

Consent Solicitation Statement



Tidewater Inc.

Solicitation of Consents Relating to our 8.00% Senior Secured Notes due 2022

Series of Notes	CUSIP/ISIN Nos.	Outstanding Aggregate Principal Amount	Consent Payment
8.00% Senior Secured Notes due 2022	88642RAA7/ US88642RAA77	\$349,793,230	\$2.50 per \$1,000 principal amount of Notes

The Consent Solicitation will expire at 5:00 p.m., New York City time, on November 22, 2019, unless otherwise extended or earlier terminated (such date and time, as we may extend from time to time, the “Expiration Time”). We will make or cause to be made cash payments to the Tabulation and Payment Agent (as defined herein) of the consent payment reflected in the table above (the “Consent Payment”) for the Notes (as defined herein) for the benefit of the Holders (as defined herein) of the Notes who have validly delivered and not validly revoked a Consent (as defined herein) at or prior to the Expiration Time if the conditions set forth herein under “The Consent Solicitation—Conditions of the Consent Solicitation” have been satisfied or, to the extent permissible, waived. We may, in our sole discretion, amend, extend or terminate the Consent Solicitation at any time.

Subject to the terms and conditions set forth in this Consent Solicitation Statement (as may be amended or supplemented from time to time, this “*Consent Solicitation Statement*”), Tidewater Inc. (the “*Issuer*,” the “*Company*,” “*we*,” “*our*” or “*us*”) hereby solicits (the “*Consent Solicitation*”) the consents (the “*Consents*”) of each registered holder (each a “*Holder*” and, collectively, the “*Holder*s”) of our \$350,000,000 aggregate principal amount of 8.00% Senior Secured Notes due 2022 (the “*Notes*”) for certain amendments to the Indenture governing the Notes, dated as of July 31, 2017 (as heretofore supplemented and amended, the “*Indenture*”), among the Issuer, each of the Guarantors party thereto (the “*Guarantors*”) and Wilmington Trust, National Association, as trustee (the “*Trustee*”) and as collateral agent (the “*Collateral Agent*”) and related corresponding amendments to the Security and Pledge Agreement, dated as of July 31, 2017, among the Issuer, the Guarantors and the Collateral Agent (the “*Security Agreement*”), entered into in connection with the issuance of the Notes (collectively, the “*Proposed Amendments*”), as described under “The Proposed Amendments” below.

Consents of Holders holding at least a majority in aggregate principal amount of the outstanding Notes must approve the Proposed Amendments (the “*Requisite Consents*”). The consummation of the Consent Solicitation is contingent upon the receipt of the Requisite Consents of the Notes. Holders that do not consent to the Proposed Amendments by the Expiration Time (“*Nonconsenting Holders*”) will not receive any Consent Payment but will be bound by the Proposed Amendments if the Requisite Consents are received and the New Supplemental Indenture (as defined herein) is entered into.

We anticipate that, promptly after receipt of the Requisite Consents at or prior to the Expiration Time (such time, the “*Effective Time*”), we will give notice to the Trustee that the Requisite Consents have been obtained and we, the Guarantors, the Trustee and the Collateral Agent, as applicable, will execute (i) a supplemental indenture (the “*New Supplemental Indenture*”) to the Indenture and (ii) an amendment to the Security Agreement (the “*Security Agreement Amendment*”) to give effect to the Proposed Amendments. The Proposed Amendments will become operative upon payment of the Consent Payment, subject to the satisfaction of all other conditions of the Consent Solicitation. Holders will not be able to revoke their Consents after the Effective Time. Holders should note that the Effective Time may be prior to the Expiration Time, and Holders will not be given prior notice of such Effective Time.

On November 8, 2019, the Company also launched an offer to Holders of the Notes to purchase for cash up to \$125,000,000 aggregate principal amount of Notes on the terms and subject to the conditions set forth in the Offer to Purchase, dated as of November 8, 2019 (the “*Tender Offer*”).

The Consent Solicitation and Tender Offer are two separate transactions. Each of the transactions will be open to all Holders, and each Holder is free to participate in either, both or none of the Tender Offer and the Consent Solicitation. No Holder is required to tender such Holder’s Notes in the Tender Offer to provide a consent in the Consent Solicitation and receive the Consent Payment, nor is any Holder required to provide its consent to this Consent Solicitation in order to tender such Holder’s Notes in the Tender Offer and receive the Tender Offer consideration. This Consent Solicitation is not conditioned on whether some, all or none of the Holders participate in the Tender Offer, however, the Company’s acceptance of Notes for payment in the Tender Offer is conditioned, in addition to the satisfaction of other conditions, upon the receipt of Requisite Consents of the Notes in this

Consent Solicitation and the execution and delivery of the New Supplemental Indenture giving effect to the Proposed Amendments.

Except for the Proposed Amendments, all of the existing terms of the Notes, the Indenture and the Security Agreement will remain unchanged. You should carefully evaluate the considerations beginning on page 8 of this Consent Solicitation Statement before you decide whether to participate in the Consent Solicitation.

The Solicitation Agent for the Consent Solicitation is

Deutsche Bank Securities

November 8, 2019

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HOLDERS IN OTHER JURISDICTIONS

Holders residing outside of the United States who wish to deliver a Consent must satisfy themselves as to their full observance of the laws of the relevant jurisdiction in connection therewith. If we become aware of any state or foreign jurisdiction where the making of the Consent Solicitation is prohibited, we will make a good faith effort to comply with the requirements of any such state or foreign jurisdiction. If, after such effort, we cannot comply with the requirements of any such state or foreign jurisdiction, the Consent Solicitation will not be made to (and Consents will not be accepted from or on behalf of) Holders in such state or foreign jurisdiction.

The Consent Solicitation is not being made to, and Consents are not being solicited from, Holders in any jurisdiction in which it is unlawful to make such solicitation or grant such Consent.

IMPORTANT INFORMATION

The Consent Solicitation is being conducted in a manner eligible for use of the Automated Tender Offer Program (“ATOP”) of The Depository Trust Company (“DTC”). D.F. King & Co., Inc. (in its capacity as tabulation and payment agent, the “*Tabulation and Payment Agent*”) will establish an ATOP account (i.e. Contra CUSIP) on our behalf with respect to the Notes held in DTC promptly after the date of this Consent Solicitation Statement. The Tabulation and Payment Agent and DTC will confirm that the Consent Solicitation is eligible for ATOP, whereby participants in DTC (the “*DTC Participants*”) may make book-entry delivery of Consents by causing DTC to transfer Notes into the Contra CUSIP or electronically deliver the Consents. Deliveries of Consents are effected through the ATOP procedures by delivery of an Agent’s Message (as defined below) by DTC to the Tabulation and Payment Agent. The confirmation of a book-entry transfer into the ATOP account at DTC is referred to as a “Book- Entry Confirmation.”

The term “*Agent’s Message*” means a message transmitted by DTC and received by the Tabulation and Payment Agent, which states that DTC has received an express acknowledgment from the DTC Participant delivering Consents that such DTC Participant (i) has received and agrees to be bound by the terms of the Consent Solicitation as set forth in this Consent Solicitation Statement and that we may enforce such agreement against such DTC Participant, and (ii) consents to the Proposed Amendments and the execution and delivery of the New Supplemental Indenture and the Security Agreement Amendment as described in this Consent Solicitation Statement.

The delivery of a Consent will not affect a Holder’s right to sell or transfer the Notes. See “The Consent Solicitation—Consent Procedures—General.”

Holders of Notes that do not deliver valid and unrevoked Consents to the Proposed Amendments on or prior to the Expiration Time will not receive any Consent Payment. Only Holders as of the Record Date, or their duly designated proxies, including, for the purposes of this Consent Solicitation, DTC Participants, may submit a Consent. A duly delivered Consent shall bind the Holders executing the same and any subsequent registered holder or transferee of the Notes to which such Consent relates.

As of the date hereof, all of the Notes were held through DTC by DTC Participants. DTC is expected to grant the assignment of consents authorizing DTC Participants to deliver an Agent’s Message.

Any questions or requests for assistance or for additional copies of this Consent Solicitation Statement or related documents may be directed to D.F. King & Co., Inc. (in its capacity as information agent, the “*Information Agent*”) at its address and telephone numbers set forth on the back cover hereof. A Holder may also contact Deutsche Bank Securities Inc. at its telephone numbers set forth on the back cover hereof or such Holder’s broker, dealer, commercial bank, trust company or other nominee for assistance concerning the Consent Solicitation.

CONSENTS MUST BE ELECTRONICALLY DELIVERED IN ACCORDANCE WITH DTC’S ATOP PROCEDURES. UNDER NO CIRCUMSTANCES SHOULD ANY HOLDER DELIVER ANY NOTES.

This Consent Solicitation Statement does not constitute an offer to sell, or a solicitation of an offer to purchase, any securities. This Consent Solicitation Statement describes the Proposed Amendments and the procedures for delivering and revoking Consents. Please read it carefully before deciding whether to participate in the Consent Solicitation.

This Consent Solicitation Statement and any related documents have not been approved or reviewed by the Securities and Exchange Commission (the “SEC”) or any federal or state securities commission or regulatory authority of any country. No authority has passed upon the accuracy or adequacy of this Consent Solicitation

Statement or any related documents, and it is unlawful and may be a criminal offense to make any representation to the contrary.

The Issuer has furnished the information contained in this Consent Solicitation Statement. No person has been authorized to give any information or make any representations other than those contained or incorporated by reference in this Consent Solicitation Statement and, if given or made, such information or representations must not be relied upon as having been authorized by the Issuer. The delivery of this Consent Solicitation Statement shall not under any circumstances create any implication that the information set forth herein is correct as of any time subsequent to the date hereof or that there has been no change in the information set forth herein or in the affairs of the Issuer since the date of this Consent Solicitation Statement.

No representation is made as to the correctness or accuracy of the CUSIP or ISIN Numbers listed in this Consent Solicitation Statement or printed on the Notes. They are provided solely for the convenience of the Holders.

