on its behalf by delivering or receiving interests in the relevant Global Note in DTC, and making or receiving payment in accordance with

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normal procedures for same-day funds settlement applicable to DTC. Euroclear participants and Clearstream participants may not deliver instructions directly to the depositories for Euroclear or Clearstream.

DTC has advised us that it will take any action permitted to be taken by a Holder of new notes only at the direction of one or more Participants to whose account DTC has credited the interests in the Global Notes and only in respect of such portion of the aggregate principal amount of the new notes as to which such Participant or Participants has or have given such direction. However, if there is an Event of Default under the new notes, DTC reserves the right to exchange the Global Notes for Certificated Notes and to distribute such new notes to its Participants.

Although DTC, Euroclear and Clearstream have agreed to the foregoing procedures to facilitate transfers of interests in the Global Notes among participants in DTC, Euroclear and Clearstream, they are under no obligation to perform or to continue to perform such procedures, and may discontinue such procedures at any time. None of the Company, the trustee or any of their respective agents will have any responsibility for the performance by DTC, Euroclear or Clearstream or their respective participants or indirect participants of their respective obligations under the rules and procedures governing their operations.

### **Exchange of global notes for certificated notes**

A Global Note is exchangeable for Certificated Notes in minimum denominations of \$2,000 and in integral multiples of \$1,000, if:

- (1) DTC (a) notifies us that it is unwilling or unable to continue as depository for the Global Notes or (b) has ceased to be a clearing agency registered under the Exchange Act and in either event the Company fails to appoint a successor depository within 90 days; or
- (2) there has occurred and is continuing an Event of Default and DTC notifies the trustee of its decision to exchange the Global Note for Certificated Notes.

Certificated Notes delivered in exchange for any Global Note or beneficial interests in Global Notes will be registered in the names, and issued in any approved denominations, requested by or on behalf of the depository (in accordance with its customary procedures).

### **Same day settlement and payment**

The Company will make payments in respect of the new notes represented by the Global Notes (including principal, premium, if any, and interest) by wire transfer of immediately available funds to the accounts specified by the Global Note Holder. The Company will make all payments of principal, interest and premium, if any, with respect to Certificated Notes by wire transfer of immediately available funds to the accounts specified by the Holders of the Certificated Notes or, if no such account is specified, by mailing a check to each such Holder's registered address. The new notes represented by the Global Notes are expected to trade in DTC's Same-Day Funds Settlement System, and any permitted secondary market trading activity in such new notes will, therefore, be required by DTC to be settled in immediately available funds. The Company expects that secondary trading in any Certificated Notes will also be settled in immediately available funds.

Because of time zone differences, the securities account of a Euroclear or Clearstream participant purchasing an interest in a Global Note from a Participant in DTC will be credited, and any such crediting will be reported to the

relevant Euroclear or Clearstream participant, during the securities settlement processing day (which must be a business day for Euroclear and Clearstream) immediately following the settlement date of DTC. DTC has advised us that cash received in Euroclear or Clearstream as a result of sales of interests in a Global Note by or through a Euroclear or Clearstream participant to a Participant in DTC will be received with value on the settlement date of DTC but will be available in the relevant Euroclear or Clearstream cash account only as of the business day for Euroclear or Clearstream following DTC's settlement date.

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**Table of Contents****MATERIAL U.S. FEDERAL INCOME TAX CONSIDERATIONS**

The following discussion is a summary of the material U.S. federal income tax (and, in the case of certain foreign individuals, estate tax) consequences relevant to the acquisition, ownership, and disposition of the new notes by U.S. Holders and by Non-U.S. Holders (each as defined below). This summary is based upon the Internal Revenue Code of 1986, as amended (the Code), Treasury regulations, rulings of the Internal Revenue Service (the IRS), and judicial decisions in existence on the date hereof, all of which are subject to change. Any such change could apply retroactively and could adversely affect the tax consequences described below. No assurance can be given that the IRS will agree with the consequences described in this summary, or that a court will not sustain any challenge by the IRS in the event of litigation. No advance tax ruling has been sought or obtained from the IRS regarding the tax consequences of the transactions described herein.

