

Flagstone Reinsurance Holdings Ltd  
Form S-3  
September 22, 2009

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As filed with the Securities and Exchange Commission on September 22, 2009

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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FORM S-3

REGISTRATION STATEMENT  
UNDER THE SECURITIES ACT OF 1933

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Flagstone Reinsurance Holdings Limited  
(Exact name of Registrant as specified in its Charter)

Bermuda  
(State or other jurisdiction of  
incorporation or organization)

98-0481623  
(I.R.S. Employer Identification  
Number)

Crawford House  
23 Church Street  
Hamilton HM 11  
(441) 278-4300  
(Address, including zip code, and telephone number, including area code, of  
Registrant's principal executive office)

CT Corporation System  
111 Eighth Avenue, 13th Floor  
New York, New York 10011  
(212) 590-9331  
(Name, address, including zip code, and telephone number, including area code,  
of agent for service)

Copy to:

Ronald Cami, Esq.  
Cravath, Swaine & Moore LLP  
Worldwide Plaza  
825 Eighth Avenue

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New York, New York 10019  
(212) 474-1000

Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this Registration Statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

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If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

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

Large accelerated filer  Accelerated filer

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

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price Per Unit (2)	Proposed Maximum Aggregate Offering Price (2)(3)	Amount of Registration Fee (3)(4)
<b>Primary Offering</b>				
Common Shares (5)				
Preferred Shares (6)				
Debt Securities (7)				
<b>Total Primary Offering</b>			<b>\$ 500,000,000</b>	<b>\$ 27,900</b>
<b>Secondary Offering</b>				
Common Shares (8)	71,547,891		\$ 755,903,468	\$ 42,179.41
<b>Total</b>			<b>\$ 1,255,903,468</b>	<b>\$ 70,079.41</b>

(1) There are being registered an indeterminate number of securities as shall have an aggregate offering price not to exceed \$500,000,000. In addition, up to 71,547,891 Common Shares may be sold from

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time to time pursuant to this Registration Statement by the selling shareholders. This Registration Statement shall also cover any additional securities to be offered or issued from stock splits, stock dividends, recapitalizations or similar transactions. The securities covered by this Registration Statement may be sold separately, together or as units with other securities registered under this Registration Statement.

- (2) With respect to the primary offering and pursuant to General Instruction II.D of Form S-3, the amount of securities to be registered for each class of securities, the proposed maximum offering price per unit for each class of securities and the proposed maximum aggregate offering price of each class of securities are not specified.
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- (3) With respect to the primary offering, the proposed maximum aggregate offering price has been estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o) of the rules and regulations under the Securities Act. With respect to Common Shares to be offered for resale by the selling shareholders in the secondary offering, the proposed maximum aggregate offering price has been estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) of the rules and regulations under the Securities Act based on the average of the high and low prices reported for the Common Shares as reported by the New York Stock Exchange on September 15, 2009.
- (4) Pursuant to Rule 457(p) of the rules and regulations under the Securities Act, the registration fee of \$35,697.14 that has already been paid and remains unused with respect to the Registrant's Form S-3 (Registration number 333-156456) filed on December 24, 2008 is applied to partially offset the registration fee currently due under this Registration Statement.
- (5) With respect to the primary offering and subject to note (1), this Registration Statement covers such an indeterminate amount of Common Shares (with accompanying purchase rights, if any) as may be sold, from time to time, at indeterminate prices, by the Registrant and such indeterminate number of Common Shares as may, from time to time, be issued upon conversion or exchange of other securities, including any Preferred Shares and Debt Securities, in each case if applicable, registered hereunder, to the extent any such securities are, by their terms, convertible or exchangeable for Common Shares.
- (6) With respect to the primary offering and subject to note (1), this Registration Statement covers such an indeterminate number of Preferred Shares (with accompanying purchase rights, if any) as may be sold from time to time at indeterminate prices by the Registrant.
- (7) With respect to the primary offering and subject to note (1), this Registration Statement covers such an indeterminate amount of Debt Securities, which may be senior or subordinated, as may be sold from time to time at indeterminate prices by the Registrant. If any Debt Securities are issued at an original issue discount, then the offering price shall be in such greater principal amount as shall result in an aggregate initial offering price not to exceed \$500,000,000.
- (8) With respect to the secondary offering and subject to note (1), this Registration Statement covers an aggregate of 71,547,891 Common Shares of the Registrant that may be sold from time to time by the selling shareholders.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.



