ALBERTO CULVER CO
Form 425
October 26, 2006

Filed by New Aristotle Holdings, Inc.

Pursuant to Rule 425 under the Securities Act of

1933 and deemed filed pursuant to Rule 14a-6

under the Securities Exchange Act of 1934

Subject Company:

Alberto-Culver Company

(Commission File No. 1-5050)

On October 26, 2006, Alberto-Culver filed a Current Report on Form 8-K, the text of which is below. The Alberto-Culver 8-K filed as an exhibit a press release announcing its financial results, the text of which is below.

Section 2 Financial Information

Item 2.02. Results of Operation and Financial Condition.

On October 26, 2006, Alberto-Culver issued a press release announcing its financial results for the fourth fiscal quarter and full fiscal year ended September 30, 2006. The full text of the press release is attached hereto as Exhibit 99. The information under this Item 2.02 and Exhibit 99 shall be deemed filed rather than furnished under the Securities Exchange Act of 1934, as amended.

Item 8.01. Other Events.

See Item 2.02 and Exhibit 99 which are incorporated into this Item 8.01 by reference.

As previously announced, Alberto-Culver has entered into an agreement to separate into two publicly-traded companies: new Alberto-Culver Company, which will own and operate Alberto-Culver s Consumer Products business and Sally Beauty Holdings, Inc. (currently New Sally Holdings, Inc.), which will own and operate Alberto-Culver s Sally/BSG Distribution business. Completion of the transactions is subject to specified conditions, including approval of Alberto-Culver s stockholders. In connection with the separation, Sally Holdings, Inc., currently a subsidiary of Alberto-Culver and following completion of the transactions a subsidiary of Sally Beauty Holdings, Inc., will enter into and make borrowings under senior secured credit facilities and incur other indebtedness.

Certain information set forth below with respect to Sally Holdings, Inc. will be provided to potential lenders in connection with the transactions.

	Three Months Ended		Twelve Months Ended	
	9/30/2005	**9/30/2006**	**9/30/2005**	**9/30/2006**
Net Sales				
Sally Beauty Supply	$ 338.8	$ 359.3	$ 1,358.9	$ 1,419.3
Beauty Systems Group	227.5	246.8	895.4	$ 953.8
Consolidated	$ 566.3	$ 606.1	$ 2,254.3	$ 2,373.1
Segment Operating Profit				
Sally Beauty Supply	$ 40.7	$ 43.4	$ 168.6	$ 185.3
Beauty Systems Group	14.1	14.9	55.6	$ 66.9
Consolidated	$ 54.8	$ 58.3	$ 224.2	$ 252.2
Depreciation & Amortization				
Consolidated	$ 9.5	$ 9.9	$ 33.9	$ 38.0
Administrative Fees from Alberto-Culver (1)				
Sally Beauty Supply	$ 3.7	$ 1.7	$ 11.0	$ 8.1
Beauty Systems Group	(0.4)	1.1	2.3	$ 5.4
Consolidated	$ 3.3	$ 2.8	$ 13.3	$ 13.5
Sales-Based Service Fees from Alberto-Culver (2)				
Consolidated	$ 6.9	$ 7.3	$ 27.6	$ 28.9
Rent Expense				
Consolidated	$ 31.9	$ 34.1	$ 123.1	$ 133.5
Interest Expense, Net of Interest Income				
Consolidated	$ 0.6	$ (0.2)	$ 3.0	$ 0.1
Capital Expeditures				
Consolidated	$ 11.2	$ 8.3	$ 52.2	$ 30.3

Comparable Store Sales Growth[3]				
Sally Beauty Supply	0.8%	3.1%	2.4%	2.4%
Beauty Systems Group	(3.0)%	7.4%	(0.6)%	4.1%
Consolidated	0.0%	4.1%	1.8%	2.8%

(1) Represents direct expenses of Sally Holdings, Inc. and allocated corporate expenses for administrative services and certain other corporate functions that were charged to Sally Holdings, Inc. by Alberto-Culver. These expenses do not give effect to reductions in certain costs New Sally Holdings, Inc. expects to occur associated with operating as a stand-alone company. These administrative fees are included as expenses in segment operating profit.

(2) Represents the sales-based service fee charged by Alberto-Culver and reflected on the historical Sally Holdings consolidated statement of earnings associated with consulting, business development and advisory services agreements between Alberto-Culver and certain subsidiaries of Sally Holdings. The agreement giving rise to the sales-based service fee will be terminated in connection with the transactions, and the sales-based service fee will no longer be payable by New Sally. These fees are not included as expenses in segment operating profit.

(3) Comparable stores are defined as company-owned stores that have been open for at least 14 months as of the last day of a month.

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In connection with the proposed transaction, New Sally Holdings, Inc. has filed a registration statement on Form S-4 (Registration No. 333-136259) with the Securities and Exchange Commission (SEC), which was declared effective on October 11, 2006. The registration statement contains a definitive proxy statement/prospectus-information statement, which was mailed to stockholders of Alberto-Culver on or about October 13, 2006. Investors are urged to carefully read the definitive proxy statement/prospectus-information statement and any other relevant documents filed with the SEC because they contain important

information. Investors are able to obtain the definitive proxy statement/prospectus-information statement and all relevant documents filed by Alberto-Culver Company, New Sally Holdings, Inc. or New Aristotle Holdings, Inc. with the SEC free of charge at the SEC s website www.sec.gov or from Alberto-Culver Investor Relations at 2525 Armitage Avenue, Melrose Park, IL 60160, (708) 450-3117.

The directors, executive officers and other members of management and employees of Alberto-Culver Company may be deemed to be participants in the solicitation of proxies from its shareholders in favor of the transactions. Information concerning persons who may be considered participants in the solicitation of Alberto-Culver Company s shareholders under the rules of the SEC is set forth in public filings filed by Alberto-Culver Company with the SEC and are set forth in the definitive proxy statement/prospectus-information statement. Information concerning Alberto-Culver Company s participants in the solicitation is contained in Alberto-Culver Company s Proxy Statement on Schedule 14A, filed with the SEC on December 13, 2005.

FOR IMMEDIATE RELEASE

For further information, contact
Doug Craney 708-450-3117

Alberto-Culver Reports Record Fiscal Fourth Quarter and Fiscal Year 2006 Results Excluding Non-Core Items

Melrose Park, IL, (October 26, 2006) Alberto-Culver Company (NYSE: ACV) today announced record sales and record profits excluding non-core items for the fourth quarter and fiscal year 2006, which ended on September 30, 2006, capping off its fifteenth consecutive record sales and earnings year.

Fourth quarter 2006 sales increased 8.2% to $974.3 million while pre-tax earnings including non-core items increased 11.4% to $101.1 million. Net earnings including non-core items increased 11.7% to $65.8 million. Diluted net earnings per share were 70 cents in the fourth quarter of 2006, after the deduction of 2 cents for stock option expense and 2 cents for fees and expenses related to the agreement with a company formed by a fund managed by Clayton, Dubilier & Rice (CD&R) to separate the Company s consumer products and Sally/BSG businesses. Fiscal year 2005 fourth quarter diluted net earnings per share were 63 cents after a 3 cent deduction for the non-cash charge relating to the conversion to a single class of stock and a 1 cent deduction related to the terminated agreement with Regis Corporation. The transaction involving CD&R and the terminated agreement with Regis are referred to collectively herein as the Sally transactions.

Excluding non-core items, pre-tax earnings in the fourth quarter increased 11.2% to $106.3 million while net earnings were up 12.6% to $70.0 million from $62.2 million in the prior year. Fourth quarter diluted net earnings per share were 74 cents compared to 67 cents in 2005 excluding the non-core items.

Sales for the 2006 fiscal year grew by 6.8% to $3.77 billion. Including non-core items, pre-tax earnings for fiscal year 2006 decreased 5.0% to $308.3 million while net earnings were lower by 2.6% at $205.3 million. Diluted net earnings per share for the year were $2.20, after the deduction of 41 cents for expenses related to the Sally transactions and 11 cents for stock option expense, versus $2.27 per share in the prior year after a 10 cent deduction for the non-cash charge relating to the conversion to a single class of stock and a 1 cent deduction related to the Sally transactions.

Excluding non-core items, pre-tax earnings in fiscal year 2006 increased 12.5% to $383.0 million and net earnings increased 14.8% to $254.0 million from $221.3 million in the prior year. Diluted net earnings per share for the year improved to $2.72 from $2.38 last year excluding the non-core items.