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

Certain statements set forth or incorporated by reference in this Consent Solicitation Statement constitute “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995, Section 27A of the Securities Act of 1933, as amended (the “*Securities Act*”), and Section 21E of the Securities Exchange Act of 1934, as amended (the “*Exchange Act*”). These forward-looking statements are sometimes identified from the use of forward-looking words such as “believe,” “think,” “should,” “could,” “continue,” “potential,” “continue,” “expect,” “project,” “estimate,” “predict,” “anticipate,” “aim,” “intend,” “seek,” “plan,” “forecast,” “target,” “is likely,” “will,” “can,” “may,” “would” or the negative of these terms or similar expressions elsewhere in this Consent Solicitation Statement. The Company’s results of operations, financial condition and cash flows may differ materially from those in the forward-looking statements. Such statements are based on management’s current views and assumptions, and involve risks and uncertainties that could affect expected results. Those risks and uncertainties include but are not limited to the following:

- the risk that the cost savings and any other synergies from the business combination with GulfMark Offshore, Inc. (the “business combination”) may not be fully realized or may take longer to realize than expected;
- disruptions from the business combination making it more difficult to maintain relationships with customers, employees or suppliers;
- the possibility of litigation related to the business combination;
- the diversion of management’s time from day-to-day operations due to the business combination;
- incurrence of substantial transaction-related costs associated with the business combination;
- the possibility of unanticipated costs being incurred to effectuate the integration;
- new accounting policies and our consolidation activities;
- fluctuations in worldwide energy demand and oil and natural gas prices, and continuing depressed levels of oil and natural gas prices without a clear indication of if, or when, prices will recover to a level to support renewed offshore exploration activities;
- fleet additions by competitors and industry overcapacity;
- our limited capital resources available to replenish our asset base, including through acquisitions or vessel construction, and to fund our capital expenditure needs;
- uncertainty of global financial market conditions and potential constraints in accessing capital or credit if and when needed with favorable terms, if at all;
- changes in decisions and capital spending by customers in the energy industry and the industry expectations for offshore exploration, field development and production;

- consolidation of our customer base;
- loss of a major customer;
- changing customer demands for vessel specifications, which may make some of our older vessels technologically obsolete for certain customer projects or in certain markets;
- rapid technological changes;
- delays and other problems associated with vessel construction and maintenance;
- the continued availability of qualified personnel and our ability to attract and retain them;
- the operating risks normally incident to our lines of business, including the potential impact of liquidated counterparties;
- our ability to comply with covenants in our indentures and other debt instruments;
- acts of terrorism and piracy;
- the impact of potential information technology, cybersecurity or data security breaches;
- integration of acquired businesses and entry into new lines of business;
- disagreements with our joint venture partners;
- significant weather conditions;
- unsettled political conditions, war, civil unrest and governmental actions, such as expropriation or enforcement of customs or other laws that are not well developed or consistently enforced;
- the risks associated with our international operations, including local content, local currency or similar requirements especially in higher political risk countries where we operate;
- interest rate and foreign currency fluctuations;
- labor changes proposed by international conventions;
- increased regulatory burdens and oversight;
- changes in laws governing the taxation of foreign source income;
- retention of skilled workers; enforcement of laws related to the environment, labor and foreign corrupt practices;
- the potential liability for remedial actions or assessments under existing or future environmental regulations or litigation;
- the effects of asserted and unasserted claims and the extent of available insurance coverage; and the resolution of pending legal proceedings; and
- other risks and uncertainties included under “Certain Significant Considerations” in this Consent Solicitation Statement and in the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2018, filed with the SEC on February 28, 2019.

The forward-looking statements included or incorporated by reference herein are made only as of the date of this Consent Solicitation Statement or, as it relates to documents incorporated herein by reference, the date of such documents. Holders should not rely upon forward-looking statements as predictions of future events. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee that the future results, levels of

activity, performance or events and circumstances reflected in the forward-looking statements will be achieved or occur. Moreover, we undertake no obligation to update publicly any forward-looking statements for any reason after the date of this Consent Solicitation Statement to conform these statements to actual results or to changes in our expectations.

SUMMARY

This Consent Solicitation Statement contains important information that should be read carefully before any decision is made with respect to the Consent Solicitation. The following summary may not contain all of the information that is important to Holders. Holders are urged to read the more detailed information set forth elsewhere in this Consent Solicitation Statement and in the documents incorporated by reference herein. Each of the capitalized terms used in this Summary and not defined herein has the meaning set forth elsewhere in this Consent Solicitation Statement.

The following is a summary of certain terms of the Consent Solicitation:

Issuer.....	Tidewater Inc., a Delaware corporation.
The Notes.....	8.00% Senior Secured Notes due 2022, of which \$349,793,230 aggregate principal amount is outstanding on the date of this Consent Solicitation Statement.
Requisite Consents.....	Consents of Holders holding at least a majority in aggregate principal amount of the then outstanding Notes must validly deliver (and not validly revoke) Consents at or prior to the Expiration Time. The consummation of the Consent Solicitation is contingent upon the receipt of Requisite Consents of the Notes. See “The Consent Solicitation—Requisite Consents.”
Consent Payment	We will make or cause to be made cash payments to the Tabulation and Payment Agent of the Consent Payment of \$2.50 in cash per \$1,000 in principal amount of Notes for the benefit of the Holders of the Notes for such Notes whose Consents have been validly delivered (and not validly revoked) at or prior to the Expiration Time (each a “ <i>Consenting Holder</i> ” and, collectively, the “ <i>Consenting Holders</i> ”) if the conditions set forth herein under “The Consent Solicitation—Conditions of the Consent Solicitation” have been satisfied or, to the extent permissible, waived, which payment will be made promptly after the Expiration Time. No interest will accrue or be paid on the Consent Payment. We expect to pay the Consent Payment from cash on hand.
Proposed Amendments	The purpose of the Proposed Amendments is to provide the Company increased operational and financial flexibility given its financial and liquidity position. See “The Proposed Amendments.”
Record Date	November 7, 2019.
Expiration Time	The Consent Solicitation will expire at 5:00 p.m., New York City time, on November 22, 2019, unless extended by us in our sole discretion. Holders must validly deliver their Consents to the Proposed Amendments to the Tabulation and Payment Agent in accordance with DTC’s ATOP procedures on or before the Expiration Time, and not validly revoke them, to be eligible to receive the Consent Payment.

We reserve the right to:

- extend the Expiration Time, from time to time, for any reason, including to obtain the Requisite Consents;
- amend the Consent Solicitation at any time, whether or not the Requisite Consents have been received;
- to the extent permissible, waive in whole or in part any conditions to the Consent Solicitation; and
- terminate the Consent Solicitation at any time, whether or not the Requisite Consents have been received.

Effective Time	The Effective Time will occur promptly after receipt of the Requisite Consents when the Issuer, the Guarantors, the Trustee and the Collateral Agent, as applicable execute the New Supplemental Indenture and the Security Agreement Amendment. Holders
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should note that the Effective Time may fall prior to the Expiration Time, and Holders will not be given prior notice of such Effective Time. Holders will not be able to revoke their Consents after the Effective Time. The New Supplemental Indenture and the Security Agreement Amendment will be executed at the Effective Time and the Proposed Amendments will become operative upon payment of the Consent Payment, subject to the satisfaction of all other conditions of the Consent Solicitation, and shall thereafter bind, or inure to the benefit of, respectively, all Holders of the Notes, including those that did not deliver Consents.

Payment Date..... We will make or cause to be made cash payments of the Consent Payment to the Tabulation and Payment Agent at or prior to the Expiration Time, if the conditions set forth herein under “The Consent Solicitation– Conditions of the Consent Solicitation” have been satisfied or, to the extent permissible, waived.

Eligibility Holders of Notes whose Consents are validly delivered (and not validly revoked) and accepted at or prior to the Expiration Time will be eligible to receive the Consent Payment. The Consent Payment will not be made if:

- the Requisite Consents are not received at or prior to the Expiration Time;
- the Consent Solicitation is terminated prior to the Effective Time;
- the New Supplemental Indenture and the Security Agreement Amendment are not executed or do not otherwise become effective with respect to the Notes for any reason;
- in our sole discretion, if the payment of the Consent Payment is prohibited or impacted by any existing or proposed law or regulation that would, or any injunction or action or other proceeding (pending or threatened) that (in the case of any action or proceeding, if adversely determined) would, in our sole discretion, make unlawful, invalid or inadvisable or enjoin or delay the implementation of the Proposed Amendments, the entering into of the New Supplemental Indenture or the Security Agreement Amendment or the payment of the Consent Payment or question the legality or validity of any thereof; or
- any of the other conditions described under “The Consent Solicitation— Conditions of the Consent Solicitation” are not satisfied.

In no case will the Consent Payment be paid to any Holder who does not validly deliver a Consent (which is not validly revoked) at or prior to the Expiration Time.

Consequences to Nonconsenting Holders If the Requisite Consents are obtained, the New Supplemental Indenture and the Security Agreement Amendment become effective and the Consent Payment is paid for the Notes, Nonconsenting Holders will be bound by the New Supplemental Indenture and the Security Agreement Amendment but will not be entitled to receive any Consent Payment.

Procedure for Delivery of Consents Consents must be electronically delivered in accordance with DTC’s ATOP procedures. DTC is expected to grant the assignment of consents authorizing the DTC Participants to deliver an Agent’s Message. Only registered Holders of Notes as of the Record Date or their duly designated proxies, including, for the purposes of this Consent Solicitation, DTC Participants, are eligible to Consent to the Proposed Amendments. Therefore, a beneficial owner of an interest in Notes held in an account of a DTC Participant who wishes a Consent to be delivered must properly instruct such DTC Participant to cause a Consent to be given in respect of such Notes. See “The Consent Solicitation—Consent Procedures.”

Revocation of Consents Revocation of Consents to the Proposed Amendments may be made at any time prior to the Effective Time in accordance with DTC’s ATOP procedures. Consents to the

Proposed Amendments may not be revoked at any time after the Effective Time. See “The Consent Solicitation— Revocation of Consents.”

Certain U.S. Federal Income Tax Considerations	For a discussion of certain U.S. income tax consequences of the adoption of the Proposed Amendments and the receipt of the Consent Payment by beneficial owners of the Notes, see “Certain U.S. Federal Income Tax Considerations.”
Solicitation Agent	Deutsche Bank Securities Inc. The address and telephone numbers of Deutsche Bank Securities Inc. appear on the back cover of this Consent Solicitation Statement.
Information Agent and Tabulation and Payment Agent.....	D.F. King & Co., Inc. The address and telephone numbers of the Information Agent and Tabulation and Payment Agent appear on the back cover of this Consent Solicitation Statement.
Trustee and Collateral Agent	Wilmington Trust, National Association.
Certain Significant Considerations	For a discussion of certain factors to consider before deciding whether to deliver a Consent, see the section entitled “Certain Significant Considerations” beginning on page 8.
Further Information	Questions concerning the terms of the Consent Solicitation should be directed to Deutsche Bank Securities Inc. at the address or telephone numbers set forth on the back cover page of this Consent Solicitation Statement.