The information in this prospectus is not complete and may be changed. These securities may not be sold until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell nor does it seek an offer to buy in any jurisdiction where the offer or sale is not permitted.

SUBJECT TO COMPLETION, DATED SEPTEMBER 22, 2009

PROSPECTUS

FLAGSTONE REINSURANCE HOLDINGS LIMITED

\$500,000,000

Common Shares

Preferred Shares

Debt Securities

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71,547,891 Common Shares Offered by  
the Selling Shareholders

We may offer and sell to the public from time to time, in one or more series or issuances:

Common Shares;

Preferred Shares; and

Senior or Subordinated Debt Securities.

The aggregate initial offering price of the securities of Flagstone Reinsurance Holdings Limited (the "Company") that we will offer for sale pursuant to this prospectus and any prospectus supplement will not exceed \$500,000,000. When we offer securities pursuant to this prospectus, we will provide specific terms of the offering and material tax considerations pertaining to an investment in the securities in supplements to this prospectus. The securities offered by this prospectus and any prospectus supplement may be offered directly to investors or to or through underwriters, dealers or other agents on a continuous or delayed basis. See "Plan of Distribution." If any underwriters or dealers are involved in the sale of any securities offered by this prospectus and any prospectus supplement, their names, and any applicable purchase price, fee, commission or discount arrangement between or among them, will be set forth, or will be calculable from the information set forth, in the applicable prospectus supplement.

Investing in our securities involves risks. You should read this prospectus, including the risk factors incorporated herein by reference on page 2, and any prospectus supplement carefully before you invest. The prospectus supplement applicable to each type or series of securities we offer may contain a discussion of additional risks applicable to an investment in us and the particular type of securities we are offering under the prospectus supplement.

In addition, the selling shareholders may sell up to a total of 71,547,891 Common Shares from time to time under this prospectus and any prospectus supplement. In the prospectus supplement relating to any sales by the selling shareholders, we will identify the number of Common Shares that the selling shareholders will be offering for sale. We will not receive any of the proceeds from the sale of our Common Shares by the selling shareholders. We have paid the fees and expenses incident to the registration of the Common Shares.

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Our Common Shares are listed on the New York Stock Exchange under the trading symbol “FSR.” Other than for our Common Shares, there is no market for the other securities we may offer.

None of the Securities and Exchange Commission, any state securities body, the Registrar of Companies in Bermuda or the Bermuda Monetary Authority (the “BMA”) has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.

**THIS PROSPECTUS MAY NOT BE USED TO OFFER OR SELL ANY SECURITIES UNLESS ACCOMPANIED BY A PROSPECTUS SUPPLEMENT.**

The date of this prospectus is [            ], 2009.



Securities may be offered or sold in Bermuda only in compliance with the provisions of the Investment Business Act of 2003, which regulates the sale of securities in Bermuda. In addition, the BMA must approve all issuances and transfers of a Bermuda exempted company. The BMA has given its general consent under the Exchange Control Act 1972 (and its related regulations) for the issue and transfer of our Common Shares to and between non-residents of Bermuda for exchange control purposes, provided our shares remain listed on an appointed stock exchange, which includes the New York Stock Exchange. This general consent would cease to apply if our Common Shares were to cease to be so listed on the New York Stock Exchange, or any other appointed stock exchange, and in such event specific consent would be required from the BMA for all issues or transfers of our Common Shares subject to certain exceptions. Persons resident in Bermuda may require the prior approval of the BMA in order to acquire Common Shares.

This prospectus and the accompanying prospectus supplements will be filed with the Registrar of Companies in Bermuda in accordance with Bermuda law.

No dealer, salesperson or other person is authorized to give any information or to represent anything not contained in this prospectus. You must not rely on any unauthorized information or representations. This prospectus is an offer to sell only the securities offered hereby, but only under circumstances and in jurisdictions where it is lawful to do so. The information contained in this prospectus is current only as of the date on the front cover.

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ABOUT THIS PROSPECTUS

This prospectus is part of a Registration Statement (the “Registration Statement”) utilizing the “shelf” registration process that we have filed with the Securities and Exchange Commission (the “SEC”), which registers the distribution of the securities offered under this prospectus. The Registration Statement, including the attached exhibits and schedules, contains additional relevant information about the Company and the securities. The Registration Statement can be read at the SEC’s website ([www.sec.gov](http://www.sec.gov)) or at the offices mentioned under the heading “Where You Can Find More Information.”

Under this Registration Statement, we may offer, as described in this prospectus and any prospectus supplement(s), from time to time, up to \$500,000,000 of securities. The selling shareholders may, from time to time, sell up to 71,547,891 Common Shares in one or more offerings.