Commenting on the quarter and year, Alberto-Culver President and Chief Executive Officer Howard Bernick said, We are very pleased today to report our fifteenth consecutive year of record sales and record earnings for the Alberto-Culver Company. During these past fifteen record years, our revenues have been growing at a compound annual growth rate of 10.7% while our operating earnings excluding non-core items have grown at a 14.7% compounded annual growth rate, a record that we are very proud to have achieved.

Mr. Bernick continued, Our consumer products group delivered another strong quarter and year. Led by *Nexxus* and *TRESemmé* and behind heavy advertising investments, the consumer group finished the year with sales growth of 9.4% and operating earnings growth of 11.3%.

Mr. Bernick went on to say, Our Sally store business generated solid top-line growth rates while expanding operating margins in the year to an all time high of 13.1%. Beauty Systems Group (BSG), coming off a difficult fiscal year 2005, finished the year with sales growth of 6.5% and operating earnings growth of 20.4%. The Company ended the quarter with 2,511 Sally stores in the U.S., Canada, Mexico, Puerto Rico, the U.K., Ireland, Germany and Japan and our Beauty Systems Group had 828 stores and 1,192 professional distributor sales consultants at September 30, 2006.

Consolidated worldwide advertising and other marketing expenditures invested behind our brands and businesses in 2006 increased by a healthy 17.4% to $306 million from $261 million in 2005, stated Mr. Bernick.

Mr. Bernick added, As I reflect back on fiscal year 2006, I find it to have been a transformational year for the Alberto-Culver Company. In addition to producing another record year of sales and earnings growth, we announced a strategic initiative to separate our consumer products business and our Sally/BSG distribution business into two independent public companies. The main factor behind this decision was the elimination of multi level channel conflicts that existed between the businesses. In the coming weeks, with shareholder approval and the satisfaction of other closing conditions, we will complete the separation and our shareholders will own 100% of the new Alberto-Culver, a focused consumer products company, and 52.5% of the new Sally/BSG, a leading beauty supply distribution business, in addition to receiving $25 in cash for each share owned. Both new businesses have a solid foundation in place to succeed and extremely capable management teams. We hope that all shareholders will continue to share in the growth and prosperity of both businesses in the coming years.

Carol L. Bernick, Alberto-Culver Company Chairman of the Board, said, I am very proud of our performance in this quarter and fiscal year, another record sales and earnings year for the Alberto-Culver

Company. But beyond the numbers themselves, I am proud of the commitment and focus they represent on the part of both the consumer products and Sally Beauty teams. During this period, while a great deal of discussion and planning for the next chapter in the Company s history has taken place, all have realized the importance of continuing to produce strong growth for our businesses and responded to that imperative with these excellent results.

The Company also announced that in place of the regular 13 cent quarterly cash dividend, shareholders will instead receive a $25 per share special cash dividend (approximately $2.4 billion) this quarter as part of the transaction separating the Company s businesses. The $25 special cash dividend will be paid shortly after the closing of the transaction to shareholders of record on the closing date, which is expected to occur in mid-November. Following the completion of the separation, new Alberto-Culver expects to pay a regular quarterly dividend and plans to announce the next quarterly dividend in late January, 2007, while new Sally/BSG does not expect to pay a regular quarterly dividend at this time.

The Company had three non-core items impacting its financial results in fiscal year 2006: stock option expense recorded in accordance with Statement of Financial Accounting Standards (SFAS) No. 123 (R); fees and expenses related to the Sally transactions; and a non-cash charge related to the Company s conversion to one class of common stock. In addition, the non-cash charge from the conversion to one class of common stock and the Sally transactions also affected fiscal year 2005.

Effective October 1, 2005, the Company adopted SFAS No. 123 (R) pertaining to the expensing of stock options. As allowed by the statement, the Company elected not to restate its previously issued financial statements and instead adopted SFAS No. 123 (R) on a modified prospective basis. The Company recorded stock option expense in the fourth quarter of fiscal year 2006 that reduced pre-tax earnings by $3.0 million ($1.9 million after tax) and basic and diluted net earnings per share by 2 cents. For fiscal year 2006, stock option expense reduced pre-tax earnings by $15.9 million ($10.3 million after tax) and basic and diluted net earnings per share by 11 cents. The stock option expense recorded in fiscal year 2006 had no effect on the operating profits or cash flows of the Company s business segments or on the consolidated cash flows of the Company.

In connection with the proposed separation of consumer products and Sally/BSG, the Company incurred transaction expenses which reduced fiscal year 2006 fourth quarter pre-tax earnings and net earnings by $2.2 million and basic and diluted net earnings per share by 2 cents. For fiscal year 2006, transaction expenses related to the terminated Sally spin/merge transaction with Regis Corporation and the proposed separation of consumer products and Sally/BSG reduced pre-tax earnings by $58.8 million ($38.3 million after

tax), basic net earnings per share by 42 cents and diluted net earnings per share by 41 cents. The transaction expenses for the full year included a $50 million termination fee paid to Regis in the third quarter of fiscal year 2006. The Company also incurred transaction expenses related to the terminated Sally spin/merge with Regis in 2005 which reduced fourth quarter and fiscal year 2005 pre-tax earnings by $1.5 million ($1.0 million after tax) and basic and diluted net earnings per share by 1 cent.

Prior to the adoption of SFAS No. 123 (R), U.S. generally accepted accounting principles (GAAP) required that the Company record a non-cash charge due to the remeasurement of the intrinsic value of stock options affected by the November, 2003 conversion to a single class of common stock. GAAP did not allow the Company to record the entire non-cash charge related to the share conversion immediately when it took place during the fiscal 2004 first quarter. In fiscal year 2005, the non-cash charge reduced pre-tax earnings in the fourth quarter by $3.4 million ($2.2 million after tax) and basic and diluted net earnings per share by 3 cents. For fiscal year 2005, the non-cash charge reduced pre-tax earnings by $14.5 million ($9.4 million after tax) and basic and diluted net earnings per share by 10 cents. Due to the adoption of SFAS No. 123 (R) effective October 1, 2005, the amount of the non-cash charge impacting the fourth quarter and fiscal year 2006 was nearly zero. The non-cash charge relates to a change in the capital structure of the Company rather than the normal operations of the Company s core businesses and had no effect on the operating profits or cash flows of the Company s business segments or on the consolidated cash flows of the Company.

Due to the disclosure of financial results excluding non-core items, this press release contains certain non-GAAP financial measures as defined by Regulation G of the Securities and Exchange Commission. A reconciliation of non-GAAP financial measures to the most directly comparable GAAP measures is included as a schedule to this release and can also be found on the Company s web site at www.alberto.com.

The Company will discuss fourth quarter and fiscal year 2006 results with investors in a call to be held later today (Thursday, October 26) at 3 p.m. Eastern Time. The dial-in numbers for the call are 877-502-9272 or 913-981-5591. The numbers for a replay of the conference call are 888-203-1112 or 719-457-0820 and will be available through Sunday, November 26, 2006. The pass code is 9800451. The call and a replay will also be available on the internet for 30 days at www.alberto.com in the Investing Section, and at www.earnings.com.

The Company has called a special meeting of its stockholders to be held at 10 a.m. Central Time on Friday, November 10, 2006, at its headquarters in Melrose Park, Illinois. The purpose of the special meeting is to consider and vote upon a proposal to approve the previously announced transaction whereby Alberto-Culver would separate its consumer products business and its Sally/BSG distribution business into two separate publicly traded companies.

Holders of record of Alberto-Culver common stock as of October 3, 2006, the record date for the special meeting, are entitled to notice of and to vote at the special meeting.

Alberto-Culver Company manufactures, distributes and markets leading personal care products including *Alberto VO5, St. Ives*, *TRESemmé* and *Nexxus* in the United States and internationally. Several of its household/grocery products such as *Mrs. Dash* and *Static Guard* are niche category leaders in the U.S. Its Pro-Line International unit is the second largest producer in the world of products for the ethnic hair care market with leading brands including *Motions* and *Soft & Beautiful*. Its Cederroth International unit is a major consumer goods marketer in the Nordic countries. Sally Beauty Company is the world s number one marketer of professional beauty care products through its chain of domestic and international Sally stores. Beauty Systems Group is a network of stores and professional sales consultants selling exclusive professional beauty care brands such as *Matrix, Redken, Paul Mitchell, Wella, L Oreal, Graham Webb* and *Sebastian* exclusively to salon owners, salon professionals and franchisees.

