

BAXTER INTERNATIONAL INC
Form DEF 14A
March 19, 2010

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of the Securities
Exchange Act of 1934 (Amendment No.)

Filed by the Registrant
Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to §240.14a-12

BAXTER INTERNATIONAL INC.

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

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2) Form, Schedule or Registration Statement No.:

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4) Date Filed:

Baxter International Inc.
One Baxter Parkway
Deerfield, Illinois 60015

March 19, 2010

Dear Shareholder:

You are invited to attend Baxter's Annual Meeting of Shareholders on Tuesday, May 4, 2010 at 9:00 a.m., Central Time, at our corporate headquarters located at One Baxter Parkway, Deerfield, Illinois. Registration will begin at 8:00 a.m., and refreshments will be served.

Details of the business to be conducted at the Annual Meeting are included in the attached Notice of Annual Meeting of Shareholders and Proxy Statement. If you plan to attend the Annual Meeting, please review the information on attendance provided on page 45 of the Proxy Statement.

In accordance with Securities and Exchange Commission rules, Baxter has elected to deliver its proxy materials over the Internet to most shareholders, which allows shareholders to receive information on a more timely basis, while lowering the company's printing and mailing costs and reducing the environmental impact of the Annual Meeting.

Whether or not you plan to attend in person, your vote is important and you are encouraged to vote promptly. You may vote your shares by Internet or by telephone. If you received a paper copy of the proxy card by mail, you may sign, date and return the proxy card in the enclosed envelope. If you attend the Annual Meeting, you may revoke your proxy and vote in person.

Very truly yours,

Robert L. Parkinson, Jr.
*Chairman of the Board
and Chief Executive Officer*

Baxter International Inc.
One Baxter Parkway
Deerfield, Illinois 60015

March 19, 2010

Notice of Annual Meeting of Shareholders

The 2010 Annual Meeting of Shareholders of Baxter International Inc. will be held at our corporate headquarters located at One Baxter Parkway, Deerfield, Illinois, on Tuesday, May 4, 2010 at 9:00 a.m., Central Time, for the following purposes:

1. To elect the four directors named in the attached Proxy Statement to hold office for a term of three years;
2. To ratify the appointment of PricewaterhouseCoopers LLP as the independent registered public accounting firm for Baxter in 2010;
3. To consider a shareholder proposal relating to simple majority voting if such proposal is properly presented at the annual meeting; and
4. To transact any other business that may properly come before the meeting.

The Board of Directors recommends a vote **FOR** Items 1 and 2 and **AGAINST** Item 3. Shareholders of record at the close of business on March 8, 2010 will be entitled to vote at the meeting.

By order of the Board of Directors,

Stephanie A. Shinn
Corporate Secretary

**IMPORTANT NOTICE REGARDING THE AVAILABILITY OF PROXY
MATERIALS FOR THE ANNUAL MEETING OF SHAREHOLDERS
TO BE HELD ON MAY 4, 2010**

This Proxy Statement relating to the 2010 Annual Meeting of Shareholders and the Annual Report to Shareholders for the year ended December 31, 2009 are available at <http://materials.proxyvote.com/071813>.

Proxy Statement

The accompanying proxy is solicited on behalf of the Board of Directors for use at the Annual Meeting of Shareholders to be held on Tuesday, May 4, 2010. On or about March 19, 2010, Baxter began mailing to shareholders a Notice of Internet Availability of Proxy Materials providing instructions on how to access proxy materials via the Internet and how to vote online (www.proxyvote.com). Shareholders who did not receive the Notice of Internet Availability of Proxy Materials as a result of a previous election will receive a paper or electronic copy of the proxy materials, which Baxter also began sending on or about March 19, 2010.

Q: Who is entitled to vote?

A: All record holders of Baxter common stock as of the close of business on March 8, 2010 are entitled to vote. On that day, approximately 599,424,817 shares were issued and outstanding. Each share is entitled to one vote on each matter presented at the Annual Meeting.

Q: How do I vote?

A: Baxter offers registered shareholders three ways to vote, other than by attending the Annual Meeting and voting in person:

By Internet, following the instructions on the Notice or the proxy card;

By telephone, using the telephone number printed on the proxy card; or

By mail (if you received your proxy materials by mail), using the enclosed proxy card and return envelope.