Questions concerning Consent procedures and requests for copies of the New Supplemental Indenture or the Security Agreement Amendment should be directed to the Information Agent at its address or telephone numbers set forth on the back cover of this Consent Solicitation Statement.

INFORMATION ABOUT THE COMPANY

General

The Company provides offshore marine support and transportation services to the global offshore energy industry through the operation of a diversified fleet of marine service vessels. The Company's vessels and associated vessel services provide support for all phases of offshore oil and natural gas exploration, field development and production. These services include towing of, and anchor handling for, mobile offshore drilling units; transporting supplies and personnel necessary to sustain drilling, workover and production activities; offshore construction and seismic and subsea support; and a variety of specialized services such as pipe and cable laying. The Company has one of the broadest geographic operating footprints in the offshore vessel industry with operations in most of the world's significant offshore crude oil and natural gas exploration and production regions. The Company's headquarters are in Houston, Texas and its U.S. marine operations are based in Amelia, Louisiana and Houston, Texas. The Company conducts its international operations through facilities and offices located in over 30 countries.

At September 30, 2019, the Company owned 220 vessels with an average of 10 years (excluding four joint venture vessels, but including 60 stacked vessels) available to serve the global energy industry. The Company is a Delaware corporation incorporated in 1956. The Company's principal executive offices are located at 6002 Rogerdale Road, Suite 600, Houston, Texas 77072, and our telephone number at that address is (713) 470-5300. The Company conducts its operations through wholly-owned United States and international subsidiaries, as well as through joint ventures in which the Company has either majority or occasionally non-controlling interests generally where required to satisfy local ownership or local content requirements.

Available Information and Incorporation by Reference

Additional information about the Company, including its Form 10, Forms 10-K, Forms 10-Q, Forms 8-K, other securities filings (and amendments thereto), press releases and other important announcements, is available at the Company's website at www.tdw.com or the SEC's website at www.sec.gov (for securities filings only). These documents can be printed free of charge as soon as reasonably practicable after their electronic filing with the SEC or their release, as applicable. The information on the Company's website is not part of this Consent Solicitation Statement.

The Company incorporates by reference into this Consent Solicitation Statement the information contained in the documents listed below, which is considered to be a part of this Consent Solicitation Statement:

- The Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2018, filed with the SEC on February 28, 2019 (the "Annual Report");
- The Company's Quarterly Reports on Form 10-Q for the quarters ended March 31, 2019, filed with the SEC on May 6, 2019 and June 30, 2019, filed with the SEC on August 9, 2019;
- The Company's Definitive Proxy Statement on Schedule 14A filed with the SEC on March 18, 2019, to the extent incorporated by reference in its Annual Report on Form 10-K for the fiscal year ended December 31, 2018; and
- Each of the Company's Current Reports on Form 8-K filed with the SEC on March 5, 2019, March 26, 2019, March 28, 2019, April 19, 2019, May 1, 2019, May 24, 2019, June 18, 2019, July 30, 2019, September 4, 2019, September 5, 2019, September 12, 2019, September 27, 2019, October 31, 2019 and November 6, 2019 (other than the portions of those documents not deemed to be filed pursuant to the rules promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act")).

All documents and reports filed by the Company pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this Consent Solicitation Statement are deemed to be incorporated by reference in this Consent Solicitation Statement from the date of filing of such documents or reports, except as to any portion of any future document or report which is not deemed to be filed under those sections. Any statement contained in a document incorporated or deemed to be incorporated by reference in this Consent Solicitation Statement will be deemed to be modified or superseded for purposes of this Consent Solicitation Statement to the extent that any statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference in this Consent Solicitation Statement modifies or

supersedes such statement. Any statement so modified or superseded will not be deemed, except as so modified or superseded, to constitute a part of this Consent Solicitation Statement.

The information relating to the Company contained in this Consent Solicitation Statement should be read together with the information in the documents incorporated by reference.

THE TENDER OFFER

On November 8, 2019, the Company launched the Tender Offer. The Consent Solicitation and Tender Offer are two separate transactions. Each of the transactions will be open to all Holders, and each Holder is free to participate in either, both or none of the Tender Offer and the Consent Solicitation. No Holder is required to tender such Holder's Notes in the Tender Offer to provide a consent in the Consent Solicitation and receive the Consent Payment, nor is any Holder required to provide its consent to this Consent Solicitation in order to tender such Holder's Notes in the Tender Offer and receive the Tender Offer consideration. This Consent Solicitation is not conditioned on whether some, all or none of the Holders participate in the Tender Offer, however, the Company's acceptance of Notes for payment in the Tender Offer is conditioned, in addition to the satisfaction of other conditions, upon the receipt of Requisite Consents of the Notes in this Consent Solicitation and the execution and delivery of the New Supplemental Indenture giving effect to the Proposed Amendments.

BACKGROUND, PURPOSE AND EFFECTS OF THE CONSENT SOLICITATION

The Notes were issued by the Company and are currently guaranteed on a senior secured basis by certain foreign subsidiaries and each of the Company's existing wholly-owned domestic subsidiaries (other than immaterial subsidiaries).

The purpose of the Consent Solicitation is to obtain the consent of the Holders of at least a majority of the aggregate principal amount of the outstanding Notes, excluding any Notes owned by the Company or any subsidiary or their respective affiliates, to the Proposed Amendments. The Proposed Amendments are being sought to provide the Company increased financial and operational flexibility given its financial and liquidity position.

If the Requisite Consents are obtained, the Company, the Guarantors, the Trustee and the Collateral Agent, as applicable, will have the authority under the Indenture and the Security Agreement to execute the New Supplemental Indenture and the Security Agreement Amendment, respectively. Pursuant to the terms of the New Supplemental Indenture and the Security Agreement Amendment, the Proposed Amendments will become operative at the Effective Time and shall thereafter bind, or inure to the benefit of, every Holder.

Regardless of whether the Proposed Amendments become operative, the Notes will continue to be outstanding in accordance with all other terms of the Notes and the Indenture. **Except for the Proposed Amendments, all of the existing terms of the Notes, the Indenture and the Security Agreement will remain unchanged. None of the Company, Trustee, Collateral Agent, Solicitation Agent, Information Agent or Tabulation and Payment Agent makes any recommendation as to whether or not Holders should deliver Consents to the Proposed Amendments.**

THE PROPOSED AMENDMENTS

Set forth below are comparisons of the provisions of the Indenture and Security Agreement that would be amended by the Proposed Amendments, and accordingly, be operative with respect to the Notes, with additions shown as bolded, underlined text. With respect to certain of the Proposed Amendments, where applicable, deleted text is indicated by a strikethrough (~~deletion~~) and corresponding changes as to articles and punctuation for items in a series will be reflected in the New Supplemental Indenture. As indicated below, Sections 4.08(b), 4.10(a), 4.17, 5.24 and 10.01(e) of the Indenture will be deleted in their entirety. Capitalized terms used in the provisions set forth below and not otherwise defined below have the meanings assigned in the Indenture or Security Agreement, as applicable.

Proposed Amendments to the Indenture

The definition of "Consolidated EBITDA" will be amended as follows:

"Consolidated EBITDA" means, at any date of determination, an amount equal to Consolidated Net Income of the Issuer and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period plus or minus, as applicable, the following to the extent deducted or included, as the case may be, in calculating such Consolidated Net Income, in each case of or by the Issuer and its Subsidiaries for such Measurement Period: (a) Consolidated Interest Charges, (b) **direct and indirect** Federal, state, local and foreign income tax expense **(including, for the avoidance of doubt, withholding tax expense on any bareboat charter to an unconsolidated joint venture)**, net of any Federal, state, local and foreign income tax credits, (c) depreciation and amortization expense, (d) any non-recurring gains or losses which do not represent a cash item in such period or any future period, including, without limitation, any revaluation of compensation paid in equity, (e) any costs and expenses directly incurred in connection with the negotiation and entry by the Issuer and/or any Subsidiaries, as applicable, into (A) this Indenture and the other agreements and documents delivered in connection therewith, (B) the Troms Credit Agreement, (C) the Security Documents, (D) the refinancing of certain outstanding Indebtedness of the Issuer and its Subsidiaries in connection with the foregoing and (E) the consummation of the foregoing, ~~and~~ (f) any fees, costs and expenses incurred pursuant to Section 14.24 of this Indenture **and (g) non-cash expenses in connection with expensing stock options or other equity compensation grants.**

The definition of "Permitted Investments" will be amended by inserting the following new clause (8):

(8) Investments made with the proceeds of sales of Equity Interests or forward sales of Equity Interests of the Issuer or its Subsidiaries.

The definition of "Permitted Lien" will be amended by inserting the following new clauses (22), (23) and (24):

(22) Liens securing Indebtedness permitted under Section 4.03(b)(xii); provided that such Liens rank pari passu or junior in priority to Liens on Collateral securing the Notes and are subject to an intercreditor agreement and/or collateral agency agreement, as applicable, among the Issuer, the Collateral Agent and the representatives of the lenders extending such Indebtedness permitted under Section 4.03(b)(xii), which (i) in the case of any such obligations secured on a pari passu basis shall be subject to an intercreditor agreement containing reasonable and customary terms and establish that the Liens on any Collateral securing the Notes also securing such pari passu obligations shall rank pari passu to the Liens on such Collateral securing any obligations under the Indenture, the Notes and the Guarantees and (ii) in the case of any such obligations that rank junior in priority shall be subject to an intercreditor agreement containing terms substantially consistent with the terms in the term sheet attached as Exhibit F;

(23) Liens on property or assets of or Equity Interests in a Person at the time such Person becomes a Subsidiary; provided, that such Liens are not created or incurred in connection with or, or in contemplation of, such Person becoming a Subsidiary; provided, further, that such Liens are limited to all or part of the same property or assets (plus improvements on such property) that secured the obligations to which such Liens relate; and

(24) Liens securing Indebtedness permitted under Section 4.03(b)(xv); provided that such Liens either solely encumber the collateral securing the Indebtedness under the Troma Credit Agreement or are junior in priority to the Liens securing the Secured Obligations, and any replacements, renewals or extensions thereof, provided that (i) the property covered thereby is not changed, (ii) the original principal amount secured or benefited thereby is not increased, and (iii) the direct or any contingent obligor with respect thereto is not changed.