This press release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements are based upon the current beliefs and expectations of Alberto-Culver s management and are subject to significant risks and uncertainties. Actual results may differ from those set forth in the forward-looking statements. The following factors, among others, could cause actual results to differ from those set forth in the forward-looking statements: risks inherent in acquisitions, divestitures and strategic alliances; the pattern of brand sales; loss of distributorship rights; competition within the relevant product markets; loss of one or more key employees; sales by unauthorized distributors in Alberto-Culver Company s exclusive markets; the effects of a prolonged United States or global economic downturn or recession; changes in costs; the costs and effects of unanticipated legal or administrative proceedings; health epidemics; adverse weather conditions; and variations in political, economic or other factors such as currency exchange rates, inflation rates, interest rates, tax changes, legal and regulatory changes or other external factors over which Alberto-Culver has no control. In addition, the following factors, among others, could cause actual results to differ from those set forth in the forward-looking statements with respect to the benefits of the proposed transaction involving Alberto-Culver and CD&R, which will separate Alberto-Culver s consumer products business and its Sally/BSG beauty supply distribution business: the failure of Alberto-Culver shareholders to approve the transaction; the risk that the businesses will not be separated successfully or cost effectively; disruption from the transaction making it more difficult to maintain relationships with clients, employees or suppliers; inability to satisfy all of the closing conditions to complete the transaction; and events that negatively affect the intended tax free nature of the portion of the transaction related to the distribution of shares of a new company formed to hold the consumer products business of Alberto-Culver. These forward-looking statements speak only as of the date of this press release, and

there is no undertaking to update or revise them as more information becomes available. Additional factors that could cause Alberto-Culver s results to differ materially from those described in the forward-looking statements can be found in the Company s 2005 Annual Report on Form 10-K and the Proxy Statement/Prospectus-Information Statement filed by Alberto-Culver on October 13, 2006, in each case on file with the SEC and available at the SEC s internet site (http://www.sec.gov).

Additional Information and Where to Find It

In connection with the proposed transaction, New Sally Holdings, Inc. has filed a registration statement on Form S-4 (Registration No. 333-136259) with the Securities and Exchange Commission (SEC), which was declared effective on October 11, 2006. The registration statement contains a definitive proxy statement/prospectus-information statement, which was mailed to stockholders of Alberto-Culver on or about October 13, 2006. Investors are urged to carefully read the definitive proxy statement/prospectus-information statement and any other relevant documents filed with the SEC because they contain important information. Investors are able to get the definitive proxy statement/prospectus-information statement and all relevant documents filed by Alberto-Culver Company, New Sally or New Aristotle Holdings, Inc. with the SEC free of charge at the SEC s website www.sec.gov or from Alberto-Culver Investor Relations at 2525 Armitage Avenue, Melrose Park, IL 60160, (708) 450-3117.

Participants in the Solicitation

The directors, executive officers and other members of management and employees of Alberto-Culver Company may be deemed to be participants in the solicitation of proxies from its shareholders in favor of the transactions. Information concerning persons who may be considered participants in the solicitation of Alberto-Culver Company s shareholders under the rules of the SEC is set forth in public filings filed by Alberto-Culver Company with the SEC and are set forth in the definitive proxy statement/prospectus-information statement. Information concerning Alberto-Culver Company s participants in the solicitation is contained in Alberto-Culver Company s Proxy Statement on Schedule 14A, filed with the SEC on December 13, 2005.

Consolidated Condensed Statements of Earnings (Unaudited)

(in thousands, except per share data)

Three Months Ended September 30, 2006 and 2005	**2006**	**2005**
Net sales	**$ 974,251**	900,743
Cost of products sold (1)	**512,889**	471,875
Gross profit	**461,362**	428,868
Advertising, marketing, selling and administrative (1) (2)	**357,514**	331,479
Sally transaction expenses (3)	**2,200**	1,456
Non-cash charge related to conversion to one class of common stock	**1**	3,449
Operating earnings	**101,647**	92,484
Interest expense, net	**546**	1,765
Earnings before income taxes	**101,101**	90,719
Provision for income taxes	**35,258**	31,751
Net earnings	**$ 65,843**	58,968
Net earnings per share:		
Basic	**$ .71**	.64
Diluted	**$ .70**	.63
Weighted average shares outstanding:		
Basic	**92,899**	91,790
Diluted	**94,003**	93,019

Twelve Months Ended September 30, 2006 and 2005	**2006**	**2005**
Net sales	**$ 3,772,001**	3,531,231
Cost of products sold (1)	**1,948,889**	1,844,383
Gross profit	**1,823,112**	1,686,848
Advertising, marketing, selling and administrative (1) (2)	**1,451,920**	1,338,683
Sally transaction expenses (3)	**58,756**	1,456
Non-cash charge related to conversion to one class of common stock	**4**	14,507
Operating earnings	**312,432**	332,202
Interest expense, net	**4,146**	7,739
Earnings before income taxes	**308,286**	324,463
Provision for income taxes	**102,965**	113,562
Net earnings	**$ 205,321**	210,901
Net earnings per share:		
Basic	**$ 2.22**	2.31
Diluted	**$ 2.20**	2.27
Weighted average shares outstanding:		
Basic	**92,426**	91,451

Diluted	**93,485**	92,838

(1) The company reclassified certain shipping and handling expenses for the Beauty Supply Distribution business from advertising, marketing, selling and administrative expenses to cost of products sold for all periods presented. The reclassifications had no effect on earnings.

(2) Advertising, marketing, selling and administrative expenses include $3,015 and $15,949 of stock option expense recorded during the fourth quarter and the twelve months of fiscal year 2006, respectively, in accordance with SFAS No. 123 (R), which was adopted effective October 1, 2005.

(3) Transaction expenses for the fourth quarter of fiscal year 2006 include legal fees incurred in connection with the proposed separation of consumer products and Sally/BSG involving Clayton, Dubilier & Rice. Transaction expenses for the twelve months of fiscal year 2006 include a $50 million fee paid to Regis Corporation in connection with the terminated spin/merge of Sally Holdings, Inc., and legal and investment banking fees incurred in connection with the terminated spin/merge transaction with Regis and the proposed separation transaction involving Clayton, Dubilier & Rice.

Consolidated Condensed Balance Sheets (Unaudited)

(in thousands)

	September 30	
	2006	**2005**
Assets		
Cash, cash equivalents and short-term investments	**$ 305,950**	168,491
Accounts receivable, net	**311,284**	285,940
Inventories	**754,647**	689,692
Other current assets	**56,920**	45,501
Total current assets	**1,428,801**	1,189,624
Property, plant and equipment, net	**354,026**	335,400
Goodwill and trade names	**711,314**	687,526
Other assets, net	**88,456**	89,573
Total assets	**$ 2,582,597**	2,302,123
Liabilities and Stockholders Equity		
Current maturities of long-term debt	**$ 1,088**	809
Accounts payable, accrued expenses and income taxes	**589,760**	535,121
Total current liabilities	**590,848**	535,930
Long-term debt	**122,322**	124,084
Other liabilities and deferred taxes	**110,498**	110,487
Total liabilities	**823,668**	770,501
Stock options subject to redemption	**29,148**	
Stockholders equity	**1,729,781**	1,531,622
Total liabilities and stockholders equity	**$ 2,582,597**	2,302,123

Segment Data (Unaudited)

(in thousands)

Three Months Ended September 30, 2006 and 2005	**2006**	**2005**
Net Sales:		
Global Consumer Products	**$ 376,757**	342,768
Beauty Supply Distribution:		
Sally Beauty Supply	**359,317**	338,813
Beauty Systems Group	**246,793**	227,534
Total	**606,110**	566,347
Eliminations	**(8,616)**	(8,372)
	$ 974,251	900,743
Earnings Before Income Taxes:		
Global Consumer Products	**$ 51,862**	44,159
Beauty Supply Distribution:		
Sally Beauty Supply	**43,462**	40,718
Beauty Systems Group	**14,869**	14,099
Total	**58,331**	54,817
Segment operating profit	**110,193**	98,976
Unallocated expenses	**(3,330)**	(1,587)
Stock option expense (1)	**(3,015)**	
Sally transaction expenses (2)	**(2,200)**	(1,456)
Non-cash charge related to conversion to one class of common stock	**(1)**	(3,449)
Interest expense, net		

The following summary of material provisions of the debt securities and the indenture is subject to, and qualified in its entirety by reference to, all of the provisions of the indenture applicable to a particular series of debt securities. We urge you to read the applicable prospectus supplements and any related free writing prospectuses related to the debt securities that we may offer under this prospectus, as well as the complete indenture that contains the terms of the debt securities.

General

The indenture does not limit the amount of debt securities that we may issue. It provides that we may issue debt securities up to the principal amount that we may authorize and may be in any currency or currency unit that we may designate. Except for the limitations on consolidation, merger and sale of all or substantially all of our assets contained in the indenture, the terms of the indenture do not contain any covenants or other provisions designed to give holders of any debt securities protection against changes in our operations, financial condition or transactions involving us.