For purposes of this summary, a U.S. Holder is a beneficial owner of original notes or new notes that is (a) an individual who is a citizen of the United States or who is resident in the United States for U.S. federal income tax purposes, (b) an entity that is classified for U.S. federal income tax purposes as a corporation and that is organized under the laws of the United States, any state thereof, or the District of Columbia, or is otherwise treated for U.S. federal income tax purposes as a domestic corporation, (c) an estate the income of which is subject to U.S. federal income taxation regardless of its source, or (d) a trust (i) whose administration is subject to the primary supervision of a court within the United States and all substantial decisions of which are subject to the control of one or more United States persons as described in Section 7701(a)(30) of the Code (United States persons), or (ii) that has a valid election in effect under applicable Treasury regulations to be treated as a United States person.

For purposes of this summary, a Non-U.S. Holder is a beneficial owner of original notes or new notes that is neither a U.S. Holder nor an entity that is classified for U.S. federal income tax purposes as a partnership or as a disregarded entity. If an entity classified for U.S. federal income tax purposes as a partnership or as a disregarded entity owns new notes, the tax treatment of a member of the entity will depend on the status of the member and the activities of the entity. The tax treatment of such an entity, and the tax treatment of any member of such an entity, are not addressed in this summary. Any entity that is classified for U.S. federal income tax purposes as a partnership or as a disregarded entity and that owns original notes or new notes, and any members of such an entity, are encouraged to consult their tax advisors.

This summary does not discuss all U.S. federal income tax considerations that may be relevant to U.S. Holders and Non-U.S. Holders in light of their particular circumstances or that may be relevant to certain beneficial owners that may be subject to special treatment under U.S. federal income tax law (for example, tax-exempt organizations, insurance companies, banks and other financial institutions, dealers in securities, traders in securities that elect to use a mark-to-market method of accounting, real estate investment trusts, regulated investment companies, individual retirement accounts, qualified pension plans, persons who hold original notes or new notes as part of a straddle, hedging, constructive sale, conversion, or other integrated transaction, persons that purchase or sell new notes as part of a wash sale for tax purposes, persons subject to special tax accounting rules under Section 451(b) of the Code, U.S. Holders whose functional currency is not the U.S. dollar, controlled foreign corporations, passive foreign investment companies, and corporations that accumulate earnings to avoid U.S. federal income tax). Furthermore, this summary does not discuss any alternative minimum tax consequences, and does not address any aspects of state, local, or foreign taxation. This summary only applies to those beneficial owners that hold new notes as capital assets within the meaning of Section 1221 of the Code. In the case of any Non-U.S. Holder who is an individual, this summary assumes that this individual was not formerly a United States citizen and was not formerly a resident of the United States for U.S. federal income tax purposes.

Treasury regulations provide special rules for the treatment of debt instruments that provide for contingent payments. Under these regulations, a contingency is disregarded if the contingency is remote or incidental, or, in certain circumstances, it is significantly more likely than not that such contingency will not occur. We intend to



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take the position that the contingencies on the new notes (for example, your right to require us to purchase the new notes upon a Change of Control Triggering Event, as described under *Description of New Notes* *Repurchase at the option of holders* *Change of control triggering event* ) will not cause the *contingent payment debt instrument* rules of the Treasury regulations to apply. A successful challenge of this position by the IRS could affect the timing and amount of income inclusions with respect to the new notes, and could also cause any gain from the sale or other disposition of a new note to be treated as ordinary income rather than as capital gain. Beneficial owners of the new notes are encouraged to consult their tax advisors regarding the possible application of the contingent payment debt instrument rules to the new notes. The remainder of this summary assumes that the new notes will not be considered to be contingent payment debt instruments.

**THIS SUMMARY IS INCLUDED FOR GENERAL INFORMATION ONLY AND MAY NOT BE APPLICABLE DEPENDING UPON THE PARTICULAR SITUATION OF A BENEFICIAL OWNER OF NEW NOTES. SUCH BENEFICIAL OWNERS ARE ENCOURAGED TO SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.**

**Treatment of the Exchange**

For U.S. federal income tax purposes, (i) the exchange of original notes for new notes pursuant to the exchange offer will not constitute a taxable event to U.S. Holders or Non-U.S. Holders, (ii) each new note will be treated as a continuation of the corresponding original note, (iii) the initial tax basis of a new note will be the same as the adjusted tax basis of the corresponding original note immediately before the exchange, and (iv) the holding period of a new note will include the holding period of the corresponding original note.

**U.S. Holders***Interest*

Interest on the new notes generally will be taxable to a U.S. Holder as ordinary interest income (in accordance with the U.S. Holder's regular method of tax accounting) at the time such income is accrued or received.