Section 4.01(b) will be amended by inserting the following new clauses (v), (vi), (vii), (viii) and (ix):

(v) the Issuer and each Subsidiary may repurchase or redeem any convertible notes issued pursuant to, and subject to the terms of, Section 4.03(b)(xiv);

(vi) Restricted Payments by the Issuer or any Subsidiary to allow the payment of cash in lieu of the issuance of fractional shares upon the exercise of options or warrants or upon the conversion or exchange of Capital Stock or Indebtedness of any such Person;

(vii) make repurchases of shares of Capital Stock of the Issuer from employees, former employees, directors or former directors of the Issuer or any of its Subsidiaries, pursuant to terms of the agreements (including employment agreements) or plans (or amendments thereto) approved or ratified by the Board of Directors under which such individuals purchase or sell or are granted the option to purchase or sell, shares of such Capital Stock if such repurchase represents all or a portion of the (i) withholding to pay taxes payable in connection therewith or (ii) Jones Act warrant liquidation; provided, however, that the aggregate amount of such Restricted Payments (excluding amounts representing cancellation of Indebtedness) shall not exceed \$5,000,000 in any calendar year (provided that unused amounts may not be carried over to the next succeeding calendar year); provided, further, that the amount payable in any calendar year may be increased by an amount up to the sum of (i) the amount of cash proceeds from the sale of Capital Stock of the Company, plus (ii) the cash proceeds of key man life insurance policies received by the Company or its Subsidiaries;

(viii) Restricted Payments by the Issuer and each Subsidiary to repay, purchase, redeem, defease or otherwise acquire or retire for value any Indebtedness under the Troma Credit Agreement and the guarantees in respect thereof (i) with the proceeds of any Indebtedness incurred pursuant to Section 4.03(b)(xv) or (ii) in an amount not to exceed an aggregate principal amount of \$35,000,000; and

(ix) payments (whether in cash or Equity Interests) in connection with or under any forward transactions with respect to the Issuer's Equity Interests;

Section 4.03(b)(x) will be amended as follows:

(x) unsecured Indebtedness that is not otherwise permitted by clauses (i) through (viii) to the extent the aggregate amount of such Indebtedness at any one time outstanding does not exceed ~~\$50,000,000~~ **\$75,000,000**; provided that no Default or Event of Default exists or would result from the incurrence of such Indebtedness; and

Section 4.03(b) will be amended by inserting the following new clauses (xii), (xiii), (xiv) and (xv):

(xii) Indebtedness incurred pursuant to any revolving credit facility in a maximum principal amount at any time outstanding not to exceed the sum of \$50,000,000.

(xiii) Indebtedness (i) incurred by the Issuer and its Subsidiaries incurred or issued to finance an acquisition of any assets (including Capital Stock) or merger or consolidation with any business or Person or (ii) of Persons that are acquired by the Issuer or any Subsidiary or merged or consolidated with or into the Issuer or a Restricted Subsidiary in accordance with the terms of the Indenture or that is assumed by the Issuer or any Subsidiary in connection with such acquisition; provided, that after giving effect to such acquisition, merger or consolidation, either:

(a) the Consolidated Interest Coverage Ratio of the Issuer would be no less than 2:00 to 1:00, or

(b) the Consolidated Interest Coverage Ratio of the Issuer is equal to or greater than such ratio immediately prior to such acquisition, merger or consolidation; and

provided further, that the aggregate amount of Indebtedness of any Person incurred pursuant to subclause (ii) of this paragraph (xviii), *divided* by the sum of such Indebtedness and the consideration paid in connection with the acquisition, merger or consolidation of such Person by or with and into the Company or a Restricted Subsidiary, as applicable, is no greater than 70%.

(xiv) the incurrence by the Issuer and its Subsidiaries of Indebtedness consisting of convertible notes up to an aggregate principal amount of \$200,000,000, provided that (i) such convertible notes have a maturity date that is after the Maturity Date of the Notes, (ii) the convertible notes are not redeemable or subject to repurchase prior to the Maturity Date of the Notes, other than in connection with a fundamental change, provided that such redemption or repurchase shall be limited to substantially similar or more restrictive terms as a Change of Control Offer of the Notes and all Notes tendered in connection with a Change of Control Offer for the Notes have been repurchased or redeemed, (iii) the definition of fundamental change is to be no less restrictive than the definition of Change of Control contained in this Indenture and (iv) to the extent any such convertible notes are guaranteed by Subsidiaries of the Issuer, that such guarantees are subordinated in priority to the Notes and any guarantees of the Notes.

(xv) the incurrence by the Issuer or its Subsidiaries of Indebtedness, the net proceeds of which are used to renew, refund, refinance, replace, defease or discharge any Indebtedness under the Troms Credit Agreement, provided that:

(i) the principal amount or accreted value of such Indebtedness does not exceed the principal amount or accreted value of the Indebtedness under the Troms Credit Agreement being renewed, refunded, refinanced, replaced, defeased or discharged, plus all accrued interest on the Indebtedness and the amount of all fees and expenses, including premiums, incurred in connection therewith;

(ii) such Indebtedness has a final maturity date that is equal to or 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 under the Troms Credit Agreement being renewed, refunded, refinanced, replaced, defeased or discharged; and

(iii) such Indebtedness (A) is not secured by a Lien on any assets other than the collateral securing the Indebtedness under the Troms Credit Agreement or (B) is unsecured or secured by a Lien that is junior in priority to the Liens securing the Notes.

The third sentence of Section 4.04(c) will be amended as follows:

(c) When the aggregate amount of the Excess Proceeds in the Excess Proceeds Account exceeds ~~\$10.0~~ **\$25.0** million, the Issuer will, as promptly as practicable and in any event within 60 days thereof (but, unless the Issuer in its sole discretion elects otherwise, not earlier than the date that is six months after the last Asset Sale Offer was made), make an offer to the holders of the Notes to purchase Notes pursuant to and subject to the conditions contained in this Indenture (each, an "Asset Sale Offer"), up to the maximum amount of Notes that may be purchased out of such Excess Proceeds at an offer price in cash in an amount equal to 100% of the principal amount thereof, plus accrued and unpaid interest to, but not including, the date fixed for the closing of such offer, in accordance with the procedures set forth in this Indenture.

Section 4.10(a) will be amended as follows:

Section 4.10(a): Consolidated Interest Coverage Ratio. The Issuer shall not permit the Consolidated Interest Coverage Ratio as of the end of any fiscal quarter of the Issuer to be less than the ratio set forth below opposite such fiscal quarter:

Fiscal Quarter Ending	Minimum Consolidated Interest Coverage Ratio
June 30, 2017 through March 31, 2019	N/A
June 30, 2019	0.50:1.00
September 30, 2019	0.75:1.00
December 31, 2019	1.00:1.00
March 31, 2020	1.25 1.00 :1.00
June 30, 2020	1.50 1.00 :1.00
September 30, 2020	1.50 1.00 :1.00
December 31, 2020 and thereafter	2.00 1.00 :1.00
<u>March 31, 2021</u>	<u>1.00:1.00</u>
<u>June 30, 2021</u>	<u>1.25:1.00</u>
<u>September 30, 2021</u>	<u>1.50:1.00</u>
<u>December 31, 2021</u>	<u>1.75:1.00</u>
<u>March 31, 2022 and thereafter</u>	<u>2.00:1.00</u>

Section 4.10(b) will be amended as follows:

(b) Minimum Liquidity. The Issuer (i) shall not permit the Liquidity of the Notes Parties at any time to be less than \$50,000,000 in excess of the amount of cash pledged by the Notes Parties to secure letters of credit and other performance-related obligations and (ii) shall not permit the Liquidity **plus any amounts available but not drawn under any revolving credit facility** of it and all of its Subsidiaries at any time to be less than \$100,000,000 (inclusive of the amount of cash pledged to secure letters of credit and other performance-related obligations).

Section 4.11 will be amended as follows:

Section 4.11 Troms Credit Agreement. The Issuer shall not, and shall not permit any of its Subsidiaries to, (a) amend, modify or change in any manner any term or condition of the Troms Credit Agreement **other than to (i) contain corresponding analogous provisions to those included in the New Supplemental Indenture or (ii) cure any ambiguity, defect or inconsistency thereunder,** or (b) take any other action in connection with any Troms Credit Agreement that would impair the value of the interest or rights of any Notes Party thereunder or that would impair the rights or interests of any Agent or any Holder.

Section 4.17 will be amended as follows:

Section 4.17: Covenant Regarding Financing Facility. (a) If the Issuer or any Notes Party enters into, amends or modifies any document evidencing or governing Indebtedness under any Financing Facility **incurred pursuant to Section 4.03(b)(xii),** or otherwise becomes bound or obligated under any Financing Facility **evidencing Indebtedness incurred pursuant to Section 4.03(b)(xii),** that contains or is amended and modified to contain, one or more Additional Covenants (collectively, the “Underlying Covenant”) (including, for the avoidance of doubt, as a result of any amendment to any **such** Financing Facility, whether or not in effect on the Issue Date, causing it to contain one or more Additional Covenants), (with any of the foregoing referred to as an “MFN Event”) the Issuer shall comply with the provisions in paragraph (b) below. (b) If an MFN Event occurs, the Issuer shall within 20 Business Days after the MFN Event enter into a supplemental indenture to this Indenture, which supplemental indenture shall add to the Indenture an additional covenant or covenants (collectively, such additional covenants, the “Corresponding Covenant”) corresponding in all material respects to such Underlying Covenant (with such amendments and variations as the Issuer shall determine in good faith are necessary or appropriate to give effect to the intention of this Section 4.17). Any supplemental indenture entered into for the purpose of adding a Corresponding Covenant to the Indenture shall provide by its terms that (i) such Corresponding Covenant is deemed to be included in Section 4.10 of the Indenture from and after the date that the relevant Underlying Covenant has become effective, (ii) without the consent of Noteholders (or further action of any party hereto), such Corresponding Covenant and all obligations in respect thereof shall be automatically and unconditionally extinguished for all

purposes hereunder at such time as each relevant Notes Party is no longer obligated by the relevant Underlying Covenant, (iii) without the consent of Noteholders (or further action of any party hereto), such Corresponding Covenant shall be automatically amended, modified or supplemented for all purposes hereunder at such time as the relevant Underlying Covenant is amended, modified or supplemented pursuant to the terms of the relevant Financing Facility, and (iv) without the consent of Noteholders, the Issuer, the Guarantors, the Collateral Agent and the Trustee shall, at the request of the Issuer and upon receipt of the documents required by Sections 10.06 and 14.05, enter into a further supplemental indenture in respect of the Corresponding Covenant solely for purposes of evidencing any such automatic extinguishment, amendment, modification or supplement.