Q: How do I attend the Annual Meeting? What do I need to bring?

A: In order to be admitted to the Annual Meeting, you must bring documentation showing that you owned Baxter common stock as of the record date of March 8, 2010. Acceptable documentation includes (i) your Notice of Internet Availability of Proxy Materials, (ii) the admission ticket attached to your proxy card (if you received your proxy materials by mail), or (iii) any other proof of ownership (such as a brokerage or bank statement) reflecting your Baxter holdings as of March 8, 2010. All attendees must also bring valid photo identification. Shareholders who do not bring this documentation will not be admitted to the Annual Meeting. Please refer to Other Information Attending the Annual Meeting on page 45 of this Proxy Statement for more information.

Q: How do I vote shares that are held by my broker?

A: If you have shares held by a broker or other nominee, you may instruct your broker or other nominee to vote your shares by following instructions that your broker or nominee provides to you. Most brokers offer voting by mail, telephone and the Internet.

Q: What does it mean to vote by proxy?

A: It means that you give someone else the right to vote your shares in accordance with your instructions. In this way, you ensure that your vote will be counted even if you are unable to attend the Annual Meeting. If you give your proxy but do not include specific instructions on how to vote, the individuals named as proxies will vote your shares as follows:

FOR the election of the Board's nominees for director;

FOR the ratification of the appointment of PricewaterhouseCoopers LLP as Baxter's independent registered public accounting firm; and

AGAINST the shareholder proposal relating to simple majority voting.

Q: What if I submit a proxy and later change my mind?

A: If you have given your proxy and later wish to revoke it, you may do so by giving written notice to the Corporate Secretary, submitting another proxy bearing a later date (in any of the permitted forms), or casting a ballot in person at the Annual Meeting.

Q: What happens if other matters are raised at the meeting?

A: If other matters are properly presented at the meeting, the individuals named as proxies will

have the discretion to vote on those matters for you in accordance with their best judgment. However, Baxter's Corporate Secretary has not received timely and proper notice from any shareholder of any other matter to be presented at the meeting.

Q: How is it determined whether a matter has been approved?

A: Assuming a quorum is present, the approval of the matters specified in the Notice of Annual Meeting will be determined as follows:

Nominees for director receiving the majority of votes cast (number of shares voted for a director must exceed 50% of the number of votes cast with respect to that director) will be elected as a director; and

Each other matter requires the affirmative vote of a majority of the shares of common stock, present in person or by proxy and entitled to vote at the Annual Meeting.

Q: Who will count the vote?

A: Broadridge Financial Solutions, Inc. will tabulate the votes and act as the Inspector of Election at the Annual Meeting.

Q: What constitutes a quorum?

A: A majority of the outstanding shares of common stock entitled to vote, represented at the meeting in person or by proxy, constitutes a quorum. Broker non-votes and abstentions will be counted for purposes of determining whether a quorum is present.

Q: What are broker non-votes?

A: Broker non-votes occur when nominees, such as banks and brokers holding shares on behalf of beneficial owners, do not receive voting instructions from the beneficial holders at least ten days before the meeting. If that happens, the nominees may vote those shares only on matters deemed routine by the New York Stock Exchange, such as the ratification of the appointment of the independent registered public accounting firm.

On non-routine matters, such as the election of directors and the shareholder proposal, nominees cannot vote unless they receive voting instructions from beneficial owners, resulting in so called broker non-votes.

Please note that this year the rules that guide how brokers vote your shares have changed. Brokers may no longer vote your shares on the election of directors in the absence of your specific instructions.

Q: What effect does an abstention have?

A: Abstentions or directions to withhold authority will have no effect on the outcome of the election of directors. Abstentions will have the same effect as a vote against any of the other matters specified in the Notice of Annual Meeting.

Q: What is householding and how does it affect me?

A: Baxter has adopted householding, a procedure under which shareholders of record who have the same address and last name and do not receive proxy materials electronically will receive a single Notice of Internet

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Availability of Proxy Materials or set of proxy materials, unless one or more of these shareholders notifies the company that they wish to continue receiving individual copies. Shareholders who participate in householding will continue to receive separate proxy cards. This procedure can result in significant savings to the company by reducing printing and postage costs.