*Amortizable bond premium*

In general, if a U.S. Holder's initial tax basis in a new note (or, in the case of a new note acquired by the U.S. Holder pursuant to the exchange, if the U.S. Holder's initial tax basis in the corresponding original note) is greater than the stated redemption price at maturity of the new note, the excess will be treated as *bond premium* for U.S. federal income tax purposes, and a U.S. Holder may elect to amortize the bond premium over the remaining term of the new note on a constant-yield basis as an offset to the interest income on the new note that is taken into account by the U.S. Holder under its regular method of tax accounting. However, because the new notes may, under certain circumstances, be redeemed by us at a premium prior to maturity, special rules would apply which could result in a deferral, reduction, or elimination of the amortization of some of the bond premium on a new note.

A U.S. Holder's tax basis in a new note will be reduced by the amount of bond premium on the new note that is so amortized. If a U.S. Holder does not elect to amortize bond premium, the U.S. Holder will be required to report the full amount of stated interest on the new note as ordinary income, even though the U.S. Holder may be required to recognize a capital loss (which may not be available to offset ordinary income) on a sale or other disposition of the new note.

An election to amortize bond premium applies to all taxable debt instruments acquired by the U.S. Holder on or after the first day of the first taxable year to which such election applies, and may not be revoked without the consent of the IRS. U.S. Holders that hold new notes with bond premium are encouraged to consult their tax advisors regarding the application of these rules.

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**Table of Contents*****Sale or other taxable disposition of new notes***

In the case of a sale or other taxable disposition (including a redemption or retirement) of the new notes, a U.S. Holder generally will recognize capital gain or loss in an amount equal to the difference between the amount realized on the taxable disposition, other than amounts attributable to accrued but unpaid interest on the new notes (which will be treated as a payment of interest), and the U.S. Holder's tax basis in such new notes. A U.S. Holder's tax basis in a new note generally will be equal to the cost of the new note (net of accrued interest) to such U.S. Holder (or, in the case of a new note acquired by the U.S. Holder pursuant to the exchange, the adjusted tax basis in the corresponding original note immediately before the exchange), as reduced by any amortizable bond premium. Any such capital gain or loss generally will be long-term capital gain or loss if the U.S. Holder's holding period for the new notes is more than one year at the time of disposition. A long-term capital gain recognized by an individual or other non-corporate U.S. Holder upon a taxable disposition of a new note is generally eligible for reduced rates of U.S. federal income taxation. The deductibility of capital losses is subject to certain limitations.

***Unearned income Medicare contribution tax***

A 3.8% Medicare contribution tax will be imposed on the net investment income of certain United States individuals and on the undistributed net investment income of certain estates and trusts. Among other items, net investment income generally includes interest and certain net gain from the disposition of property (such as the new notes), less certain deductions.

***Backup withholding and information reporting***

In general, information returns will be filed with the IRS in connection with payments on the new notes and the proceeds from a sale or other disposition of the new notes. A U.S. Holder may be subject to backup withholding on these payments if the U.S. Holder fails to provide its taxpayer identification number in the manner required by applicable law, fails to certify that it is not subject to the backup withholding tax, or otherwise fails to comply with applicable backup withholding tax rules.

Any amounts withheld from a U.S. Holder under the backup withholding provisions may be credited against the U.S. federal income tax liability, if any, of the U.S. Holder, and may entitle the U.S. Holder to a refund, provided that the required information is timely furnished to the IRS.

**Non-U.S. Holders*****Interest***

Interest earned on a new note by a Non-U.S. Holder will be considered portfolio interest, and (subject to the discussion below regarding information reporting and backup withholding and subject to the discussion under the heading Foreign account tax compliance below) will not be subject to U.S. federal income tax or withholding, if:

the Non-U.S. Holder is neither (i) a controlled foreign corporation that is related to us as described in Section 881(c)(3)(C) of the Code, (ii) a bank receiving the interest on a loan made in the ordinary course of its business, nor (iii) a person who owns, directly or under the attribution rules of Section 871(h)(3)(C) of the Code, 10% or more of the total combined voting power of all classes of our stock entitled to vote;

the certification requirements described below are satisfied; and

the interest is not effectively connected with the conduct of a trade or business within the United States by the Non-U.S. Holder.