The first paragraph of Section 5.09 will be amended as follows:

Section 5.09 Additional Note Guarantees and Collateral. Subject to the terms of the Security Documents, if either (a) the Issuer or any of its Subsidiaries acquires or creates another wholly owned Domestic Subsidiary or another wholly owned Foreign Subsidiary (other than any (i) CFC, (ii) Subsidiary that is held directly or indirectly by a CFC, ~~or~~ (iii) other wholly owned Foreign Subsidiary the providing of a Note Guarantee by which would result in adverse tax consequences to the Issuer or any of its Subsidiaries, **or (iv) other wholly owned Foreign Subsidiary by which the providing of a Note Guarantee is not within the legal capacity of such Foreign Subsidiary to do so, or would conflict with the fiduciary duties of such Foreign Subsidiary's directors or result in, or could reasonably be expected to result in, a material risk of personal or criminal liability for any officer or director of such Foreign Subsidiary**), in each case after the Issue Date, or (b) any existing Notes Party acquires any assets (including as the result of the reinvestment of Net Proceeds pursuant to Section 4.04(b)(iv)) that are not subject to a Lien in favor of the Collateral Agent pursuant to an existing Security Document, then the Issuer will:

Section 5.20(b)(ii) will be amended as follows:

(ii) **from and after the effective date of the New Supplemental Indenture**, not cause or permit **an amount greater than 25% of the Fair Market Value of** all Mortgaged Vessels that are documented under the laws and flag of the United States to be deleted from such registry, provided that this restriction shall not apply to the Cheryl Tide (IMO No. 9452012),

Section 5.24 will be amended as follows:

Section 5.24: Repatriation of Cash. The Issuer shall cause all cash held by TMII and Foreign Subsidiaries of the Issuer to be repatriated and become part of Collateral and subject to a Control Agreement; provided that (a) Subsidiaries that are not Guarantors may retain an amount not to exceed the sum of ~~\$100,000,000~~ **\$125,000,000** plus cash in bank accounts of such Subsidiaries as a result of (1) legal, regulatory, judicial, administrative or local financial institution constraints on the ability of any such Subsidiary to remit cash to bank accounts of a Notes Party including, but not limited to, currency controls or currency constraints (including constraints on local currency conversion or repatriation) and the existence of tax disputes or inquiries and (2) disputes with or claims by third parties, including, but not limited to, co-venturers and marketing agents, provided that such Subsidiary shall repatriate such amounts promptly when and to the extent circumstances change to permit such repatriation and (b) Domestic Subsidiaries may transfer cash to Foreign Subsidiaries for up to ninety days in any twelve month period for planning purposes in regards to the current year state or local franchise or similar taxes provided that cash pursuant to this subclause (b) is deposited in a deposit account subject to a Control Agreement with the Collateral Agent or otherwise pledged under applicable law to the Collateral Agent.

The second paragraph of Exhibit F shall be amended as follows:

“Second Lien Agreement” refers to the agreement governing junior secured indebtedness permitted to be incurred under Section 4.03(b)(ix), **Section 4.03(b)(xii)**, Section 4.06 and clauses (19) **and (22)** of the definition of “Permitted Liens” of the Indenture. “Second Lien Documents” refers to the Second Lien Agreement and related security documents.

Proposed Amendment to the Security Agreement

The third sentence of Section 3.1 will be amended as follows:

The Grantors constitute all of the (i) wholly owned Domestic Subsidiaries and (ii) wholly owned Foreign Subsidiaries of the Company (other than any (x) CFC, (y) Subsidiary that is held directly or indirectly by a CFC, or (z) other wholly owned Foreign Subsidiary **(i) the joinder of which as a Grantor would result in adverse tax consequences to the Company or any of its Subsidiaries or (ii) by which the providing of a Note Guarantee is not within the legal capacity of such Foreign Subsidiary to do so, or would conflict with the fiduciary duties of such Foreign Subsidiary's directors or result in, or could reasonably be expected to result in, a material risk of personal or criminal liability for any officer or director of such Foreign Subsidiary**).

Except for the Proposed Amendments, all of the existing terms of the Notes, the Indenture and the Security Agreement will remain unchanged.

CERTAIN SIGNIFICANT CONSIDERATIONS

Prior to delivering a Consent, Holders should carefully consider the factors set forth below in addition to the other information described elsewhere or incorporated by reference in this Consent Solicitation Statement, including the risk factors set forth under Part I, Item 1A “Risk Factors” of the Issuer’s Annual Report on Form 10-K for the fiscal year ended December 31, 2018, and as may be included from time to time in the Issuer’s reports filed with the SEC. See “Information about the Company—Available Information and Incorporation by Reference” for more information. For a discussion of certain U.S. federal income tax considerations of the Consent Solicitation to beneficial owners of the Notes, see “Certain U.S. Federal Income Tax Considerations.”

Nonconsenting Holders will be bound by the Proposed Amendments if the New Supplemental Indenture and the Security Agreement Amendment become effective but will not receive any Consent Payment.

If the Requisite Consents are accepted, the Issuer, the Guarantors, the Trustee and the Collateral Agent, as applicable, will execute the New Supplemental Indenture and the Security Agreement Amendment effecting the Proposed Amendments. The Consent Solicitation will expire at 5:00 p.m., New York City time, on November 22, 2019, unless earlier terminated or extended by us in our sole discretion. Holders who wish to receive the Consent Payment must validly deliver (and not validly revoke) their Consents to the Proposed Amendments at or before the Expiration Time.

Once the New Supplemental Indenture and the Security Agreement Amendment become effective, they will be binding on all Holders of Notes whether or not they delivered a Consent to the Proposed Amendments. Holders of Notes that do not deliver valid and unrevoked Consents to the Proposed Amendments at or prior to the Expiration Time will not receive any Consent Payment but will be bound by the New Supplemental Indenture and the Security Agreement Amendment.

The consummation of the Consent Solicitation is subject to certain conditions.

Our obligation to accept Consents and pay the Consent Payment for valid and unrevoked Consents to the Proposed Amendments is subject to and conditioned upon the satisfaction or, to the extent permissible, waiver of the conditions set forth herein under “The Consent Solicitation—Conditions of the Consent Solicitation.” In addition, if any of the conditions are not satisfied or, to the extent permissible, waived, we may terminate or amend the Consent Solicitation for any reason in our sole discretion. There can be no assurance that such conditions will be met, that we will not terminate the Consent Solicitation, or that, in the event that the Consent Solicitation is not consummated, the market value and liquidity of the Notes will not be materially and adversely affected.

The Consent Solicitation is not conditioned on whether some, all or none of the Holders participate in the Tender Offer. No Holder is required to tender such Holder’s Notes in the Tender Offer to provide a consent in the Consent Solicitation and receive the Consent Payment, nor is any Holder required to provide its consent to this Consent Solicitation in order to tender such Holder’s Notes in the Tender Offer and receive the Tender Offer consideration.

Your ability to revoke a Consent is limited.

Revocation of Consents to the Proposed Amendments may be made at any time prior to the Effective Time in accordance with DTC’s ATOP procedures. Consents to the Proposed Amendments may not be revoked at any time after the Effective Time. See “The Consent Solicitation—Revocation of Consents.”

We anticipate executing (and requesting the Trustee and the Collateral Agent to execute pursuant to the Indenture and the Security Agreement, respectively) the New Supplemental Indenture and the Security Agreement Amendment promptly after receipt of the Requisite Consents. Holders should note that the Effective Time may occur prior to the Expiration Time and Holders will not be given prior notice of such Effective Time. A Consent becomes irrevocable upon execution of the New Supplemental Indenture and the Security Agreement Amendment at the Effective Time, regardless of whether the Effective Time occurs prior to or after the Expiration Time.

Holders may not receive any Consent Payment if the procedures for the Consent Solicitations are not followed.

Holders are responsible for complying with all of the procedures for delivering a Consent. See “The Consent Solicitation—Consent Procedures.” None of the Issuer, the Trustee, the Collateral Agent, the Solicitation Agent, the Information Agent or the Tabulation and Payment Agent assumes any responsibility for informing Holders of irregularities with respect to any delivery of a Consent. Holders should not, under any circumstances, deliver a Consent to us, the Solicitation Agent, the Information Agent, the Trustee, the Collateral Agent or DTC. Delivery of a Consent to such persons

is not delivery of a Consent to the Solicitation Agent. However, we reserve the right, in our sole discretion, to accept any Consent received by us, the Solicitation Agent, the Information Agent, the Trustee or the Collateral Agent by any other reasonable means evidencing the giving of a Consent. We will have the right, in our sole discretion, to determine whether any purported Consent satisfies the requirements of the Consent Solicitation, the Indenture or the Security Agreement, and any such determination shall be conclusive and binding on the Holder who delivered such Consent or purported Consent.

The Company may acquire Notes, whether or not the Requisite Consents are obtained, through open market purchases, privately negotiated transactions or otherwise.

From time to time, the Company may acquire Notes, whether or not the Requisite Consents are received, through open market purchases, privately negotiated transactions, tender offers, exchange offers or otherwise, upon such terms and at such prices (which could be in the form of cash or other consideration) as we may determine, which may be more or less per Note than the sum of the Consent Payment and the prevailing market price of the Notes following consummation (or termination) of this Consent Solicitation.

The U.S. federal income tax consequences of the Consent Solicitation are uncertain.

See “Certain U.S. Federal Income Tax Considerations” for a discussion of certain tax matters that should be considered in evaluating the Consent Solicitation.

THE CONSENT SOLICITATION

General

We are seeking the Requisite Consents from Holders of the Notes to the Proposed Amendments. See “The Proposed Amendments.” The Other Notes are not part of this Consent Solicitation.

Regardless of whether the Proposed Amendments become operative, the Notes will continue to be outstanding in accordance with all other terms of the Notes and the Indenture. **Except for the Proposed Amendments, all of the existing terms of the Notes, the Indenture and the Security Agreement will remain unchanged.**

Promptly after accepting the Requisite Consents, we will give notice to the Trustee and the Collateral Agent that the Requisite Consents have been obtained and we, the Guarantors, the Trustee and the Collateral Agent, as applicable, will execute the New Supplemental Indenture and the Security Agreement Amendment. If the New Supplemental Indenture and the Security Agreement Amendment are entered into, then the New Supplemental Indenture and the Security Agreement Amendment will become effective as of the Effective Time and the Proposed Amendments will become operative upon payment of the Consent Payment, subject to the satisfaction of all other conditions of the Consent Solicitation, and will thereafter bind all Holders of the Notes, including those that did not deliver Consents. If Consents relating to any Notes either are not validly delivered or are subsequently validly revoked and not properly redelivered at or prior to the Expiration Time, Holders of such Notes will not receive any Consent Payment even if the Proposed Amendments will be effective. Holders should note that the Effective Time may fall prior to the Expiration Time and Holders will not be given prior notice of such Effective Time. Holders will not be able to revoke their Consents after the Effective Time.