If you participate in householding and wish to receive a separate Notice of Internet Availability of Proxy Materials or set of proxy materials, or if you wish to receive separate copies of future Notices, annual reports and proxy statements, please call 1-800-542-1061 or write to: Broadridge Financial Solutions, Inc., Household Department, 51 Mercedes Way, Edgewood, New York 11717. The company will deliver the requested documents to you promptly upon your request.

Any shareholders of record who share the same address and currently receive multiple copies of proxy materials who wish to receive only one copy of these materials per household in the future may contact Broadridge Financial Solutions, Inc. at the address or telephone number listed above. If you hold your shares through a broker, bank or other nominee, please contact your broker, bank, or other nominee to request information about householding.

Q: What shares are covered by the proxy card?

A: The proxy card covers all shares held by you of record (*i.e.*, registered in your name), including those held in Baxter's Dividend Reinvestment Plan, Employee Stock Purchase Plan and any shares credited to your Incentive Investment Plan account or Puerto Rico Savings and Investment Plan account held in custody by the plan trustee. If you hold your shares through a broker, bank or other nominee, you will receive separate instructions from your broker, bank or other nominee describing how to vote your shares.

Q: How do I vote if I hold my shares through the Baxter Incentive Investment Plan or Puerto Rico Savings and Investment Plan?

A: If you are a current or former Baxter employee with shares credited to your account in the Incentive Investment Plan or Puerto Rico Savings and Investment Plan, then your completed proxy card (or vote via the Internet or by telephone) will serve as voting instructions to the plan trustee. The trustee will vote your shares as you direct, except as may be required by the Employee Retirement Income Security Act (ERISA). If you fail to give instructions to the plan trustee, the trustee may vote your shares at its discretion. To allow sufficient time for voting by the plan trustee, your voting instructions must be received by April 27, 2010.

Q: Does the company offer an opportunity to receive future proxy materials electronically?

A: Yes. If you wish to receive future proxy materials over the Internet instead of receiving copies in the mail, follow the instructions provided when you vote through the Internet. If you vote by telephone, you will not have the option to elect electronic delivery while voting.

If you elect electronic delivery, the company will discontinue mailing the proxy materials to you beginning next year and will send you an e-mail message notifying you of the Internet address or addresses where you may access next year's proxy materials and vote your shares. You may discontinue electronic delivery at any time.

Q: What are the benefits of electronic delivery?

A: Electronic delivery reduces the company's printing and mailing costs as well as the environmental impact of the Annual Meeting. It is also a convenient way for you to receive your proxy materials and makes it easy to vote your shares over the Internet.

Proposal 1 Election of Directors

Baxter's Board of Directors currently consists of thirteen members and is divided into three classes. The directors in each class serve three-year terms. The Board has nominated the four current directors of Baxter whose terms expire at the 2010 Annual Meeting for re-election as directors.

Baxter's Bylaws require each director to be elected by the majority of the votes cast with respect to such director in uncontested elections; that is, the number of shares voted for a director must exceed 50% of the number of votes cast with respect to that director. Abstentions will not be considered votes cast. In a contested election (a situation in which the number of nominees exceeds the number of directors to be elected), the standard for election of directors will be a plurality of the shares represented in person or by proxy at any such meeting and entitled to vote on the election of directors. If a nominee who is serving as a director is not elected at an annual meeting, under Delaware law the director would continue to serve on the Board as a holdover director. However, under Baxter's Bylaws, any incumbent director who fails to be elected must offer his or her resignation to the Board. The Corporate Governance Committee would then make a recommendation to the Board whether to accept or reject the resignation, or whether other action should be taken. The Board would act on the Corporate Governance Committee's recommendation and publicly disclose its decision and the rationale behind it within 90 days from the date the election results are certified. The director who offers his or her resignation would not participate in the Board's decision.

All of the nominees have indicated their willingness to serve if elected, but if any should be unable or unwilling to stand for election, proxies may be voted for a substitute nominee designated by the Board of Directors. No nominations for directors were received from shareholders, and no other candidates are eligible for election as directors at the 2010 Annual Meeting. Unless proxy cards are otherwise marked, the individuals named as proxies intend to vote the shares represented by proxy in favor of all of the Board's nominees.