This prospectus provides you with a general description of the securities we and the selling shareholders may offer. Each time we or the selling shareholders sell securities, we will provide a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement may also add, update or change information contained in this prospectus. You should read both this prospectus and any prospectus supplement, together with additional information described in this prospectus under the heading “Where You Can Find More Information.”

In this prospectus, unless the context otherwise requires or unless the prospectus supplement otherwise indicates, (i) the “Company,” “Flagstone,” “we,” “us,” and “our” refer to Flagstone Reinsurance Holdings Limited and/or its subsidiaries, including Flagstone Réassurance Suisse SA, its wholly-owned Switzerland reinsurance company, Marlborough Underwriting Agency Limited, its United Kingdom Lloyd’s managing agency, Island Heritage Holdings Limited, its Cayman-based insurance company, Flagstone Alliance Insurance & Reinsurance PLC, its wholly-owned Cypriot insurance and reinsurance company, Flagstone Reinsurance Africa Limited, its South African reinsurance company, Mont Fort Re Ltd., its wholly-owned Bermuda reinsurance company, Haute Route Re, Ltd., its wholly-owned Bermuda reinsurance company, and any other direct or indirect wholly-owned subsidiary, unless the context suggests otherwise; (ii) “Flagstone Suisse” refers to Flagstone Réassurance Suisse SA and its wholly-owned subsidiaries, including its Bermuda branch; (iii) “Marlborough” refers to Marlborough Underwriting Agency Limited and its wholly-owned subsidiaries as well as Lloyd’s Syndicate 1861; (iv) “Island Heritage” refers to Island Heritage Holdings Limited and its subsidiaries; (v) “Flagstone Alliance” refers to Flagstone Alliance Insurance & Reinsurance PLC and its subsidiaries; (vi) “Flagstone Africa” refers to Flagstone Reinsurance Africa Limited; (vii) “Common Shares” refers to common shares of the Company, par value \$0.01 per share; (viii) “Preferred Shares” refers to preferred shares of the Company, par value \$0.01 per share; (ix) “Debt Securities” refers to the debt securities of the Company that may be offered and sold pursuant to the registration statement to which this prospectus relates; and (x) “securities” refers collectively to the Common Shares, the Preferred Shares and the Debt Securities. References in this prospectus to “dollars” or “\$” are to the lawful currency of the United States of America, unless the context otherwise requires.

You should rely only on the information contained in this prospectus or in any prospectus supplement or incorporated by reference in this prospectus or in any prospectus supplement. We have not authorized anyone to provide you with different information. The distribution of this prospectus and sale of the securities in certain jurisdictions may be restricted by law. Persons in possession of this prospectus are required to inform themselves about and observe any such restrictions. We are only offering the securities in states where offers are permitted. You should assume that the information appearing in this prospectus or in any prospectus supplement is accurate as of the date on the front cover of those documents only. Our business, financial condition, results of operations and prospects may have changed since that date.



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FORWARD-LOOKING STATEMENTS

This prospectus, including the documents we incorporate by reference, contains, and the Company may from time to time make, written or oral “forward-looking statements” within the meaning of the U.S. federal securities laws, which are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. All forward-looking statements rely on a number of assumptions concerning future events and are subject to a number of uncertainties and other factors, many of which are outside the Company’s control, which could cause actual results to differ materially from such statements. In particular, statements using words such as “may,” “should,” “estimate,” “expect,” “anticipate,” “intend,” “believe,” “predict,” “potential,” or words of similar import generally involve forward-looking statements.

Important events and uncertainties that could cause the actual results to differ include, but are not necessarily limited to: market conditions affecting the Company’s Common Share price; the impact of the current unprecedented volatility in the financial markets, including the duration of the crisis and the effectiveness of governmental solutions; the weakening economy, including the impact on our customers’ businesses; fluctuations in interest and exchange rates; the effects of corporate bankruptcies on capital markets and increase of counterparty risk due to impairment of financial institutions; the possibility of severe or unanticipated losses from natural or man-made catastrophes; the effectiveness of our loss limitation methods; our dependence on principal employees; the cyclical nature of the reinsurance and insurance business; the levels of new and renewal business achieved; opportunities to increase writings in our core property and specialty reinsurance and insurance lines of business and in specific areas of the casualty reinsurance market; the sensitivity of our business to financial strength ratings established by independent rating agencies; the estimates reported by cedents and brokers on pro-rata contracts and certain excess of loss contracts where the deposit premium is not specified in the contract; the inherent uncertainties of establishing reserves for loss and loss adjustment expenses; our reliance on industry loss estimates and those generated by modeling techniques; unanticipated adjustments to premium estimates; changes in the availability, cost or quality of reinsurance or retrocessional coverage; changes in general economic conditions, including availability of capital; changes in governmental regulation or tax laws in the jurisdictions where we conduct business; the amount and timing of reinsurance recoverables and reimbursements we actually receive from our reinsurers; the overall level of competition, and the related demand and supply dynamics in our markets relating to growing capital levels in the reinsurance and insurance industries; declining demand due to increased retentions by cedents and other factors; the impact of terrorist activities on the economy; and rating agency policies and practices.