We may issue the debt securities issued under the indenture as discount securities, which means

they may be sold at a discount below their stated principal amount. These debt securities, as well as other debt securities that are not issued at a discount, may be issued with original issue discount, or OID, for U.S. federal income tax purposes because of interest payment and other characteristics or terms of the debt securities. Material U.S. federal income tax considerations applicable to debt securities issued with OID will be described in more detail in any applicable prospectus supplement.

We will describe in the applicable prospectus supplement the terms of the series of debt securities being offered, including:

the title of the series of debt securities;

any limit upon the aggregate principal amount that may be issued;

the maturity date or dates;

the form of the debt securities of the series;

the applicability of any guarantees;

whether or not the debt securities will be secured or unsecured, and the terms of any secured debt;

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whether the debt securities rank as senior debt, senior subordinated debt, subordinated debt or any combination thereof, and the terms of any subordination;

if the price (expressed as a percentage of the aggregate principal amount thereof) at which such debt securities will be issued is a price other than the principal amount thereof, the portion of the principal amount thereof payable upon declaration of acceleration of the maturity thereof, or if applicable, the portion of the principal amount of such debt securities that is convertible into another security or the method by which any such portion shall be determined;

the interest rate or rates, which may be fixed or variable, or the method for determining the rate and the date interest will begin to accrue, the dates interest will be payable and the regular record dates for interest payment dates or the method for determining such dates;

our right, if any, to defer payment of interest and the maximum length of any such deferral period;

if applicable, the date or dates after which, or the period or periods during which, and the price or prices at which, we may, at our option, redeem the series of debt securities pursuant to any optional or provisional redemption provisions and the terms of those redemption provisions;

the date or dates, if any, on which, and the price or prices at which we are obligated, pursuant to any mandatory sinking fund or analogous fund provisions or otherwise, to redeem, or at the holder s option to purchase, the series of debt securities and the currency or currency unit in which the debt securities are payable;

the denominations in which we will issue the series of debt securities, if other than denominations of $1,000 and any integral multiple thereof;

any and all terms, if applicable, relating to any auction or remarketing of the debt securities of that series and any security for our obligations with respect to such debt securities and any other terms which may be advisable in connection with the marketing of debt securities of that series;

whether the debt securities of the series shall be issued in whole or in part in the form of a global security or securities; the terms and conditions, if any, upon which such global security or securities may be exchanged in whole or in part for other individual securities; and the depositary for such global security or securities;

if applicable, the provisions relating to conversion or exchange of any debt securities of the series and the terms and conditions upon which such debt securities will be so convertible or exchangeable, including the conversion or exchange price, as applicable, or how it will be calculated and may be adjusted, any mandatory or optional (at our option or the holders option) conversion or exchange features, the applicable conversion or exchange period and the manner of settlement for any conversion or exchange;

if other than the full principal amount thereof, the portion of the principal amount of debt securities of the series which shall be payable upon declaration of acceleration of the maturity thereof;

additions to or changes in the covenants applicable to the particular debt securities being issued, including, among others, the consolidation, merger or sale covenant;

additions to or changes in the events of default with respect to the securities and any change in the right of the trustee or the holders to declare the principal, premium, if any, and interest, if any, with respect to such securities to be due and payable;

additions to or changes in or deletions of the provisions relating to covenant defeasance and legal defeasance;

additions to or changes in the provisions relating to satisfaction and discharge of the indenture;

additions to or changes in the provisions relating to the modification of the indenture both with and without the consent of holders of debt securities issued under the indenture;

the currency of payment of debt securities if other than U.S. dollars and the manner of determining the equivalent amount in U.S. dollars;

whether interest will be payable in cash or additional debt securities at our or the holders option and the terms and conditions upon which the election may be made;

the terms and conditions, if any, upon which we will pay amounts in addition to the stated interest, premium, if any and principal amounts of the debt securities of the series to any holder that is not a United States person for federal tax purposes;

any restrictions on transfer, sale or assignment of the debt securities of the series; and

any other specific terms, preferences, rights or limitations of, or restrictions on, the debt securities, any other additions or changes in the provisions of the indenture, and any terms that may be required by us or advisable under applicable laws or regulations.

Conversion or Exchange Rights

We will set forth in the prospectus supplement the terms on which a series of debt securities may be convertible into or exchangeable for our common stock or our other securities. We will include provisions as to settlement upon conversion or exchange and whether conversion or exchange is mandatory, at the option of the holder or at our option. We may include provisions pursuant to which the number of shares of our common stock or our other securities that the holders of the series of debt securities receive would be subject to adjustment.

Consolidation, Merger or Sale

Unless we provide otherwise in the prospectus supplement applicable to a particular series of debt securities, the indenture will not contain any covenant that restricts our ability to merge or consolidate, or sell, convey, transfer or otherwise dispose of our assets as an entirety or substantially as an entirety. However, any successor to or acquirer of such assets (other than a subsidiary of ours) must assume all of our obligations under the indenture or the debt securities, as appropriate.

Events of Default under the Indenture

Unless we provide otherwise in the prospectus supplement applicable to a particular series of debt securities, the following are events of default under the indenture with respect to any series of debt securities that we may issue:

- if we fail to pay any installment of interest on any series of debt securities, as and when the same shall become due and payable, and such default continues for a period of 90 days; provided, however, that a valid extension of an interest payment period by us in accordance with the terms of any indenture supplemental thereto shall not constitute a default in the payment of interest for this purpose;

- if we fail to pay the principal of, or premium, if any, on any series of debt securities as and when the same shall become due and payable whether at maturity, upon redemption, by declaration or otherwise, or in any payment required by any sinking or analogous fund established with respect to such series; provided, however, that a valid extension of the maturity of such debt securities in accordance with the terms of any indenture supplemental thereto shall not constitute a default in the payment of principal or premium, if any;

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- if we fail to observe or perform any other covenant or agreement contained in the debt securities or the indenture, other than a covenant specifically relating to another series of debt securities, and our failure continues for 90 days after we receive written notice of such failure, requiring the same to be remedied and stating that such is a notice of default thereunder, from the trustee or holders of at least 25% in aggregate principal amount of the outstanding debt securities of the applicable series; and

- if specified events of bankruptcy, insolvency or reorganization occur.

If an event of default with respect to debt securities of any series occurs and is continuing, other than an event of default specified in the last bullet point above, the trustee or the holders of at least 25% in aggregate principal amount of the outstanding debt securities of that series, by notice to us in writing, and to the trustee if notice is given by such holders, may declare the unpaid principal of, premium, if any, and accrued interest, if any, due and payable immediately. If an event of default specified in the last bullet point above occurs with respect to us, the principal amount of and accrued interest, if any, of each issue of debt securities then outstanding shall be due and payable without any notice or other action on the part of the trustee or any holder.

The holders of a majority in principal amount of the outstanding debt securities of an affected series may waive any default or event of default with respect to the series and its consequences, except defaults or events of default regarding payment of principal, premium, if any, or interest, unless we have cured the default or event of default in accordance with the indenture. Any waiver shall cure the default or event of default.

Subject to the terms of the indenture, if an event of default under an indenture shall occur and be continuing, the trustee will be under no obligation to exercise any of its rights or powers under such indenture at the request or direction of any of the holders of the applicable series of debt securities, unless such holders have offered the trustee reasonable indemnity. The holders of a majority in principal amount of the outstanding debt securities of any series will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee, or exercising any trust or power conferred on the trustee, with respect to the debt securities of that series, provided that:

- the direction so given by the holder is not in conflict with any law or the applicable indenture; and

- subject to its duties under the Trust Indenture Act, the trustee need not take any action that might involve it in personal liability or might be unduly prejudicial to the holders not involved in the proceeding.

A holder of the debt securities of any series will have the right to institute a proceeding under the indenture or to appoint a receiver or trustee, or to seek other remedies only if:

- the holder has given written notice to the trustee of a continuing event of default with respect to that series;

- the holders of at least 25% in aggregate principal amount of the outstanding debt securities of that series have made written request;

- such holders have offered to the trustee indemnity satisfactory to it against the costs, expenses and liabilities to be incurred by the trustee in compliance with the request; and

- the trustee does not institute the proceeding, and does not receive from the holders of a majority in aggregate principal amount of the outstanding debt securities of that series other conflicting directions within 90 days after the notice, request and offer.

These limitations do not apply to a suit instituted by a holder of debt securities if we default in the payment of the principal, premium, if any, or interest on, the debt securities.

We will periodically file statements with the trustee regarding our compliance with specified covenants in the indenture.