We will be deemed to have accepted the Consents of Holders if, as and when we, the Guarantors, the Trustee and the Collateral Agent, as applicable, execute the New Supplemental Indenture and the Security Agreement Amendment. Thereafter, all Holders of the Notes, including Nonconsenting Holders, and all subsequent Holders of Notes will be bound by the Proposed Amendments.

Regardless of whether the Requisite Consents are received, if the Consent Solicitation is terminated for any reason before the Expiration Time, or the conditions thereto are neither satisfied nor, to the extent permissible, waived, the Consents will be voided and no Consent Payment will be paid. We have retained Deutsche Bank Securities Inc. as the sole Solicitation Agent.

During or after the Consent Solicitation, the Solicitation Agent, we and any of our respective affiliates may purchase Notes in the open market, in privately negotiated transactions, through tender or exchange offers or otherwise. Any future purchases will depend on various factors at that time and may be material.

The Trustee and the Collateral Agent are not responsible for and make no representation as to the validity, accuracy or adequacy of the Consent Solicitation Statement and any of its contents, and are not responsible for any statement of the Company or any other person in the Consent Solicitation Statement or in any document issued or used in connection with it or the Consents.

Requisite Consents

To approve the Proposed Amendments, Holders must validly deliver (and not validly revoke) Consents constituting the Requisite Consents.

Consents may be validly revoked at any time prior to the Effective Time but not thereafter.

The failure of a Holder to validly deliver a Consent will have the same effect as if such Holder had voted against the Proposed Amendments.

Consent Payment

We will make or cause to be made cash payments to the Tabulation and Payment Agent of the Consent Payment for the benefit of the Holders who have validly delivered and not validly revoked a Consent at or prior to the Expiration Time if the conditions set forth herein under “The Consent Solicitation— Conditions of the Consent Solicitation” have been satisfied or, to the extent permissible, waived.

The Consent Payment will not be made if:

- the Requisite Consents are not received prior to the Expiration Time;
- the Consent Solicitation is terminated prior to the Effective Time;
- the New Supplemental Indenture and the Security Agreement Amendment are not executed or do not otherwise become effective with respect to the Notes for any reason; or
- in our sole discretion, the payment of the Consent Payment is prohibited or impacted by any existing or proposed law or regulation that would, or any injunction or action or other proceeding (pending or threatened) that (in the case of any action or proceeding, if adversely determined) would, in our sole discretion, make unlawful, invalid or inadvisable or enjoin or delay the implementation of the Proposed Amendments, the entering into of the New Supplemental Indenture and the Security Agreement Amendment or the payment of the Consent Payment or question the legality or validity of any thereof.

No interest will accrue or be paid on the Consent Payment. We expect the New Supplemental Indenture and the Security Agreement Amendment will be executed promptly after receipt of the Requisite Consents, but the Consent Payment is not expected to be made until promptly after the Expiration Time. The Tabulation and Payment Agent will act as agent for the Consenting Holders for the purpose of receiving payments from us and transmitting such payments to the Consenting Holders. Upon the terms and subject to the conditions of the Consent Solicitation, payment of the Consent Payment by the Company through the Tabulation and Payment Agent will be made by deposit of the Consent Payment to DTC, who will transmit such Consent Payment to the applicable Holders. Upon the deposit to DTC for the purpose of making payment of the Consent Payment to the applicable Holders, our obligation to make such payments shall be satisfied, and consenting Holders must thereafter look solely to DTC for payments of amounts owed to them by reason of acceptance of Consents pursuant to the Consent Solicitation.

Expiration Time; Extensions

The Consent Solicitation will expire at 5:00 p.m., New York City time, on November 22, 2019, unless earlier terminated or extended by us in our sole discretion. We anticipate executing the New Supplemental Indenture and the Security Agreement Amendment promptly after receipt of the Requisite Consents. Holders should note that the Effective Time may be prior to the Expiration Time and Holders will not be given prior notice of such Effective Time. Consents may not be revoked after the Effective Time. The New Supplemental Indenture and the Security Agreement Amendment will each provide that they will become effective on the date it is executed by us, the Guarantors, the Trustee and the Collateral Agent, as applicable. However, the Proposed Amendments will not become operative until the Consent Payment is made, subject to the satisfaction of all other conditions of the Consent Solicitation.

We reserve the right, in our sole discretion, to extend the Consent Solicitation at any time and from time to time, whether or not the Requisite Consents have been received, by giving written notice to the Holders no later than 9:00 a.m., New York City time, on the next business day after the previously announced Expiration Time. Notice of any such extension shall be given by press release or other public announcement (or by written notice to the Holders). Such announcement or notice may state that we are extending the Consent Solicitation for a specified period of time or on a daily basis.

We reserve the right, in our sole discretion, to:

- extend the Expiration Time, from time to time, for any reason, including to obtain the Requisite Consents;
- amend the Consent Solicitation at any time, whether or not the Requisite Consents have been received;
- to the extent permissible, waive in whole or in part any conditions to the Consent Solicitation; and
- terminate the Consent Solicitation at any time, whether or not the Requisite Consents have been received.

Conditions of the Consent Solicitation

The consummation of the Consent Solicitation (including the payment of the Consent Payment) is conditioned on:

- the Requisite Consents being received by the Tabulation and Payment Agent at or prior to the Expiration Time;
- the New Supplemental Indenture and the Security Agreement Amendment being executed and becoming effective;
- the absence of any existing or proposed law or regulation that would, and the absence of any injunction or action or other proceeding (pending or threatened) that (in the case of any action or proceeding, if adversely determined) would, in our sole discretion, make unlawful, invalid or inadvisable or enjoin or delay the Consent Solicitation, the implementation of the Proposed Amendments, the entering into of the New Supplemental Indenture and the Security Agreement Amendment or the payment of the Consent Payment or question the legality or validity of any thereof; and
- none of the Trustee, the Collateral Agent nor any Holder shall have objected in any respect to or taken action that could, in our sole discretion, adversely affect the consummation of the Consent Solicitation, the implementation of the Proposed Amendments, the entering into of the New Supplemental Indenture and the Security Agreement Amendment or the payment of the Consent Payment, and there shall not have been instituted, threatened or be pending any action, proceeding or investigation (whether formal or informal) (and there shall not have been any material adverse development with respect to any action or proceeding currently instituted, threatened or pending) before or by any court, governmental, regulatory or administrative agency or instrumentality, or by any other person, in connection with the Consent Solicitation that, in our sole discretion either (a) is, or is likely to be, materially adverse to the Issuer's business, operations, properties, condition (financial or otherwise), assets, liabilities or prospects, or (b) would or might prohibit, prevent, restrict or delay consummation of the Consent Solicitation, the implementation of the Proposed Amendments, the entering into of the New Supplemental Indenture and the Security Agreement Amendment or the payment of any Consent Payment.

The New Supplemental Indenture and the Security Agreement Amendment will each provide that they will become effective on the date it is executed by us, the Guarantors, the Trustee and the Collateral Agent, as applicable. The Proposed Amendments will become operative upon payment of the Consent Payment, subject to the satisfaction of all other conditions of the Consent Solicitation. If the Consent Solicitation is abandoned or terminated for any reason, we shall as promptly as practicable give notice thereof to the Holders and the Consents will be voided and no Consent Payment will be paid.

Consent Procedures

General

In order to provide a Consent, each person who is shown in the records of the clearing and settlement systems of DTC as a Holder of the Notes must submit, at or prior to the Expiration Time, a Consent in the applicable manner described below. We will accept Consents given in accordance with the customary procedures of DTC's ATOP.

A beneficial owner of an interest in Notes held in an account of a DTC Participant who wishes a Consent to be delivered must properly instruct such DTC Participant to cause a Consent to be given in respect of such Notes.

The delivery of a Consent will not affect a Holder's right to sell or transfer the Notes. The Notes for which a Consent has been delivered through ATOP as part of the Consent Solicitation prior to the Expiration Time will be held under one or more temporary CUSIP numbers (i.e. Contra CUSIP) during the period beginning at the time the DTC Participant electronically delivers a Consent and ending on the earlier of (i) the Payment Date, (ii) the date on which the DTC Participant revokes its Consent and (iii) the date on which the Consent Solicitation is terminated. During the period that Notes are held under a temporary CUSIP number or numbers, such Notes are freely transferable to third parties. However, the right to receive the Consent Payment is not transferable with any Notes.

The Consent Payment will only be made to the Holder that provided and did not validly revoke its Consent prior to the Expiration Time. No subsequent Holder of the Notes will be entitled to receive any Consent Payment.

Holders of Notes that do not deliver valid and unrevoked Consents to the Proposed Amendments on or prior to the Expiration Time will not receive any Consent Payment.

As of the date hereof, all of the Notes are held through DTC by DTC Participants.

CONSENTS MUST BE ELECTRONICALLY DELIVERED IN ACCORDANCE WITH DTC'S ATOP PROCEDURES.

Holders should contact the Tabulation and Payment Agent with any requests for additional documentation.

Determination of Validity

The registered ownership of a Note as of the Expiration Time shall be proved by the Trustee, as registrar of the Notes. The ownership of Notes held through DTC by DTC Participants shall be established by a DTC security position listing provided by DTC as of the Record Date. All questions as to the validity, form and eligibility (including time of receipt) regarding the consent procedures will be determined by us in our sole discretion, which determination will be conclusive and binding. We reserve the absolute right to reject any or all Consents that we determine are not in proper form or the acceptance of which could, in our opinion, or the opinion of our counsel, be unlawful. We also reserve the right to waive any defects or irregularities in connection with deliveries of particular Consents. Unless waived, any defects or irregularities in connection with deliveries of Consents must be cured within such time as we determine. None of us or any of our affiliates, the Tabulation and Payment Agent, the Trustee, the Collateral Agent or any other person shall be under any duty to give any notification to any Holder of any such defects or irregularities or waiver, nor shall any of them incur any liability for failure to give such notification. Deliveries of Consents will not be deemed to have been made until any irregularities or defects therein have been cured or waived. Our interpretations of the terms and conditions of the Consent Solicitation shall be conclusive and binding.

How to Consent

The Consent Solicitation is being conducted in a manner eligible for use of DTC's ATOP. At the date of this Consent Solicitation Statement, all of the Notes held through DTC are registered in the name of the nominee of DTC. In turn, the Notes are recorded on DTC's books in the names of DTC Participants who hold Notes either for themselves or for the ultimate beneficial owners. In order to cause Consents to be delivered, DTC Participants must electronically deliver a Consent by causing DTC to temporarily transfer and surrender their Notes to the Tabulation and Payment Agent in accordance with DTC's ATOP procedures. By making such transfer, DTC Participants will be deemed to have delivered a Consent with respect to any Notes so transferred and surrendered. DTC will verify each temporary transfer and surrender of Notes and confirm the electronic delivery of a Consent by sending an Agent's Message to the Tabulation and Payment Agent.