These and other events that could cause actual results to differ are discussed in more detail from time to time in our filings with the SEC. The Company undertakes no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by U.S. federal securities laws. Investors are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date on which they are made.

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PROSPECTUS SUMMARY

Flagstone, a global insurance and reinsurance holding company, was incorporated under the laws of Bermuda in October 2005 and commenced operations in December 2005. The Company is currently organized into two business segments: Reinsurance and Insurance. Through our Reinsurance segment, we write primarily property, property catastrophe and short-tail specialty and casualty reinsurance. Through our Insurance segment, we write property insurance for homes, condominiums and office buildings in the Caribbean region. We diversify our risks across business lines by risk zones, each of which combines a geographic zone with one or more types of peril (for example, Texas Windstorm). The majority of our reinsurance contracts contain loss limitation provisions such as fixed monetary limits to our exposure and per event caps. We specialize in underwriting where sufficient data exists to analyze effectively the risk/return profile, and where we are subject to legal systems we deem reasonably fair and reliable.

Our largest business is providing property catastrophe reinsurance coverage to a broad range of select insurance companies, primarily on an excess of loss basis. These policies provide coverage for claims arising from major natural catastrophes, such as hurricanes and earthquakes, in excess of a specified loss. We also provide coverage for claims arising from other natural and man-made catastrophes such as winter storms, freezes, floods, fires and tornados. Our specialty lines, which represent a growing proportion of our business, cover such risks as aviation, energy, accident and health, satellite, marine and workers' compensation catastrophe.

We measure our financial success through long-term growth in diluted book value per share plus accumulated dividends measured over intervals of three years, which we believe is the most appropriate measure of the Company's performance, a measure that focuses on the return provided to the Company's common shareholders. Diluted book value per share is obtained by dividing shareholders' equity by the number of Common Shares and Common Share equivalents outstanding. We believe that prudent management of our underwriting risks, relative to our capital base, together with effective investment of our capital and premium income will achieve our financial goals and deliver attractive risk-adjusted returns for our shareholders.

Our principal executive offices are located at Crawford House, 23 Church Street, Hamilton HM 11, Bermuda. Our telephone number is (441) 278-4300. We maintain a website at <http://www.flagstonere.bm> where general information about us is available. We are not incorporating the contents of the website into this prospectus.

For further information regarding Flagstone, including financial information, you should refer to our recent filings with the SEC. See "Where You Can Find More Information."

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RISK FACTORS

An investment in our securities involves risks. Before making an investment decision, you should carefully consider the risks described in our filings with the SEC referred to under the heading “Where You Can Find More Information,” and the risks discussed in the section entitled “Risk Factors” incorporated by reference herein from our Annual Report on Form 10-K for the year ended December 31, 2008 and from our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2009 and June 30, 2009, as updated by annual, quarterly and other reports and documents we file with the SEC after the date of this prospectus. Additional risk factors may be included in a prospectus supplement relating to a particular series or offering of securities.

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USE OF PROCEEDS

Unless we state differently in the applicable prospectus supplement, we expect to use the net proceeds we receive from the sale of the securities offered by us pursuant to this prospectus and the accompanying prospectus supplement(s) for general corporate purposes, including repayment of borrowings, working capital, acquisitions and stock repurchases.

The selling shareholders will receive all of the proceeds from the resale of their Common Shares pursuant to this prospectus and the applicable prospectus supplement.

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## RATIO OF EARNINGS TO FIXED CHARGES

The following table sets forth our consolidated ratio of earnings to fixed charges. The following table is derived from audited results for the period October 4, 2005 (the date of the Company's incorporation) through December 31, 2005 and the fiscal years ended December 31, 2006, 2007 and 2008 and the unaudited results for the six-month period ended June 30, 2009.