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In general, the certification requirements will be satisfied if either (i) the beneficial owner of the new note provides, to the person that otherwise would be required to withhold U.S. tax, a properly completed IRS Form W-8BEN or IRS Form W-8BEN-E (or a suitable substitute form) that includes the beneficial owner's name and address and that certifies, under penalties of perjury, that the beneficial owner is not a United States person, or (ii) a securities clearing organization, bank, or other financial institution which holds customers' securities in the ordinary course of its trade or business holds the new note on behalf of a beneficial owner and provides to the person that otherwise would be required to withhold U.S. tax, a statement certifying under penalties of perjury that an applicable IRS Form W-8BEN or IRS Form W-8BEN-E (or a suitable substitute form) has been received by it from the beneficial owner, or from another financial institution acting on behalf of the beneficial owner, and furnishes a copy to the person that otherwise would be required to withhold U.S. tax. These certification requirements may be satisfied with other documentary evidence in the case of a new note held through a qualified intermediary.

Any payments to a Non-U.S. Holder of interest that do not qualify for the portfolio interest exemption and that are not effectively connected with the conduct of a trade or business (or, if a United States income tax treaty applies, are not attributable to a permanent establishment maintained) within the United States by the Non-U.S. Holder will be subject to U.S. federal income tax and withholding at a rate of 30% (or at a lower rate under an applicable income tax treaty). To claim a reduction or exemption under an applicable income tax treaty, a Non-U.S. Holder must generally submit, to the person that otherwise would be required to withhold U.S. tax, a properly completed IRS Form W-8BEN or IRS Form W-8BEN-E (or a suitable substitute form).

Any interest earned on a new note that is effectively connected with the conduct of a trade or business (and, if a United States income tax treaty applies, is attributable to a permanent establishment maintained) within the United States by a Non-U.S. Holder will be subject to U.S. federal income tax at regular graduated rates. If the Non-U.S. Holder is classified as a corporation for U.S. federal income tax purposes, such income will also be taken into account for purposes of determining the amount of U.S. branch profits tax, which is imposed at a rate of 30% (or at a lower rate under an applicable income tax treaty) on effectively connected earnings and profits, subject to certain adjustments. However, such effectively connected income will not be subject to U.S. federal income tax withholding, provided that the Non-U.S. Holder furnishes a properly completed IRS Form W-8ECI (or a suitable substitute form) to the person that otherwise would be required to withhold U.S. tax.

***Sale or other taxable disposition of new notes***

Subject to the discussion below regarding information reporting and backup withholding and subject to the discussion under the heading Foreign account tax compliance below, any gain recognized by a Non-U.S. Holder upon a sale or other taxable disposition (including a redemption or retirement) of new notes will not be subject to U.S. federal income tax unless:

the gain is effectively connected with the conduct of a trade or business (and, if an applicable United States income tax treaty applies, is attributable to a permanent establishment maintained) within the United States by the Non-U.S. Holder; or

in the case of an individual, such individual is present in the United States for 183 days or more during the taxable year in which the gain is realized and certain other conditions are met.

In the case of a Non-U.S. Holder whose gain is described in the first bullet point above, any such gain will be subject to U.S. federal income tax at regular graduated rates, and (if the Non-U.S. Holder is classified as a corporation for

U.S. federal income tax purposes) may also be subject to a U.S. branch profits tax, which is imposed at a rate of 30% (or at a lower rate under an applicable income tax treaty) on effectively connected earnings and profits, subject to certain adjustments.

An individual Non-U.S. Holder described in the second bullet point above will be subject to U.S. federal income tax at a rate of 30% (or at a reduced rate under an applicable U.S. income tax treaty) on the amount by which its U.S.-source capital gains exceed its U.S.-source capital losses.

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***Backup withholding and information reporting***

Any payments of interest to a Non-U.S. Holder with respect to the new notes generally will be reported to the IRS and to the Non-U.S. Holder. Copies of these information returns may also be made available under the provisions of a specific treaty or agreement to the tax authorities of the country in which the payee resides.

Any payments of interest to a Non-U.S. Holder with respect to the new notes generally will not be subject to backup withholding and additional information reporting, provided that the Non-U.S. Holder certifies, under penalties of perjury, on a properly completed IRS Form W-8BEN, IRS Form W-8BEN-E, or IRS Form W-8ECI (or a suitable successor form) that it is not a United States person and certain other conditions are met, or the Non-U.S. Holder otherwise establishes an exemption.