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Modification of Indenture; Waiver

We and the trustee may change an indenture without the consent of any holders with respect to specific matters:

to cure any ambiguity, defect or inconsistency in the indenture or in the debt securities of any series;

to comply with the provisions described above under Description of Debt Securities-Consolidation, Merger or Sale;

to provide for uncertificated debt securities in addition to or in place of certificated debt securities;

to add to our covenants, restrictions, conditions or provisions such new covenants, restrictions, conditions or provisions for the benefit of the holders of all or any series of debt securities, to make the occurrence, or the occurrence and the continuance, of a default in any such additional covenants, restrictions, conditions or provisions an event of default or to surrender any right or power conferred upon us in the indenture;

to add to, delete from or revise the conditions, limitations, and restrictions on the authorized amount, terms, or purposes of issue, authentication and delivery of debt securities, as set forth in the indenture;

to make any change that does not adversely affect the interests of any holder of debt securities of any series in any material respect;

to provide for the issuance of and establish the form and terms and conditions of the debt securities of any series as provided above under Description of Debt Securities-General to establish the form of any certifications required to be furnished pursuant to the terms of the indenture or any series of debt securities, or to add to the rights of the holders of any series of debt securities;

to evidence and provide for the acceptance of appointment under any indenture by a successor trustee; or

to comply with any requirements of the SEC in connection with the qualification of any indenture under the Trust Indenture Act.

In addition, under the indenture, the rights of holders of a series of debt securities may be changed by us and the trustee with the written consent of the holders of a majority in aggregate principal amount of the outstanding debt securities of each series that is affected. However, unless we provide otherwise in the prospectus supplement applicable to a particular series of debt securities, we and the trustee may make the following changes only with the consent of each holder of any outstanding debt securities affected:

- extending the fixed maturity of any debt securities of any series;
- reducing the principal amount, reducing the rate of or extending the time of payment of interest, or reducing any premium payable upon the redemption of any series of any debt securities; or
- reducing the percentage of debt securities, the holders of which are required to consent to any amendment, supplement, modification or waiver.

Discharge

Each indenture provides that we can elect to be discharged from our obligations with respect to one or more series of debt securities, except for specified obligations, including obligations to:

- provide for payment;

- register the transfer or exchange of debt securities of the series;
- replace stolen, lost or mutilated debt securities of the series;
- pay principal of and premium and interest on any debt securities of the series;
- maintain paying agencies;
- hold monies for payment in trust;
- recover excess money held by the trustee;
- compensate and indemnify the trustee; and
- appoint any successor trustee.

In order to exercise our rights to be discharged, we must deposit with the trustee money or government obligations sufficient to pay all the principal of, any premium, if any, and interest on, the debt securities of the series on the dates payments are due.

Form, Exchange and Transfer

We will issue the debt securities of each series only in fully registered form without coupons and, unless we provide otherwise in the applicable prospectus supplement, in denominations of $1,000 and any integral multiple thereof. The indenture provides that we may issue debt securities of a series in temporary or permanent global form and as book-entry securities that will be deposited with, or on behalf of, The Depository Trust Company, or DTC, or another depositary named by us and identified in a prospectus supplement with respect to that series. To the extent the debt securities of a series are issued in global form and as book-entry, a description of terms relating to any book-entry securities will be set forth in the applicable prospectus supplement.

At the option of the holder, subject to the terms of the indenture and the limitations applicable to global securities described in the applicable prospectus supplement, the holder of the debt securities of any series can exchange the debt securities for other debt securities of the same series, in any authorized denomination and of like tenor and aggregate principal amount.

Subject to the terms of the indenture and the limitations applicable to global securities set forth in the applicable prospectus supplement, holders of the debt securities may present the debt securities for exchange or for registration of transfer, duly endorsed or with the form of transfer endorsed thereon duly executed if so required by us or the security registrar, at the office of the security registrar or at the office of any transfer agent designated by us for this purpose. Unless

otherwise provided in the debt securities that the holder presents for transfer or exchange, we will impose no service charge for any registration of transfer or exchange, but we may require payment of any taxes or other governmental charges.

We will name in the applicable prospectus supplement the security registrar, and any transfer agent in addition to the security registrar, that we initially designate for any debt securities. We may at any time designate additional transfer agents or rescind the designation of any transfer agent or approve a change in the office through which any transfer agent acts, except that we will be required to maintain a transfer agent in each place of payment for the debt securities of each series.

If we elect to redeem the debt securities of any series, we will not be required to:

- issue, register the transfer of, or exchange any debt securities of that series during a period beginning at the opening of business 15 days before the day of mailing of a notice of redemption of any debt securities that may be selected for redemption and ending at the close of business on the day of the mailing; or

- register the transfer of or exchange any debt securities so selected for redemption, in whole or in part, except the unredeemed portion of any debt securities we are redeeming in part.

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Information Concerning the Trustee

The trustee, other than during the occurrence and continuance of an event of default under an indenture, undertakes to perform only those duties as are specifically set forth in the applicable indenture. Upon an event of default under an indenture, the trustee must use the same degree of care as a prudent person would exercise or use in the conduct of his or her own affairs. Subject to this provision, the trustee is under no obligation to exercise any of the powers given it by the indenture at the request of any holder of debt securities unless it is offered reasonable security and indemnity against the costs, expenses and liabilities that it might incur.

Payment and Paying Agents

Unless we otherwise indicate in the applicable prospectus supplement, we will make payment of the interest on any debt securities on any interest payment date to the person in whose name the debt securities, or one or more predecessor securities, are registered at the close of business on the regular record date for the interest.

We will pay principal of and any premium and interest on the debt securities of a particular series at the office of the paying agents designated by us, except that unless we otherwise indicate in the applicable prospectus supplement, we will make interest payments by check that we will mail to the holder or by wire transfer to certain holders. Unless we otherwise indicate in the applicable prospectus supplement, we will designate the corporate trust office of the trustee as our sole paying agent for payments with respect to debt securities of each series. We will name in the applicable prospectus supplement any other paying agents that we initially designate for the debt securities of a particular series. We will maintain a paying agent in each place of payment for the debt securities of a particular series.

All money we pay to a paying agent or the trustee for the payment of the principal of or any premium or interest on any debt securities that remains unclaimed at the end of two years after such principal, premium or interest has become due and payable will be repaid to us, and the holder of the debt security thereafter may look only to us for payment thereof.

Governing Law

The indenture and the debt securities will be governed by and construed in accordance with the laws of the State of New York, except to the extent that the Trust Indenture Act of 1939 is applicable.

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DESCRIPTION OF WARRANTS

The following description, together with the additional information we may include in any applicable prospectus supplements, summarizes the material terms and provisions of the warrants that we may offer under this prospectus and the related warrant agreements and warrant certificates. While the terms summarized below will apply generally to any warrants that we may offer, we will describe the particular terms of any series of warrants in more detail in the applicable prospectus supplement. If we indicate in the prospectus supplement, the terms of any warrants offered under that prospectus supplement may differ from the terms described below. However, no prospectus supplement shall fundamentally change the terms that are set forth in this prospectus or offer a security that is not registered and described in this prospectus at the time of its effectiveness. Specific warrant agreements will contain additional important terms and provisions and will be incorporated by reference as an exhibit to the registration statement that includes this prospectus or as an exhibit to a report that we file with the SEC.

General

We will describe in the applicable prospectus supplement the terms of the series of warrants, including:

- the offering price and aggregate number of warrants offered;
- the currency for which the warrants may be purchased;
- if applicable, the designation and terms of the securities with which the warrants are issued and the number of warrants issued with each such security or each principal amount of such security;
- if applicable, the date on and after which the warrants and the related securities will be separately transferable;
- in the case of warrants to purchase debt securities, the principal amount of debt securities purchasable upon exercise of one warrant and the price at, and currency in which, this principal amount of debt securities may be purchased upon such exercise;
- in the case of warrants to purchase common stock or preferred stock, the number of shares of common stock or preferred stock, as the case may be, purchasable upon the exercise of one warrant and the price at which these shares may be purchased upon such exercise;

the effect of any merger, consolidation, sale or other disposition of our business on the warrant agreements and the warrants;

the terms of any rights to redeem or call the warrants;

any provisions for changes to or adjustments in the exercise price or number of securities issuable upon exercise of the warrants;

the dates on which the right to exercise the warrants will commence and expire;

the manner in which the warrant agreements and warrants may be modified;

any material or special U.S. federal income tax consequences of holding or exercising the warrants;

the terms of the securities issuable upon exercise of the warrants; and

any other specific terms, preferences, rights or limitations of or restrictions on the warrants.