Set forth below is information concerning the nominees for election as well as the current directors in each class continuing after the Annual Meeting of Shareholders.

The Board of Directors recommends a vote **FOR** the election of each of the director nominees.

Nominees for Election as Directors (Term Expires 2013)

Blake E. Devitt, age 63, has served as a Director of Baxter since 2005. Mr. Devitt retired in 2004 from the public accounting firm of Ernst & Young LLP. During his 33-year career at Ernst & Young, Mr. Devitt held several positions, including Senior Audit Partner and Director, Pharmaceutical and Medical Device Industry Practice, from 1994 to 2004.

John D. Forsyth, age 62, has served as a Director of Baxter since 2003. Mr. Forsyth has been Chairman of Wellmark Blue Cross Blue Shield, a healthcare insurance provider for residents of Iowa and South Dakota, since 2000 and Chief Executive Officer since 1996. Prior to that, he spent more than 25 years at the University of Michigan Health System, holding various positions, including President and Chief Executive Officer.

Gail D. Fosler, age 62, has served as a Director of Baxter since 2001. Ms. Fosler is Senior Advisor of The Conference Board, a global research and business membership organization. Ms. Fosler has held several positions with The Conference Board since 1989, including President, Executive Vice President and Chief Economist. Ms. Fosler is a director of Caterpillar Inc. Ms. Fosler served as a director of Unisys Corporation from 1993 to 2005.

Carole J. Shapazian, age 66, has served as a Director of Baxter since 2003. Ms. Shapazian served as Executive Vice President of Maytag Corporation, a producer of home and commercial appliances, and as President of Maytag's Home Solutions Group, from January 2000 to December 2000. Prior to that, Ms. Shapazian was Executive Vice President and Assistant Chief Operating Officer of Polaroid Corporation, a photographic equipment and supplies corporation, from 1998 to 1999, having previously served as Executive Vice President and President of Commercial Imaging. Ms. Shapazian served as a director of Ceridian Corporation from 1994 to 2005.

Directors Continuing in Office (Term Expires 2011)

Wayne T. Hockmeyer, Ph.D., age 65, has served as a Director of Baxter since September 2007. Dr. Hockmeyer was the founder of MedImmune, Inc., a healthcare company focused on infectious diseases, cancer and inflammatory diseases, and served as Chairman and/or Chief Executive Officer of MedImmune from 1988 to 2007. Prior to that, he was vice president of laboratory research and product development at Praxis Biologics Inc. and chief of the Department of Immunology at Walter Reed Army Institute of Research. Dr. Hockmeyer serves as a director of GenVec Inc. and Idenix Pharmaceuticals Inc. Dr. Hockmeyer also served as a director of Middlebrook Pharmaceuticals, Inc. from 2003 to 2009, MedImmune, Inc. from 1988 to 2007 and Vanda Pharmaceuticals Inc. from 2004 to 2006.

Joseph B. Martin, M.D., Ph.D., age 71, has served as a Director of Baxter since 2002. Dr. Martin serves as Professor of Neurobiology at Harvard Medical School. From July 1997 to July 2007, Dr. Martin served as Dean of the Harvard Faculty of Medicine. He was Chancellor of the University of California, San Francisco from 1993 to 1997 and Dean of the UCSF School of Medicine from 1989 to 1993. From 1978 to 1989, he was chief of the neurology department of Massachusetts General Hospital and Professor of Neurology at Harvard Medical School. Dr. Martin also served as a director of Cytoc Corporation from 2002 to 2007 and Scientific Learning Corporation from 2000 to 2008.

Robert L. Parkinson, Jr., age 59, is Chairman and Chief Executive Officer of Baxter, having served in that capacity since April 2004. Prior to joining Baxter, Mr. Parkinson was Dean of Loyola University Chicago School of Business Administration and Graduate School of Business from 2002 to 2004. He retired from Abbott Laboratories in 2001 following a 25-year career, having served in a variety of domestic and international management and leadership positions, including as President and Chief Operating Officer. Mr. Parkinson also serves on the boards of directors of Chicago-based Northwestern Memorial Hospital and the Northwestern Memorial Foundation as well as Loyola University Chicago Board of Trustees.