	Six months ended June 30, 2009	Year ended December 31, 2008(1)	Year ended December 31, 2007	Year ended December 31, 2006	Period October 4, 2005 through December 31, 2005 (2)
Ratio of earnings to fixed charges	16.92	—	11.65	32.87	—
Deficiency of earnings to fixed charges (in thousands)	—	\$ (152,145)	—	—	—\$ (12,326)

- (1) For the year ended December 31, 2008, earnings were insufficient to cover fixed charges by \$152.1 million. This is primarily attributed to three areas: significant loss and loss adjustment expenses in 2008 resulting from Hurricanes Ike and Gustav; a significant decrease in investment income primarily due to the significant declines in the global equity, bond and commodities markets in 2008; and substantial foreign exchange losses in 2008 resulting from fluctuations in foreign exchange rates against the U.S. dollar, as a significant portion of the Company's operations are transacted in foreign currencies.
- (2) For the period October 4, 2005 through December 31, 2005, earnings were insufficient to cover fixed charges by \$12.3 million. In connection with the initial closing of the private placement for our Common Shares in December 2005, the Company issued a Warrant to Haverford (Bermuda) Ltd ("Haverford") for its role in these capital raising activities. The Warrant granted the holder the right, at any time during the period commencing on December 1, 2010 and ending December 31, 2010, to purchase from the Company up to 12.0% of the issued share capital of the Company at the consummation of the initial capital raising activities for the Company at an exercise price of \$14.00 per Common Share. The compensation expense based on the fair value of the Warrant was \$12.2 million at the initial closing of the private placement, and is included in general and administrative expenses and in additional paid-in capital in our consolidated financial statements as at and for the period ended December 31, 2005.



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DESCRIPTION OF SHARE CAPITAL

The following summarizes the material terms and provisions of the Common Shares and Preferred Shares offered hereby. For the complete terms of our shares, please refer to the Company's Memorandum of Association (the "Memorandum of Association") and the Amended and Restated Shareholders' Agreement dated November 15, 2006 among the Company and the shareholders named therein (the "Shareholders' Agreement"), which were filed with the SEC as exhibits to the Company's registration statement on Form S-1 (Registration No. 333-138182), as thereafter amended and supplemented, including in the prospectus constituting part of such registration statement filed pursuant to Rule 424(a) under the Securities Act on March 27, 2007, the Company's Bye-Laws (the "Bye-Laws"), which was filed with the SEC as an exhibit to the Company's Quarterly Report on Form 10-Q on August 9, 2007, and the Warrant dated February 23, 2006, as amended (the "Warrant"), which was filed with the SEC as an exhibit to the Company's Current Report on Form 8-K on November 18, 2008. The Bermuda Companies Act of 1981, as amended, and related regulations (referred to herein collectively as the "Companies Act") may also affect the terms of the Company's shares.

General

The Company's Memorandum of Association authorizes the issuance of up to 300,000,000 shares, par value \$0.01 per share. Subject to our Bye-Laws and Bermuda law, our Board of Directors has the power to issue any of our shares as it determines, including the issuance of any shares with preferred, deferred or other special rights or restrictions. On September 18, 2009, there were 84,846,844 Common Shares issued and outstanding and no Preferred Shares outstanding. The following summary of our share capital is qualified in its entirety by reference to the Memorandum of Association, the Bye-Laws, the Shareholders' Agreement and the Warrant.

Common Shares

Liquidation Rights

Holders of our Common Shares have no pre-emptive, redemption, conversion or sinking fund rights. In the event of our liquidation, dissolution or winding-up, the holders of our Common Shares are entitled to share equally and ratably in our assets, if any remain after the payment of all our debts and liabilities and the liquidation preference of any outstanding preferred shares.

Voting Rights

In general, and except as provided below, shareholders have one vote for each Common Share held by them and are entitled to vote at all meetings of shareholders. However, if, and so long as, the Common Shares of a shareholder are treated as "controlled shares" (generally, Common Shares held directly, indirectly through non-U.S. entities or constructively through certain relationships) of any U.S. Person (as defined in Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended (the "Code")) and such controlled shares constitute 9.9% or more of the votes conferred by the Company's issued shares, the voting rights with respect to the controlled shares of that U.S. Person (a "9.9% U.S. Shareholder") shall be limited to a voting power of less than 9.9% under a formula specified in the Bye-Laws. The reduction in votes is generally to be applied proportionately among all the "controlled shares" of the 9.9% U.S. Shareholder; provided, however, that the reduction shall first be effected by reducing the votes conferred on the Common Shares held directly by such 9.9% U.S. Shareholder. The reduction in the votes of the Common Shares held by a 9.9% U.S. Shareholder effected by the foregoing shall be allocated proportionately among the Common Shares held by the other shareholders so long as the allocation does not cause any U.S. Person to become a 9.9% U.S. Shareholder. The formula is applied repeatedly until the voting power of all 9.9% U.S. Shareholders has been reduced to 9.9%.