Before exercising their warrants, holders of warrants will not have any of the rights of holders of the securities purchasable upon such exercise, including:

- in the case of warrants to purchase debt securities, the right to receive payments of principal of, or premium, if any, or interest on, the debt securities purchasable upon exercise or to enforce covenants in the applicable indenture; or
- in the case of warrants to purchase common stock or preferred stock, the right to receive dividends, if any, or payments upon our liquidation, dissolution or winding up or to exercise voting rights, if any.

Exercise of Warrants

Each warrant will entitle the holder to purchase the securities that we specify in the applicable prospectus supplement at the exercise price that we describe in the applicable prospectus supplement. Unless we otherwise specify in the applicable prospectus supplement, holders of the warrants may exercise the warrants at any time up to 5:00 P.M. Eastern Time on the expiration date that we set forth in the applicable prospectus supplement. After the close of business on the expiration date, unexercised warrants will become void.

Holders of the warrants may exercise the warrants by delivering the warrant certificate representing the warrants to be exercised together with specified information, and paying the required amount to the warrant agent in immediately available funds, as provided in the applicable prospectus supplement. We will set forth on the reverse side of the warrant certificate and in the applicable prospectus supplement the information that the holder of the warrant will be required to deliver to the warrant agent.

Upon receipt of the required payment and the warrant certificate properly completed and duly executed at the corporate trust office of the warrant agent or any other office indicated in the applicable prospectus supplement, we will issue and deliver the securities purchasable upon such exercise. If fewer than all of the warrants represented by the warrant certificate are exercised, then we will issue a new warrant certificate for the remaining amount of warrants. If we so indicate in the applicable prospectus supplement, holders of the warrants may surrender securities as all or part of the exercise price for warrants.

Enforceability of Rights by Holders of Warrants

Each warrant agent will act solely as our agent under the applicable warrant agreement and will not assume any obligation or relationship of agency or trust with any holder of any warrant. A single bank or trust company may act as warrant agent for more than one issue of warrants. A warrant agent will have no duty or responsibility in case of any default by us under the applicable warrant agreement or warrant, including any duty or responsibility to initiate any proceedings at law or otherwise, or to make any demand upon us. Any holder of a warrant may, without the consent of the related warrant agent or the holder of any other warrant, enforce by appropriate legal action its right to exercise, and receive the securities purchasable upon exercise of, its warrants.

Outstanding Warrants

As of April 3, 2014, there were outstanding warrants to purchase 9,380,128 shares of our common stock, having an exercise price ranging from $1.60 to $116.89, with a weighted average exercise price per share of $2.34. Any of the outstanding warrants may be exercised by applying the value of a portion of the warrant, which is equal to the number of shares issuable under the warrant being exercised multiplied by the fair market value of the security receivable upon the exercise of the warrant, less the per share price, in lieu of payment of the exercise price per share. The warrants will expire at various times between April 2016 and January 2020.

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LEGAL OWNERSHIP OF SECURITIES

We can issue securities in registered form or in the form of one or more global securities. We describe global securities in greater detail below. We refer to those persons who have securities registered in their own names on the books that we or any applicable trustee, depositary or warrant agent maintain for this purpose as the holders of those securities. These persons are the legal holders of the securities. We refer to those persons who, indirectly through others, own beneficial interests in securities that are not registered in their own names, as indirect holders of those securities. As we discuss below, indirect holders are not legal holders, and investors in securities issued in book-entry form or in street name will be indirect holders.

Book-Entry Holders

We may issue securities in book-entry form only, as we will specify in the applicable prospectus supplement. This means securities may be represented by one or more global securities registered in the name of a financial institution that holds them as depositary on behalf of other financial institutions that participate in the depositary s book-entry system. These participating institutions, which are referred to as participants, in turn, hold beneficial interests in the securities on behalf of themselves or their customers.

Only the person in whose name a security is registered is recognized as the holder of that security. Securities issued in global form will be registered in the name of the depositary or its participants. Consequently, for securities issued in global form, we will recognize only the depositary as the holder of the securities, and we will make all payments on the securities to the depositary. The depositary passes along the payments it receives to its participants, which in turn pass the payments along to their customers who are the beneficial owners. The depositary and its participants do so under agreements they have made with one another or with their customers; they are not obligated to do so under the terms of the securities.

As a result, investors in a book-entry security will not own securities directly. Instead, they will own beneficial interests in a global security, through a bank, broker or other financial institution that participates in the depositary s book-entry system or holds an interest through a participant. As long as the securities are issued in global form, investors will be indirect holders, and not holders, of the securities.

Street Name Holders

We may terminate a global security or issue securities in non-global form. In these cases, investors may choose to hold their securities in their own names or in street name. Securities held by an investor in street name would be registered in the name of a bank, broker or other financial institution that the investor chooses, and the investor would hold only a beneficial interest in those securities through an account he or she maintains at that institution.

For securities held in street name, we will recognize only the intermediary banks, brokers and other financial institutions in whose names the securities are registered as the holders of those securities, and we will make all payments on those securities to them. These institutions pass along the payments they receive to their customers who are the beneficial owners, but only because they agree to do so in their customer agreements or because they are legally required to

do so. Investors who hold securities in street name will be indirect holders, not holders, of those securities.

Legal Holders

Our obligations, as well as the obligations of any applicable trustee and of any third parties employed by us or a trustee, run only to the legal holders of the securities. We do not have obligations to investors who hold beneficial interests in global securities, in street name or by any other indirect means. This will be the case whether an investor chooses to be an indirect holder of a security or has no choice because we are issuing the securities only in global form.

For example, once we make a payment or give a notice to the holder, we have no further responsibility for the payment or notice even if that holder is required, under agreements with depositary participants or customers or by law, to pass it along to the indirect holders but does not do so. Similarly, we may want to obtain the approval of the holders to amend an indenture, to relieve us of the consequences of a default or of our obligation to comply with a particular provision of the indenture or for other purposes. In such an event, we would seek approval only from the holders, and not the indirect holders, of the securities. Whether and how the holders contact the indirect holders is up to the holders.

Special Considerations for Indirect Holders

If you hold securities through a bank, broker or other financial institution, either in book-entry form or in street name, you should check with your own institution to find out:

- the performance of third party service providers;
- how it handles securities payments and notices;
- whether it imposes fees or charges;
- how it would handle a request for the holders consent, if ever required;
- whether and how you can instruct it to send you securities registered in your own name so you can be a holder, if that is permitted in the future;
- how it would exercise rights under the securities if there were a default or other event triggering the need for holders to act to protect their interests; and
- if the securities are in book-entry form, how the depositary s rules and procedures will affect these matters.

Global Securities

A global security is a security that represents one or any other number of individual securities held by a depositary. Generally, all securities represented by the same global securities will have the same terms.

Each security issued in book-entry form will be represented by a global security that we deposit with and register in the name of a financial institution or its nominee that we select. The financial institution that we select for this purpose is called the depositary. Unless we specify

otherwise in the applicable prospectus supplement, DTC will be the depositary for all securities issued in book-entry form.

A global security may not be transferred to or registered in the name of anyone other than the depositary, its nominee or a successor depositary, unless special termination situations arise. We describe those situations below under the section entitled Special Situations When a Global Security Will Be Terminated in this prospectus. As a result of these arrangements, the depositary, or its nominee, will be the sole registered owner and holder of all securities represented by a global security, and investors will be permitted to own only beneficial interests in a global security. Beneficial interests must be held by means of an account with a broker, bank or other financial institution that in turn has an account with the depositary or with another institution that does. Thus, an investor whose security is represented by a global security will not be a holder of the security, but only an indirect holder of a beneficial interest in the global security.

If the prospectus supplement for a particular security indicates that the security will be issued in global form only, then the security will be represented by a global security at all times unless and until the global security is terminated. If termination occurs, we may issue the securities through another book-entry clearing system or decide that the securities may no longer be held through any book-entry clearing system.

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Special Considerations for Global Securities

The rights of an indirect holder relating to a global security will be governed by the account rules of the investor s financial institution and of the depositary, as well as general laws relating to securities transfers. We do not recognize an indirect holder as a holder of securities and instead deal only with the depositary that holds the global security.