Thomas T. Stallkamp, age 63, has served as a Director of Baxter since 2000.

Mr. Stallkamp has been an Industrial Partner in Ripplewood Holdings L.L.C., a New York private equity group, since 2004. From 2003 to 2004, he served as Chairman of MSX International, Inc., a global provider of technology-driven engineering, business and specialized staffing services, and from 2000 to 2003, he served as Vice-Chairman and Chief Executive Officer of MSX. From 1980 to 1999, Mr. Stallkamp held various positions with DaimlerChrysler Corporation and its predecessor Chrysler Corporation, the most recent of which was Vice Chairman and President. Mr. Stallkamp serves as a director of BorgWarner Inc., Honsel AG and Asahi Tec Corporation. Mr. Stallkamp also served as a director of MSX International, Inc. from 2000 to 2006 and Visteon Corporation from 2002 to 2006.

Albert P.L. Stroucken, age 62, has served as a Director of Baxter since 2004.

Mr. Stroucken has served as Chairman, President and Chief Executive Officer of Owens-Illinois, Inc., a glass packaging company, since 2006 and as director since 2005. From 1998 to 2006, Mr. Stroucken served as President and Chief Executive Officer of H.B. Fuller Company, a manufacturer of adhesives, sealants, coatings, paints and other specialty chemicals. Mr. Stroucken served as Chairman of the Board of H.B. Fuller Company from 1999 to 2006. From 1997 to 1998, he was General Manager of the Inorganics Division of Bayer AG. From 1992 to 1997, Mr. Stroucken was Executive Vice President and President of the Industrial Chemicals Division of Bayer Corporation.

Directors Continuing in Office (Term Expires 2012)

Walter E. Boomer, age 71, has served as a Director of Baxter since 1997 and was appointed lead director in May 2008. From 1997 until his retirement in 2004, General Boomer served as President and Chief Executive Officer of Rogers Corporation, a manufacturer of specialty materials for targeted applications, focused on communications and computer markets. General Boomer also served as Chairman of the Board of Rogers Corporation between April 2002 and April 2004 and continues as director. From 1994 to 1996, he served as Executive Vice President of McDermott International, Inc. and President of the Babcock & Wilcox Power Generation Group. In 1994, General Boomer retired as a General and Assistant Commandant of the United States Marine Corps after 34 years of service. General Boomer also served as a director of Cytoc Corporation from 2000 to 2007.

James R. Gavin III, M.D., Ph.D., age 64, has served as a Director of Baxter since 2003. Dr. Gavin is Chief Executive Officer and Chief Medical Officer of Healing Our Village, Inc., a corporation that specializes in targeted advocacy, training, education, disease management and outreach for health care professionals and minority communities, having previously served as Executive Vice President for Clinical Affairs at Healing Our Village from 2005 to 2007. Dr. Gavin is also Clinical Professor of Medicine and Senior Advisor of Health Affairs at Emory University, a position he has held since 2005. From 2002 to 2005, Dr. Gavin was President of the Morehouse School of Medicine and from 1991 to 2002, he was Senior Science Officer at Howard Hughes Medical Institute, a nonprofit medical research organization. Dr. Gavin serves as a director of Amylin Pharmaceuticals, Inc. Dr. Gavin also served as a director of MicroIslet, Inc. from 2002 to 2007 and Nuvelo Inc. from 2006 to 2009.

Peter S. Hellman, age 60, has served as a Director of Baxter since 2005. From 2000 until his retirement in 2008, Mr. Hellman held various positions at Nordson Corporation, a manufacturer of systems that apply adhesives, sealants and coatings during manufacturing operations, the most recent of which was President and Chief Financial and Administrative Officer. From 1989 to 1999, Mr. Hellman held various positions with TRW Inc., the most recent of which was President and Chief Operating Officer. Mr. Hellman serves as a director of Qwest Communications International Inc. and Owens-Illinois, Inc. Mr. Hellman also served as a director of Nordson Corporation from 2001 to 2008.