Thus, for example, if following an offering three unrelated U.S. Persons were to own 21%, 16% and 14% of the Company's outstanding Common Shares, respectively, the voting power of each Common Share held by such U.S. Persons would be reduced by approximately 52.86%, 38.13% and 29.29%, respectively, such that the Common Shares owned by each U.S. Person, in the aggregate, would possess only 9.9% of the voting power of the Company's outstanding Common Shares. The aggregate reduction in voting power of 21.3% (i.e.,  $(21\% + 16\% + 14\%) - (9.9\% + 9.9\% + 9.9\%)$ ) would then be allocated proportionately among the Common Shares held by all of the other shareholders so long as such allocation would not cause any other shareholder to become a 9.9% U.S. Shareholder. If the reallocation of voting power to such other shareholders were to cause one of the other shareholders to become a 9.9% U.S. Shareholder, such shareholder's voting rights would likewise be reduced to 9.9% and the reduction in voting power would then be allocated proportionately among the Common Shares held by the shareholders whose voting power would not already have been reduced. The formula would be applied repeatedly until the voting power of all 9.9% U.S. Shareholders has been reduced to 9.9%.

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In addition, the Board of Directors may limit a shareholder's voting rights where it deems it appropriate to do so to (i) avoid the existence of any 9.9% U.S. Shareholder; and (ii) avoid certain adverse tax, legal or regulatory consequences to the Company or any of the Company's subsidiaries or any shareholder or its affiliates. "Controlled shares" includes all shares that a U.S. Person is deemed to own directly, indirectly or constructively (within the meaning of Section 958 of the Code).

Under these provisions, certain shareholders, such as the Lehman entities and the Silver Creek entities, may have their voting rights limited to less than one vote per share, while other shareholders may have their voting rights increased to in excess of one vote per share. Moreover, these provisions could have the effect of reducing the votes of certain shareholders who would not otherwise be subject to the 9.9% limitation by virtue of their direct share ownership. Our Bye-Laws provide that shareholders will be notified of their voting interests prior to any vote to be taken by the shareholders.

We are authorized to require any shareholder to provide information as to that shareholder's beneficial share ownership, the names of persons having beneficial ownership of the shareholder's shares, relationships with other shareholders or any other facts the directors may deem relevant to a determination of whether a shareholder's voting rights are to be reallocated pursuant to the Bye-Laws. We may, in our reasonable discretion, reduce or disregard the votes attached to shares of any holder failing to respond to such a request or submitting incomplete or inaccurate information.

Under our Bye-Laws, the boards of directors of our direct and indirect non-U.S. subsidiaries that are not treated as pass-through or disregarded entities for U.S. federal income tax purposes are to consist of persons who have been elected by our shareholders (subject to the limitations on voting rights discussed above) by resolution in a general shareholder meeting.

## Shareholders' Agreement

The Company and certain shareholders who acquired our Common Shares prior to the date of our initial public offering (the "Existing Shareholders") are parties to the Shareholders' Agreement. The Shareholders' Agreement permits persons who hold at least five million of our Common Shares to request registration for a public offering of Common Shares. We have agreed to use our best efforts to cause the prompt registration of such Common Shares, but may postpone the filing of a registration statement in connection with such public offering for up to three months from the date of the request if we determine in good faith that the registration would reasonably be expected to have an adverse effect on any proposal or plan by us or any of our subsidiaries to engage in any acquisition of assets (other than in the ordinary course of business) or any stock purchase, amalgamation, merger, consolidation, tender offer, reorganization, or similar transaction or if an underwritten public offering is contemplated in which the Common Shares proposed to be registered would be included. If the number of Common Shares to be sold in the requested offering is limited by the managing underwriter, then the number of Common Shares requested to be registered will be allocated, pro rata, among the requesting shareholders. The Existing Shareholders are currently entitled to request up to three such demand registrations.

Additionally, the Shareholders' Agreement provides that, if at any time we propose to register any of our Common Shares under the Securities Act, we will offer the Existing Shareholders the opportunity, subject to certain conditions, to include thei