Consents may be delivered only in principal amounts equal to minimum denominations of \$1.00 and integral multiples of \$1.00 in excess thereof.

No alternative conditional or contingent tenders will be accepted.

Holders desiring to deliver their Consents prior to the Expiration Time should note that they must allow sufficient time for completion of the ATOP procedures during the normal business hours of DTC on such respective date. Consents not delivered prior to the Expiration Time will be disregarded and of no effect.

No Letter of Transmittal or Consent Form

No consent form or letter of transmittal needs to be executed in relation to the Consent Solicitation or the Consents delivered through DTC. The valid electronic delivery of Consents through the temporary transfer and surrender of existing Notes in accordance with DTC's ATOP procedures shall constitute a written consent to the Consent Solicitation.

Book-Entry Transfer

The Tabulation and Payment Agent will establish an ATOP account (i.e. Contra CUSIP) on behalf of the Company with respect to the securities held in DTC promptly after the date of this Consent Solicitation Statement. The Tabulation and Payment Agent and DTC will confirm that the Consent Solicitation is eligible for ATOP, whereby DTC Participants may make book-entry delivery of Consents by causing DTC to transfer Notes into the Contra CUSIP or electronically deliver the Consents. Deliveries of Consents are effected through the ATOP procedures by delivery of an Agent's Message by DTC to the Tabulation and Payment Agent.

The Notes for which a Consent has been delivered through ATOP as part of the Consent Solicitation prior to the Expiration Time will be held under one or more temporary CUSIP numbers (i.e. Contra CUSIP) during the period beginning at the time the DTC Participant electronically delivers a Consent and ending on the earlier of (i) the Payment Date, (ii) the date on which the DTC Participant revokes its Consent and (iii) the date on which the Consent Solicitation is terminated. During the period that Notes are held under a temporary CUSIP number or numbers, such Notes are freely transferable to third parties.

Revocation of Consents

Each Holder who delivers a Consent pursuant to the Consent Solicitation acknowledges and agrees that: (a) it will not be able to revoke its Consent after the Effective Time and (b) until the Effective Time, it will not revoke its Consent except in accordance with the conditions and procedures for revocation of Consents provided below. Each properly delivered Consent by a Holder of the Notes will bind the Holder and every subsequent holder of such Notes or portion of such Notes, even if notation of the Consent is not made on such Notes, unless the procedure for revocation of Consents provided below has been followed.

Prior to the Effective Time, any Holder may revoke any Consent given as to its Notes or any portion of such Notes (in integral multiples of \$1.00). Once the New Supplemental Indenture is executed, any Consents given may not be revoked.

All revocations of Consents must be delivered in accordance with the customary procedures of DTC's ATOP. DTC Participants who wish to exercise their right of revocation with respect to the Consent Solicitation must deliver a properly formatted and transmitted withdrawal request to the Tabulation and Payment Agent for return to DTC prior to the Effective Time. In order to be valid, a withdrawal request must specify the name of the person as to which the Consent is to be revoked or who deposited the Notes to be withdrawn (the "*Depositor*"), the name of the participant in DTC whose name appears on the security position listing as the owner of such Notes, if different from that of the Depositor, and a description of the Notes to which the revocation relates (including the principal amount of Notes to which the revocation relates).

A Holder may revoke a Consent only if such revocation complies with the provisions of this Consent Solicitation Statement. A beneficial owner of Notes who is not the Holder of such Notes as of the Expiration Time must instruct the Holder of such Notes as of the Expiration Time to revoke any Consent already given with respect to such Notes.

A revocation of a Consent may only be rescinded by the delivery of a new Consent, in accordance with the procedures herein described, by the Holder who delivered such revocation. A Holder who has delivered a revocation may after such revocation deliver a new electronic instruction at any time prior to the Expiration Time.

We reserve the right to contest the validity of any revocation of Consent and all questions as to the validity (including time of receipt) of any revocation of Consent will be determined by us in our sole discretion, which determination will be conclusive and binding on all parties.

None of us, any of our affiliates, the Information Agent, the Tabulation and Payment Agent, the Trustee, the Collateral Agent, the Solicitation Agent or any other person will be under any duty to give notification of any defects or irregularities with respect to any revocation of Consent nor shall any of them incur any liability for failure to give such notification.

A Holder who delivered a notice of revocation of Consent may thereafter deliver a new Consent by following the procedures described in the Solicitation Documents. See "—Consent Procedures."

Solicitation Agent, Information Agent, Tabulation and Payment Agent

We have retained Deutsche Bank Securities Inc. to act as sole Solicitation Agent and D.F. King & Co., Inc. to act as Information Agent and as Tabulation and Payment Agent in connection with the Consent Solicitation. In its capacity as Solicitation Agent, Deutsche Bank Securities Inc. may contact Holders regarding the Consent Solicitation and may request brokers, dealers and other nominees to forward this Consent Solicitation Statement and related materials to beneficial owners of Notes. The Tabulation and Payment Agent will be responsible for collecting Consents. In addition, the Tabulation and Payment Agent will act as agent for the Holders giving Consents for the purpose of receiving the Consent Payment from us and then transmitting payment to such Holders. The Information Agent and the Tabulation and Payment Agent will receive a customary fee for such services and reimbursement of their reasonable out-of-pocket expenses from us. Deutsche Bank Securities Inc. will receive a fee for its service as Solicitation Agent and we have agreed to reimburse the Solicitation Agent

for certain of its expenses in connection with its services. We have agreed to indemnify the Solicitation Agent, the Information Agent and the Tabulation and Payment Agent against certain liabilities.

The Solicitation Agent, the Information Agent and the Tabulation and Payment Agent do not assume any responsibility for the accuracy or completeness of the information contained or incorporated by reference in this Consent Solicitation Statement or any failure by us to disclose events that may have occurred and may affect the significance or accuracy of such information. At any time, the Solicitation Agent and its affiliates may trade the Notes for their own accounts, or for the accounts of their customers, and accordingly may hold long or short positions in the Notes.

Requests for assistance in filling out and delivering Consents may be directed to the Information Agent at its address and telephone numbers set forth on the back cover of this Consent Solicitation Statement. Questions concerning Consent procedures (including requests for assistance in completing and delivering consents) and requests for copies of the New Supplemental Indenture, Security Agreement Amendment or additional copies of this Consent Solicitation Statement should be directed to the Information Agent at its address or telephone numbers set forth on the back cover of this Consent Solicitation Statement. Questions concerning the terms of the Consent Solicitation should be directed to Deutsche Bank Securities Inc. at the address or telephone numbers set forth on the back cover of this Consent Solicitation Statement.

CERTAIN U.S. FEDERAL INCOME TAX CONSIDERATIONS

The following is a general discussion of certain U.S. federal income tax considerations relating to the adoption of the Proposed Amendments and the receipt of the Consent Payment that may be relevant to U.S. Holders and Non-U.S. Holders (each as defined below). This discussion applies only to Notes that are held as capital assets for U.S. federal income tax purposes and does not describe all of the tax consequences that may be relevant to you in light of your particular circumstances, including the alternative minimum tax, the Medicare tax on certain investment income, the consequences to you if you are required to accelerate the recognition of gross income with respect to the Notes under Section 451(b) of the Internal Revenue Code of 1986, as amended (the “Code”), as a result of such income being included on an applicable financial statement, and the different consequences that may apply if you are subject to special rules that apply to certain types of investors, such as:

- banks or other financial institutions;
- insurance companies;
- dealers or traders subject to a mark-to-market method of tax accounting with respect to the Notes;
- former U.S. citizens or long-term residents;
- persons holding the Notes as part of a “straddle,” integrated transaction or similar transaction;
- U.S. Holders whose functional currency is not the U.S. dollar;
- U.S. Holders that hold Notes through non-U.S. brokers or other non-U.S. intermediaries;
- partnerships or other pass-through entities for U.S. federal income tax purposes (and investors therein);
- tax-exempt entities.

If you are a partnership for U.S. federal income tax purposes, the U.S. federal income tax treatment of your partners will generally depend on the status of your partners and your activities.

This discussion is based on the Code, and administrative pronouncements, judicial decisions and final, temporary and proposed Treasury regulations as of the date hereof, all of which may be subject to differing interpretation, and changes to any of which subsequent to the date hereof may affect the tax consequences described herein, possibly on a retroactive basis. This discussion also does not address any tax consequences of the Tender Offer, which are addressed separately in the Offer to Purchase. This discussion does not address any aspect of state, local or non-U.S. taxation, or any U.S. federal taxes other than income taxes (such as estate and gift taxes). We have not and do not intend to seek any ruling from the Internal Revenue Service (the “IRS”) or an opinion of counsel regarding the matters described below. There can be no assurance that the IRS will not challenge one or more of the statements contained in this discussion or that, if the IRS were to challenge such statements, such challenge would not be sustained by a court.

You should consult your tax advisor with respect to the application of U.S. federal income tax laws to your particular situation, as well as any tax consequences arising under any other federal tax laws or the laws of any state, local or non-U.S. jurisdiction.

Modification of the Notes

A “modification” of the terms of a debt instrument, which for this purpose would include the Proposed Amendments, results in a deemed exchange of the original debt instrument for a new debt instrument for U.S. federal income tax purposes in which, unless the deemed exchange qualifies as a recapitalization, gain or loss may be recognized by holders if the modification is “significant.” Subject to provisions applicable to certain categories of modifications, a modification is “significant” under the applicable Treasury regulations if, based on all facts and circumstances, the legal rights or obligations that are altered and the degree to which they are altered are “economically significant.” The applicable Treasury regulations provide that a modification that adds, deletes or alters customary accounting or financial covenants is not a significant modification; the Treasury regulations, however, do not define “customary accounting or financial covenants” and thus, the application of this rule to the Proposed Amendments is uncertain. Although the matter is not free from doubt, we intend to take the position that the adoption of the Proposed Amendments does not constitute a significant modification of the Notes for U.S. federal income tax purposes. You should consult your tax advisor regarding the risk that the adoption of the Proposed Amendments constitutes a significant modification, the applicability of the recapitalization rules and recognition of any gain or loss.