K. J. Storm, age 67, has served as a Director of Baxter since 2003. Mr. Storm is a registered accountant (the Dutch equivalent of a Certified Public Accountant) and was Chief Executive Officer of AEGON N.V., an international insurance group, from 1993 until his retirement in 2002. Mr. Storm is chairman of the Supervisory Board of KLM Royal Dutch Airlines, a member of the Supervisory Board of AEGON N.V. and PON Holdings B.V. and a member of the Board of Anheuser-Busch InBev S.A. and Unilever N.V. and Plc.

Board of Directors

Baxter's Board of Directors currently consists of thirteen members. The Board has determined that each of the following twelve current directors satisfies Baxter's independence standards and the New York Stock Exchange's listing standards for independence: Walter E. Boomer, Blake E. Devitt, John D. Forsyth, Gail D. Fosler, James R. Gavin III, M.D., Ph.D., Peter S. Hellman, Wayne T. Hockmeyer, Ph.D., Joseph B. Martin, M.D., Ph.D., Carole J. Shapazian, Thomas T. Stallkamp, K. J. Storm and Albert P.L. Stroucken. Please refer to the section entitled "Corporate Governance - Director Independence" on page 9 of this Proxy Statement for a discussion of Baxter's independence standards.

During 2009, the Board held 8 meetings. All directors attended 94% or more of the aggregate number of meetings of the Board and Board committees on which they served. Average attendance was approximately 99%. In accordance with Baxter's Corporate Governance Guidelines, which express the company's expectation that directors attend the annual meeting of shareholders, all but one of the company's directors attended the annual meeting of shareholders held on May 5, 2009.

Committees of the Board

The standing committees of the Board of Directors are the Audit Committee, Compensation Committee, Corporate Governance Committee, Finance Committee, Public Policy Committee and Science and Technology Committee. Each committee consists solely of independent directors and is governed by a written charter. All required committee charters are available on Baxter's website at www.baxter.com under "About Baxter - Corporate Governance - Board of Directors - Committees of the Board."

Audit Committee

The Audit Committee is currently composed of Blake E. Devitt (Chair), Gail D. Fosler, Thomas T. Stallkamp, K. J. Storm and Albert P.L. Stroucken, each of whom is independent under the rules of the New York Stock Exchange and Rule 10A-3 of the Securities Exchange Act of 1934, as amended. The Board has determined that Messrs. Devitt, Stallkamp, Storm and Stroucken each qualify as an audit committee financial expert as defined by the rules of the Securities and Exchange Commission. The Audit Committee is primarily concerned with the integrity of Baxter's

financial statements, system of internal accounting controls, the internal and external audit process, and the process for monitoring compliance with laws and regulations. Its duties include: (1) reviewing the adequacy and effectiveness of Baxter's internal control over financial reporting with management and the independent and internal auditors, and reviewing with management Baxter's disclosure controls and procedures; (2) retaining and evaluating the qualifications, independence and performance of the independent registered public

accounting firm; (3) approving audit and permissible non-audit engagements to be undertaken by the independent registered public accounting firm; (4) reviewing the scope of the annual internal and external audits; (5) reviewing and discussing earnings press releases prior to their release; (6) holding separate executive sessions with the independent registered public accounting firm, the internal auditor and management; and (7) discussing guidelines and policies governing the process by which Baxter assesses and manages risk. The Audit Committee met 11 times in 2009. The Audit Committee Report appears on page 41.

Compensation Committee

The Compensation Committee is currently composed of John D. Forsyth (Chair), Walter E. Boomer, Peter S. Hellman, Carole J. Shapazian and Thomas T. Stallkamp, each of whom is independent under the rules of the New York Stock Exchange. The Compensation Committee exercises the authority of the Board relating to employee benefit plans and is responsible for the oversight of compensation generally. The Compensation Committee may delegate its authority to subcommittees when appropriate. While the Committee has delegated its authority with respect to day-to-day plan administration and interpretation issues and certain off-cycle equity grants, no authority for the compensation of executive officers or directors has been delegated by the Committee. The Committee's duties include: (1) making recommendations for consideration by the Board, in executive session, concerning the compensation of the Chief Executive Officer; (2) determining the compensation of executive officers (other than the Chief Executive Officer) and advising the Board of such determination; (3) making recommendations to the Board with respect to incentive compensation plans and equity-based plans and exercising the authority of the Board concerning benefit plans; (4) serving as the administration committee of the company's equity plans; and (5) making recommendations to the Board concerning director compensation. The Corporate Governance and Compensation Committees work together to establish a link between Mr. Parkinson's performance and decisions regarding his compensation. All compensation actions relating to Mr. Parkinson are subject to the approval of the independent directors of the Board. The Compensation Committee met 5 times in 2009. The Compensation Committee Report appears on page 23.