If securities are issued only in the form of a global security, an investor should be aware of the following:

- an investor cannot cause the securities to be registered in his or her name, and cannot obtain non-global certificates for his or her interest in the securities, except in the special situations we describe below;

- an investor will be an indirect holder and must look to his or her own bank or broker for payments on the securities and protection of his or her legal rights relating to the securities, as we describe above;

- an investor may not be able to sell interests in the securities to some insurance companies and to other institutions that are required by law to own their securities in non-book-entry form;

- an investor may not be able to pledge his or her interest in a global security in circumstances where certificates representing the securities must be delivered to the lender or other beneficiary of the pledge in order for the pledge to be effective;

- the depositary s policies, which may change from time to time, will govern payments, transfers, exchanges and other matters relating to an investor s interest in a global security;

- we and any applicable trustee have no responsibility for any aspect of the depositary s actions or for its records of ownership interests in a global security, nor do we or any applicable trustee supervise the depositary in any way;

- the depositary may, and we understand that DTC will, require that those who purchase and sell interests in a global security within its book-entry system use immediately available funds, and your broker or bank may require you to do so as well; and

financial institutions that participate in the depositary s book-entry system, and through which an investor holds its interest in a global security, may also have their own policies affecting payments, notices and other matters relating to the securities.

There may be more than one financial intermediary in the chain of ownership for an investor. We do not monitor and are not responsible for the actions of any of those intermediaries.

Special Situations When a Global Security Will Be Terminated

In a few special situations described below, the global security will terminate and interests in it will be exchanged for physical certificates representing those interests. After that exchange, the choice of whether to hold securities directly or in street name will be up to the investor. Investors must consult their own banks or brokers to find out how to have their interests in securities transferred to their own name, so that they will be direct holders. We have described the rights of holders and street name investors above.

Unless we provide otherwise in the applicable prospectus supplement, the global security will terminate when the following special situations occur:

- if the depositary notifies us that it is unwilling, unable or no longer qualified to continue as depositary for that global security and we do not appoint another institution to act as depositary within 90 days;
- if we notify any applicable trustee that we wish to terminate that global security; or
- if an event of default has occurred with regard to securities represented by that global security and has not been cured or waived.

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The applicable prospectus supplement may also list additional situations for terminating a global security that would apply only to the particular series of securities covered by the applicable prospectus supplement. When a global security terminates, the depositary, and not we or any applicable trustee, is responsible for deciding the names of the institutions that will be the initial direct holders.

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PLAN OF DISTRIBUTION

We may sell the securities from time to time pursuant to underwritten public offerings, negotiated transactions, block trades or a combination of these methods. We may sell the securities to or through underwriters or dealers, through agents, or directly to one or more purchasers. We may distribute securities from time to time in one or more transactions:

- at a fixed price or prices, which may be changed;
- at market prices prevailing at the time of sale;
- at prices related to such prevailing market prices; or
- at negotiated prices.

A prospectus supplement or supplements (and any related free writing prospectus that we may authorize to be provided to you) will describe the terms of the offering of the securities, including, to the extent applicable:

- the name or names of the underwriters, if any;
- the purchase price of the securities or other consideration therefor, and the proceeds, if any, we will receive from the sale;
- any over-allotment options under which underwriters may purchase additional securities from us;
- any agency fees or underwriting discounts and other items constituting agents or underwriters compensation;
- any public offering price;
- any discounts or concessions allowed or reallowed or paid to dealers; and
- any securities exchange or market on which the securities may be listed.

Only underwriters named in the prospectus supplement will be underwriters of the securities offered by the prospectus supplement.

If underwriters are used in the sale, they will acquire the securities for their own account and may resell the securities from time to time in one or more transactions at a fixed public offering price or at varying prices determined at the time of sale. The obligations of the underwriters to purchase the securities will be subject to the conditions set forth in the applicable underwriting agreement. We may offer the securities to the public through underwriting syndicates represented by managing underwriters or by underwriters without a syndicate. Subject to certain conditions, the underwriters will be obligated to purchase all of the securities offered by the prospectus supplement, other than securities covered by any over-allotment option. Any public offering price and any discounts or concessions allowed or reallowed or paid to dealers may change from time to time. We may use underwriters with whom we have a material relationship. We will describe in the prospectus supplement, naming the underwriter, the nature of any such relationship.

We may sell securities directly or through agents we designate from time to time. We will name any agent involved in the offering and sale of securities and we will describe any commissions we will pay the agent in the prospectus supplement. Unless the prospectus supplement states otherwise, our agent will act on a best-efforts basis for the period of its appointment.

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We may authorize agents or underwriters to solicit offers by certain types of institutional investors to purchase securities from us at the public offering price set forth in the prospectus supplement pursuant to delayed delivery contracts providing for payment and delivery on a specified date in the future. We will describe the conditions to these contracts and the commissions we must pay for solicitation of these contracts in the prospectus supplement.

We may provide agents and underwriters with indemnification against civil liabilities, including liabilities under the Securities Act, or contribution with respect to payments that the agents or underwriters may make with respect to these liabilities. Agents and underwriters may engage in transactions with, or perform services for, us in the ordinary course of business.

All securities we may offer, other than common stock, will be new issues of securities with no established trading market. Any underwriters may make a market in these securities, but will not be obligated to do so and may discontinue any market making at any time without notice. We cannot guarantee the liquidity of the trading markets for any securities.

Any underwriter may engage in over-allotment, stabilizing transactions, short-covering transactions and penalty bids in accordance with Regulation M under the Exchange Act. Over-allotment involves sales in excess of the offering size, which create a short position. Stabilizing transactions permit bids to purchase the underlying security so long as the stabilizing bids do not exceed a specified maximum price. Syndicate-covering or other short-covering transactions involve purchases of the securities, either through exercise of the over-allotment option or in the open market after the distribution is completed, to cover short positions. Penalty bids permit the underwriters to reclaim a selling concession from a dealer when the securities originally sold by the dealer are purchased in a stabilizing or covering transaction to cover short positions. Those activities may cause the price of the securities to be higher than it would otherwise be. If commenced, the underwriters may discontinue any of the activities at any time.

Any underwriters that are qualified market makers on The NASDAQ Capital Market may engage in passive market making transactions in the common stock on The NASDAQ Capital Market in accordance with Regulation M under the Exchange Act, during the business day prior to the pricing of the offering, before the commencement of offers or sales of the common stock. Passive market makers must comply with applicable volume and price limitations and must be identified as passive market makers. In general, a passive market maker must display its bid at a price not in excess of the highest independent bid for such security; if all independent bids are lowered below the passive market maker s bid, however, the passive market maker s bid must then be lowered when certain purchase limits are exceeded. Passive market making may stabilize the market price of the securities at a level above that which might otherwise prevail in the open market and, if commenced, may be discontinued at any time.

In compliance with guidelines of the Financial Industry Regulatory Authority, or FINRA, the maximum consideration or discount to be received by any FINRA member or independent broker dealer may not exceed 8% of the aggregate amount of the securities offered pursuant to this prospectus and the applicable prospectus supplement.

LEGAL MATTERS

Unless otherwise indicated in the applicable prospectus supplement, the validity of the securities offered by this prospectus, and any supplement thereto, will be passed upon for us by Cooley LLP, Broomfield, Colorado.

EXPERTS

The consolidated financial statements of ARCA biopharma, Inc. (a development stage enterprise) as of December 31, 2013 and 2012, and for each of the years in the two year period ended December 31, 2013, and for the period from Inception (December 17, 2001) through December 31, 2013, have been incorporated by reference herein and in the registration statement in reliance upon the report of KPMG LLP, independent registered public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing. The audit report covering the December 31, 2013 consolidated financial statements contains an explanatory paragraph that states that the Company s recurring losses from operations and its dependence upon raising additional funds from strategic transactions, sales of equity, and/or issuance of debt raise substantial doubt about the Company s ability to continue as a going concern. The Company s ability to consummate such transactions is uncertain. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

WHERE YOU CAN FIND MORE INFORMATION

This prospectus is part of the registration statement on Form S-3 we filed with the SEC under the Securities Act and does not contain all the information set forth in the registration statement. Whenever a reference is made in this prospectus to any of our contracts, agreements or other documents, the reference may not be complete and you should refer to the exhibits that are a part of the registration statement or the exhibits to the reports or other documents incorporated by reference into this prospectus for a copy of such contract, agreement or other document. Because we are subject to the information and reporting requirements of the Exchange Act, we file annual, quarterly and current reports, proxy statements and other information with the SEC. Our SEC filings are available to the public over the Internet at the SEC s website at http://www.sec.gov, which contains reports, proxy and information statements, and other information regarding issuers that file electronically. You may also read and copy any document we file at the SEC s Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the Public Reference Room. You can find additional information about the company at our website, http://www.arcabiopharma.com.