The applicable Treasury regulations also provide that a change in the yield of a debt instrument is a significant modification if the annual yield of the modified instrument varies from the annual yield on the unmodified instrument

(determined as of the date of the modification) by more than the greater of 25 basis points or five percent of the annual yield of the unmodified instrument. For purposes of determining the yield on the modified instrument, any payments made to the holders as consideration for the modification are taken into account as an adjustment to the issue price of the modified debt instrument. Based on the amount of the Consent Payment, the change in yield should not exceed this threshold.

We intend to take the position that the adoption of the Proposed Amendments, taken alone (with respect to a non-consenting holder) or together with the receipt of the Consent Payment (with respect to a consenting holder), does not cause a significant modification of the Notes under the Treasury regulations. If instead the Notes were treated as significantly modified for U.S. federal income tax purposes, you would be deemed to exchange your Notes for “new notes” and the tax consequences to you may differ materially from those described in this discussion. Except where stated otherwise, the remainder of this discussion assumes that the adoption of the Proposed Amendments (and, with respect to a consenting holder, the receipt of the Consent Payment) do not cause a significant modification. You should consult your tax advisor regarding the U.S. federal income tax treatment of the Consent Solicitation, including the adoption of the Proposed Amendment and the receipt of the Consent Payment.

U.S. Holders

A U.S. Holder is a beneficial owner of a Note that is, for U.S. federal income tax purposes:

- an individual who is a citizen or resident of the United States;
- a corporation organized under the laws of the United States, any state thereof or the District of Columbia;
- an estate or trust the income of which is includible in gross income for U.S. federal income tax purposes regardless of its source.

Adoption of Proposed Amendments

As discussed above, although not free from doubt, we intend to take the position that the adoption of the Proposed Amendments does not result in a significant modification of the Notes. Assuming this treatment is respected, the adoption of the Proposed Amendments should not cause you to recognize any gain or loss, and subject to the discussion below with respect to the treatment of the Consent Payment, your adjusted tax basis, holding period and accrued market discount (if any) with respect to your Notes should not change as a result of the adoption of the Proposed Amendments.

You should consult your tax advisor regarding the risk there may be a significant modification for U.S. federal income tax purposes with respect to the Notes as a result of the adoption of the Proposed Amendments and the tax consequences to you if there were such a significant modification including the tax consequences of holding the Notes after such a significant modification and the applicability of the recapitalization rules.

Treatment of Consent Payment

The U.S. federal income tax treatment of the Consent Payment is uncertain. Although the matter is not free from doubt, we intend to treat the Consent Payment you receive as a separate payment for consenting taxable as ordinary income. Alternatively, it is possible that such Consent Payment may properly be treated differently, such as, as a payment of accrued and unpaid interest, if any, or as a payment of principal on the applicable Note. To the extent the Consent Payment were treated as a payment of accrued and unpaid interest, it would generally be taxable to you as ordinary income. To the extent the Consent Payment were treated as a payment of principal, it would generally not be taxable currently to you, unless you acquired the Note with “market discount” (and have not previously elected to include market discount in income as it accrues), in which case it would result in ordinary income to you to the extent of the accrued market discount. Your tax basis in such Note would effectively be reduced by the amount of the Consent Payment that was not currently taxable to you (thereby resulting in additional gain or a reduction of loss upon a subsequent sale or other disposition (including redemption or retirement) of such Note). You should consult your tax advisor regarding the proper U.S. federal income tax treatment of the Consent Payment.

Non-U.S. Holders

A Non-U.S. Holder is a beneficial owner of a Note that is, for U.S. federal income tax purposes, an individual corporation, estate or trust and is not a U.S. Holder.

Adoption of Proposed Amendments

In general, you should not be subject to U.S. federal income tax on account of the modification of the Notes resulting from the Proposed Amendments (unless income from the Notes is effectively connected with your conduct of a trade or business within the United States), regardless of whether the Proposed Amendments results in a significant modification of the Notes for U.S. federal income tax purposes. You should consult your tax advisor regarding the risk that the adoption of the Proposed Amendments constitute a significant modification of the Notes for U.S. federal income tax purposes, and the tax consequences to you if there were such a significant modification, including the tax consequences of holding the Notes after such a significant modification.

Treatment of Consent Payment

Under current U.S. federal income tax law, there is uncertainty regarding the treatment of the Consent Payments paid on the Notes (*see* “—U.S. Holders—Treatment of Consent Payment” above) and whether your receipt of a Consent Payment is subject to U.S. federal withholding tax. Although the matter is not free from doubt, we intend to treat the Consent Payment you receive as a separate payment for consenting, taxable as ordinary income and, consequently, subject to U.S. federal withholding tax at a rate of 30%, or the lower rate specified by an applicable treaty (unless it is effectively connected with your conduct of a trade or business within the United States, in which case it would be subject to tax generally in the same manner as if you were a U.S. Holder (*see* “—U.S. Holders” above) and, in addition, if you are a foreign corporation, you might be subject to a 30% (or lower applicable treaty rate) branch profits tax). Alternatively, it is possible that such Consent Payment may properly be treated differently, as discussed in the paragraph immediately below. The applicable withholding agent generally makes the determination of whether to withhold on the Consent Payment, and it would be prudent to expect a withholding agent to treat the Consent Payment as subject to withholding. If withholding results in overpayment of taxes, a Non-U.S. Holder may be entitled to a refund, provided that the required information is timely furnished to the IRS. You should consult your tax advisor regarding the U.S. federal income tax treatment of the Consent Payment and the application of U.S. federal income tax withholding, including eligibility for a withholding tax exemption and refund procedures.

It is possible that the Consent Payment may properly be treated instead as a payment of accrued and unpaid interest, if any, or as a payment of principal on the applicable Note. Subject to the discussion below concerning FATCA and backup withholding, U.S. federal withholding tax generally should not apply to such payment of accrued and unpaid interest or principal on the applicable Note, provided that, in the case of such accrued and unpaid interest:

- you do not actually (or constructively) own 10% or more of the total combined voting power of all classes of our voting stock within the meaning of the Code and applicable Treasury regulations;
- you are not a controlled foreign corporation that is related to us, directly or indirectly, through stock ownership; and
- you certify on a properly executed IRS Form W-8BEN or W-8BEN-E, under penalties of perjury, that you are not a U.S. person as defined under the Code.

If you cannot satisfy the requirements described above, payments of such accrued and unpaid interest generally should be subject to a 30% U.S. federal withholding tax unless a tax treaty applies to reduce or eliminate the tax. Payments of accrued and unpaid interest, however, that are effectively connected with the conduct of a trade or business by you within the United States generally will not be subject to the U.S. federal withholding tax, unless an applicable income tax treaty provides otherwise, but instead generally will be subject to U.S. federal income tax as if you were a U.S. Holder (*see* “—U.S. Holders” above). To claim any reduction of or exemption from the 30% withholding tax, you should provide a properly executed IRS Form W-8BEN or W-8BEN-E claiming a reduction of or an exemption from withholding tax under an applicable tax treaty or a properly executed IRS Form W-8ECI stating that such payments are not subject to withholding tax because they are effectively connected with your conduct of a trade or business within the United States.

Information Reporting and Backup Withholding

In general, a U.S. Holder may be subject to information reporting and backup withholding at a rate of 24% with respect to the payment of the Consent Payment unless (i) the U.S. Holder is a corporation or other exempt recipient and, when required, establishes its exemption from information reporting and backup withholding or (ii) in the case of backup withholding, the U.S. Holder provides its correct taxpayer identification number (“*TIN*”), certifies that such *TIN* is correct

and that it is not currently subject to backup withholding, and otherwise complies with requirements of the backup withholding rules. A U.S. Holder that does not provide its correct TIN may be subject to penalties imposed by the IRS.

In general, a Non-U.S. Holder should not be subject to information reporting or backup withholding with respect to the payment of the Consent Payment provided (i) the Non-U.S. Holder certifies that it is not a U.S. person (generally, by providing an IRS Form W-8BEN, IRS Form W-8BEN-E or other applicable IRS Form W-8) or (ii) the Non-U.S. Holder otherwise establishes an exemption. However, information returns may be required to be filed with the IRS in connection with the Consent Payment even if such payment is not subject to U.S. federal income tax under the Code or an applicable income tax treaty.

Backup withholding is not an additional tax. Holders generally may use amounts withheld as a credit against their U.S. federal income tax liability or claim a refund if they timely provide certain information to the IRS.

FATCA

Provisions commonly referred to as “FATCA” may impose withholding of 30% on certain payments of U.S.-source interest and certain other types of payments, in each case paid to “foreign financial institutions” (which is broadly defined for this purpose and in general includes investment vehicles) and certain other non-U.S. entities (whether such institutions and entities are beneficial owners or intermediaries) unless various U.S. information reporting and due diligence requirements (generally relating to ownership by U.S. persons of interests in or accounts with those entities) have been satisfied, or an exemption applies. Such an exemption must typically be evidenced by delivery of a properly executed IRS Form W-8BEN-E. FATCA withholding also applies to payments of gross proceeds from a sale or other disposition of the Notes. Withholding agents may, however, rely on proposed U.S. Treasury Regulations that would no longer require FATCA withholding on payments of gross proceeds from a sale or other disposition of the Notes. Although unclear, FATCA withholding might also apply to the Consent Payment. The applicable withholding agent generally makes the determination of whether to implement FATCA withholding on the Consent Payment, and it would be prudent to expect a withholding agent to treat the Consent Payment as subject to FATCA withholding. An intergovernmental agreement between the United States and the entity’s jurisdiction may modify these requirements. If FATCA withholding is imposed, a beneficial owner that is not a foreign financial institution generally will be entitled to a refund of any amounts withheld by filing a U.S. federal income tax return (which may entail significant administrative burden). You should consult your tax advisors regarding FATCA and its application to the Consent Solicitation.

The Information Agent and Tabulation and Payment Agent for the Consent Solicitation is:

D.F. King & Co., Inc.

48 Wall Street
New York, NY 10005

Banks and Brokers Call: (212) 269-5550

All Others Call Toll Free: (877) 361-7966

Or Contact via E-mail at: tdw@dfking.com

Any questions or requests for assistance or additional copies of this Consent Solicitation Statement may be directed to the Information Agent at the telephone numbers and address set forth above. A Holder may also contact Deutsche Bank Securities Inc. at its telephone numbers set forth below or such Holder's broker, dealer, commercial bank, trust company or other nominee for assistance concerning the Consent Solicitation.

The Sole Solicitation Agent for the Consent Solicitation is:

Deutsche Bank Securities Inc.

60 Wall Street
New York, New York 10005
Attn: Liability Management Group
Collect: (212) 250-7527
Toll-Free: (855) 287-1922