The payment to a Non-U.S. Holder of the proceeds of a disposition of new notes by or through the U.S. office of a broker generally will not be subject to information reporting or backup withholding if the Non-U.S. Holder either certifies, under penalties of perjury, on a properly completed IRS Form W-8BEN, IRS Form W-8BEN-E or IRS Form W-8ECI (or a suitable successor form) that it is not a United States person and certain other conditions are met, or the Non-U.S. Holder otherwise establishes an exemption. Information reporting and backup withholding generally will not apply to the payment of the proceeds of a disposition of new notes by or through the foreign office of a foreign broker (within the meaning of applicable Treasury regulations). However, with respect to a payment of the proceeds of the disposition of a new note by or through a foreign office of a U.S. broker or of a foreign broker with certain relationships to the United States, information reporting requirements generally will apply unless the broker has documentary evidence that the holder is not a United States person and certain other conditions are met, or the holder otherwise establishes an exemption; and backup withholding will not apply unless the disposition is subject to information reporting and the broker has actual knowledge or reason to know that the holder is a United States person or otherwise does not satisfy the requirements for an exemption.

Any amounts withheld from a Non-U.S. Holder under the backup withholding provisions may be credited against the U.S. federal income tax liability, if any, of the Non-U.S. Holder, and may entitle the Non-U.S. Holder to a refund, provided that the required information is timely furnished to the IRS.

***Foreign account tax compliance***

Under the Foreign Account Tax Compliance Act ( FATCA ), a 30% withholding tax will be imposed on interest paid with respect to the new notes (and payments of proceeds from the sale or other disposition of the new notes after December 31, 2018) to foreign financial institutions (including non-U.S. investment funds) or non-financial foreign entities (each as defined in the Code), unless they meet the information reporting requirements of FATCA. To avoid withholding, a foreign financial institution generally will need to enter into an agreement with the IRS that states that it will provide the IRS certain information, including the names, addresses and taxpayer identification numbers of direct and indirect U.S. account holders, comply with due diligence procedures with respect to the identification of U.S. accounts, report to the IRS certain information with respect to U.S. accounts maintained, agree to withhold tax on certain payments made to non-compliant foreign financial institutions or to account holders who fail to provide the required information, and determine certain other information as to its account holders. An intergovernmental agreement between the United States and an applicable foreign country, or future U.S. Treasury regulations, may modify these requirements. A non-financial foreign entity generally will need to provide either the name, address, and taxpayer identification number of each substantial U.S. owner, or certifications of no substantial U.S. ownership, to avoid withholding, unless certain exceptions apply.

Prospective investors are encouraged to consult their own tax advisors regarding the application of FATCA to investments in the new notes.



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*Estate tax consequences*

Any new note that is owned (or treated as owned) by an individual who is not a citizen or resident (as specially defined for U.S. federal estate tax purposes) of the United States at the date of death will not be included in such individual's estate for U.S. federal estate tax purposes, unless the individual owns, directly or indirectly, 10% or more of the voting power of all our stock, or, at the time of such individual's death, payments in respect of the new notes would have been effectively connected with the conduct by such individual of a trade or business in the United States.

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**PLAN OF DISTRIBUTION**

Each broker-dealer that receives new notes for its own account pursuant to the exchange offer must acknowledge that it will deliver a prospectus in connection with any resale of such new notes. We reserve the right in our sole discretion to purchase or make offers for, or to offer new notes for, any original notes that remain outstanding subsequent to the expiration of the exchange offer pursuant to this prospectus or otherwise and, to the extent permitted by applicable law, purchase original notes in the open market, in privately negotiated transactions or otherwise. This prospectus, as it may be amended or supplemented from time to time, may be used by a broker-dealer in connection with resales of new notes received in exchange for original notes where such original notes were acquired as a result of market-making activities or other trading activities. We have agreed that for a period of 180 days beginning when the new notes are issued, we will make this prospectus, as amended or supplemented, available to any broker-dealer for use in connection with any such resale. In addition, until August 14, 2018, all dealers effecting transactions in the new notes may be required to deliver a prospectus.