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INCORPORATION OF CERTAIN INFORMATION BY REFERENCE

The SEC allows us to incorporate by reference information from other documents that we file with it, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be part of this prospectus. Information in this prospectus supersedes information incorporated by reference that we filed with the SEC prior to the date of this prospectus, while information that we file later with the SEC will automatically update and supersede the information in this prospectus. We incorporate by reference into this prospectus and the registration statement of which this prospectus is a part the information or documents listed below that we have filed with the SEC (Commission File No. 000-22873):

- our Annual Report on Form 10-K for the year ended December 31, 2013, filed with the SEC on March 20, 2014;
- our Current Reports on Form 8-K or 8-K/A filed with the SEC on January 8, 2014, February 4, 2014, February 10, 2014, February 12, 2014, February 18, 2014 and March 3, 2014; and
- the description of our common stock set forth in our registration statement on Form 8-A filed with the SEC on July 23, 1997, including any amendments thereto or reports filed for the purpose of updating such description.

We also incorporate by reference any future filings (other than current reports furnished under Item 2.02 or Item 7.01 of Form 8-K and exhibits filed on such form that are related to such items unless such Form 8-K expressly provides to the contrary) made with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, including those made after the date of the initial filing of the registration statement of which this prospectus is a part and prior to effectiveness of such registration statement, until we file a post-effective amendment that indicates the termination of the offering of the securities covered by this prospectus and will become a part of this prospectus from the date that such documents are filed with the SEC. Information in such future filings updates and supplements the information provided in this prospectus. Any statements in any such future filings will automatically be deemed to modify and supersede any information in any document we previously filed with the SEC that is incorporated or deemed to be incorporated herein by reference to the extent that statements in the later filed document modify or replace such earlier statements.

We will furnish without charge to you, on written or oral request, a copy of any or all of the documents incorporated by reference, including exhibits to these documents. You should direct any requests for documents to ARCA biopharma, Inc., Attention: Corporate Secretary, 11080 CirclePoint Road, Suite 140, Westminster, Colorado 80020. Our phone number is (720) 940-2200. In addition, all of the documents incorporated by reference into this prospectus may be accessed via the Internet at our website: http://www.arcabiopharma.com.

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PART II

INFORMATION NOT REQUIRED IN THE PROSPECTUS

Item 14. Other Expenses of Issuance and Distribution

The following table sets forth an itemization of all estimated expenses in connection with the issuance and distribution of the securities being registered.

	Amount to be Paid by Registrant
SEC Registration Fee	$ 9,660
Legal Fees and Expenses	$ 35,000
Accounting Fees and Expenses	$ 10,000
Printing and Miscellaneous	$ 6,000
Total	$ 60,660

Item 15. Indemnification of Directors and Officers

Section 145 of the Delaware General Corporation Law permits indemnification of officers, directors and other corporate agents under certain circumstances and subject to certain limitations. Our Restated Certificate and Bylaws provide that we will indemnify our directors, officers, employees and agents to the full extent permitted by the Delaware General Corporation Law, including in circumstances in which indemnification is otherwise discretionary under Delaware law. In addition, we have entered into indemnification agreements with our directors and officers that require us, among other things, to indemnify them against certain liabilities that may arise by reason of their status or service (other than liabilities arising from willful misconduct of a culpable nature). The indemnification provisions in our Restated Certificate and Bylaws and the indemnification agreements entered into between us and our directors may be sufficiently broad to permit indemnification of our officers and directors for liabilities (including reimbursement of expenses incurred) arising under the Securities Act of 1933, as amended. We also maintain director and officer liability insurance to insure our directors and officers against the cost of defense, settlement or payment of a judgment under certain circumstances.

The underwriting agreement that we may enter into, which is Exhibit 1.1 to this registration statement, may provide for indemnification by any of our underwriters, our board of directors, our officers who sign the registration statement and the our controlling persons for some liabilities, including liabilities arising under the Securities Act.

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Item 16. Exhibits

Exhibit	Description
1.1	Form of Underwriting Agreement (1)
2.1	Agreement and Plan of Merger and Reorganization, dated September 24, 2008, among Nuvelo, Inc., Dawn Acquisition Sub, Inc. and ARCA biopharma, Inc. (5)
2.2	Amendment No. 1 to Agreement and Plan of Merger and Reorganization, dated October 28, 2008, by and among Nuvelo, Inc., Dawn Acquisition Sub, Inc. and ARCA biopharma, Inc. (6)
3.1	Amended and Restated Certificate of Incorporation of ARCA biopharma, Inc., as amended (2)
3.1(a)	Certificate of Amendment to Restated Certificate of Incorporation of ARCA biopharma, Inc. (3)
3.2	Second Amended and Restated Bylaws of ARCA biopharma, Inc. (7)
4.1	Specimen Common Stock Certificate (4)
4.2	Specimen Preferred Stock Certificate and Form of Certificate of Designation of Preferred Stock (1)
4.3	Form of Indenture between the ARCA biopharma, Inc. [and a trustee to be named]
4.4	Form of Common Stock Warrant Agreement and Warrant Certificate
4.5	Form of Preferred Stock Warrant Agreement and Warrant Certificate
4.6	Form of Debt Securities Warrant Agreement and Warrant Certificate
4.7	Form of Note (1)
5.1	Opinion of Cooley LLP
23.1	Consent of KPMG LLP, Independent Registered Public Accounting Firm
23.2	Consent of Cooley LLP (included in Exhibit 5.1)
24.1	Power of Attorney (included on the signature page hereto)
25.1	Statement of Eligibility of Trustee under the Indenture (1)

(1) To be filed by amendment or by a report filed under the Securities Exchange Act of 1934, as amended, and incorporated herein by reference, if applicable.
(2) Incorporated by reference to the Registrant s Annual Report on Form 10-K (File No. 000-22873) filed on March 27, 2009.
(3) Incorporated by reference to the Registrant s Current Report on Form 8-K (File No. 000-22873) filed on March 5, 2013.

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(4) Incorporated by reference to the Registrant s Current Report on Form 8-K (File No. 000-22873) filed on January 28, 2009.
(5) Incorporated by reference to Nuvelo, Inc. s Current Report on Form 8-K (File No. 000-22873) filed on September 25, 2008.
(6) Incorporated by reference to Nuvelo, Inc. s Current Report on Form 8-K (File No. 000-22873) filed on October 29, 2008.
(7) Incorporated by reference to the Registrant s Quarterly Report on Form 10-Q (File No. 000-22873) filed on November 16, 2009.

Item 17. Undertakings

The undersigned registrant hereby undertakes:

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

(i) to include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

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

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

provided, however, that paragraphs (1)(i), (1)(ii) and (1)(iii) of this section do not apply if the registration statement is on Form S-3 or Form F-3 and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

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

(4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

(i) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or

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(x) for the purpose of providing the information required by Section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof. *Provided*, *however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

(5) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

(6) That, for the purpose of determining liability of the registrant under the Securities Act of 1933, each filing of the registrant s annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan s annual report pursuant to section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(7) That, for purposes of determining any liability under the Securities Act of 1933:

(i) the information omitted from the form of prospectus filed as part of the registration statement in reliance upon Rule 430A and contained in the form of prospectus filed by the registrant

pursuant to Rule 424(b)(l) or (4) or 497(h) under the Securities Act of 1933 shall be deemed to be a part of this registration statement as of the time it was declared effective; and

(ii) each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(8) To file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of Section 310 of the Trust Indenture Act in accordance with the rules and regulations prescribed by the Commission under Section 305(b)(2) of the Act.

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Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of Westminster, Colorado, on April 4, 2014.

ARCA BIOPHARMA, INC.

By: /s/ Michael R. Bristow
Michael R. Bristow
President and Chief Executive Officer

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POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Michael R. Bristow and Patrick M. Wheeler, and each of them, with full power of substitution and full power to act without the other, his or her true and lawful attorney-in-fact and agent to act for him or her in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including pre-effective and post-effective amendments) to this Registration Statement, and to sign any registration statement for the same offering covered by this Registration Statement that is to be effective upon filing pursuant to Rule 462 under the Securities Act of 1933, as amended, and to file each of the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises in order to effectuate the same as fully, to all intents and purposes, as they, he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, may lawfully do or cause to be done by virtue hereof.

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

Name	Title	Date
/s/ Michael R. Bristow Michael R. Bristow	President and Chief Executive Officer and Director, (Principal Executive Officer)	April 4, 2014
/s/ Patrick M. Wheeler Patrick M. Wheeler	Chief Financial Officer (Principal Financial and Accounting Officer)	April 4, 2014
/s/ Linda Grais Linda Grais	Director	April 4, 2014
/s/ Raymond Woosley Raymond Woosley	Director	April 4, 2014
/s/ Robert Conway Robert Conway	Director	April 4, 2014
/s/ Daniel Mitchell Daniel Mitchell	Director	April 4, 2014

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