We will not receive any proceeds from any sale of new notes by brokers-dealers. New notes received by broker-dealers for their own account pursuant to the exchange offer may be sold from time to time in one or more transactions in the over-the-counter market, in negotiated transactions, through the writing of options on the new notes or a combination of such methods of resale, at market prices prevailing at the time of resale, at prices related to such prevailing market prices or at negotiated prices. Any such resale may be made directly to purchasers or to or through brokers or dealers who may receive compensation in the form of commissions or concessions from any such broker-dealer and/or the purchasers of any such new notes. Any broker-dealer that resells new notes that were received by it for its own account pursuant to the exchange offer and any broker or dealer that participates in a distribution of such new notes may be deemed to be an underwriter within the meaning of the Securities Act and any profit on any such resale of new notes and any commissions or concessions received by any such persons may be deemed to be underwriting compensation under the Securities Act. The letter of transmittal states that by acknowledging that it will deliver and by delivering a prospectus, a broker-dealer will not be deemed to admit that it is an underwriter within the meaning of the Securities Act.

For a period of 180 days beginning when the new notes are issued, we will promptly send additional copies of this prospectus and any amendment or supplement to this prospectus to any broker-dealer that requests such documents in the letter of transmittal. We have agreed to pay all expenses incident to the exchange offer, other than commissions or concessions of any brokers or dealers and will indemnify the holders of the notes (including any broker-dealers) against certain liabilities, including liabilities under the Securities Act.

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**WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly and current reports, proxy statements and other information with the SEC. We also filed a registration statement on Form S-4, including exhibits, under the Securities Act of 1933 with respect to the new notes offered by this prospectus. This prospectus is a part of the registration statement, but does not contain all of the information included in the registration statement or the exhibits. You may read and copy the registration statement and any other document that we file at the SEC's public reference room at 100 F Street, N.E., Washington D.C. 20549. You can call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference room. You can also find our public filings with the SEC on the internet at a web site maintained by the SEC located at <http://www.sec.gov>.

We are incorporating by reference specified documents that we file with the SEC, which means:

incorporated documents are considered part of this prospectus;

we are disclosing important information to you by referring you to those documents; and

information we file with the SEC will automatically update and supersede information contained in this prospectus.

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 Exchange Act after the date of this prospectus and before the end of the offering of the securities pursuant to this prospectus:

our Annual Report on Form 10-K for the year ended December 31, 2017;

our Quarterly Report on Form 10-Q for the quarter ended March 31, 2018; and

our Current Reports on Form 8-K filed on April 13, 2018, April 13, 2018, May 3, 2018 and May 25, 2018. Notwithstanding the foregoing, information furnished under Items 2.02 and 7.01 of any Current Report on Form 8-K, including the related exhibits under Item 9.01, is not incorporated by reference in this prospectus.

You may request a copy of any of these filings, at no cost, by request directed to us at the following address or telephone number:

Whiting Petroleum Corporation

1700 Broadway, Suite 2300

Denver, Colorado 80290

Edgar Filing: ACUITY BRANDS INC - Form 10-K

(303) 837-1661

Attention: Corporate Secretary

You can also find these filings on our website at [www.whiting.com](http://www.whiting.com). However, we are not incorporating the information on our website other than these filings into this prospectus.

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**LEGAL MATTERS**

Certain legal matters relating to this exchange offer will be passed upon for us by Foley & Lardner LLP and, for certain British Columbia legal matters, by Stikeman Elliott LLP.

**EXPERTS**

The consolidated financial statements incorporated in this Prospectus by reference from Whiting Petroleum Corporation's Annual Report on Form 10-K for the year ended December 31, 2017, and the effectiveness of Whiting Petroleum Corporation and subsidiaries' internal control over financial reporting have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their reports, which are incorporated herein by reference. Such consolidated financial statements have been so incorporated in reliance upon the reports of such firm given upon their authority as experts in accounting and auditing.

Certain information with respect to our oil and natural gas reserves derived from the report of Cawley Gillespie & Associates, Inc., an independent petroleum engineering consultant, has been included in this prospectus, and incorporated in this prospectus by reference to Whiting Petroleum Corporation's Annual Report on Form 10-K for the year ended December 31, 2017, on the authority of said firm as an expert in petroleum engineering.

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**Whiting Petroleum Corporation**

**Offer to Exchange All Outstanding, Unregistered**

**\$1,000,000,000 6.625% Senior Notes due 2026**

**For New, Registered**

**\$1,000,000,000 6.625% Senior Notes due 2026**

**PROSPECTUS**

**June 6, 2018**