The Compensation Committee has directly engaged George B. Paulin, Chairman and Chief Executive Officer of Frederic W. Cook & Co., Inc., as its compensation consultant. Additionally, Hewitt Associates assists the Committee with the compilation of market data from time to time. Mr. Paulin reports directly and exclusively to the Committee and his firm provides no other services to Baxter except advising on executive and Board compensation matters. He provides analyses and recommendations that inform the Committee's decisions, but he does not decide or approve any compensation actions. During 2009, he advised the Committee Chairman on setting agenda items for Committee meetings; reviewed management proposals presented to the Committee; evaluated market data compiled by Hewitt Associates; conducted a review of the structure and level of compensation for non-employee directors; and performed a review of the overall effectiveness of the executive officer compensation program.

Corporate Governance Committee

The Corporate Governance Committee is currently composed of James R. Gavin III, M.D., Ph.D. (Chair), Blake E. Devitt, John D. Forsyth and Joseph B. Martin, M.D., Ph.D., each of whom is independent under the rules of the New York Stock Exchange. The Corporate Governance Committee assists and advises the Board on director nominations, corporate governance and general Board organization and planning matters. Its duties include: (1) developing criteria, subject to approval by the Board, for use in evaluating and selecting candidates for election or re-election to the Board and assisting the Board in identifying and attracting qualified director candidates; (2) selecting and recommending that the Board approve the director nominees for the next annual meeting of shareholders and recommending persons to fill any vacancy on the Board; (3) determining Board committee structure and membership; (4) reviewing at least annually the adequacy of Baxter's Corporate Governance Guidelines; (5) overseeing the succession planning process for management, including the Chief Executive Officer; (6) developing and implementing an annual process for

evaluating the performance of the Chief Executive Officer; and (7) developing and implementing an annual process for evaluating Board and committee performance. The Corporate Governance Committee met 3 times in 2009.

Finance Committee

The Finance Committee is currently composed of K. J. Storm (Chair), Gail D. Fosler, Peter S. Hellman, Wayne T. Hockmeyer, Ph.D. and Albert P.L. Stroucken. The Finance Committee assists the Board in fulfilling its responsibilities in connection with the company's financial affairs. The Finance Committee reviews and, subject to the limits specified in its charter, approves or makes recommendations or reports to the Board regarding: (1) proposed financing transactions, capital expenditures, acquisitions, divestitures and other transactions; (2) dividends; (3) results of the management of pension assets; and (4) risk management relating to the company's hedging activities, use of derivative instruments and insurance coverage. The Finance Committee met 6 times in 2009.

Public Policy Committee

The Public Policy Committee is currently composed of Wayne T. Hockmeyer, Ph.D. (Chair), Walter E. Boomer, James R. Gavin III, M.D., Ph.D., Joseph B. Martin, M.D., Ph.D. and Carole J. Shapazian. The Public Policy Committee is primarily concerned with the review of the policies and practices of Baxter to ensure that they are consistent with Baxter's social responsibility to act with integrity as a global corporate citizen to employees, customers and society. The Committee's duties include: (1) addressing the company's responsibilities with respect to the health and safety of employees, consumers and the environment; (2) overseeing, reviewing and making recommendations to the Corporate Responsibility Office as set forth in the company's Code of Conduct; (3) reviewing and making recommendations regarding Baxter's Quality and Regulatory programs and performance; and (4) reviewing and making recommendations on the company's Government Affairs Program, including the company's political contributions and positions with respect to pending legislative and other initiatives, and political advocacy activities. The Public Policy Committee met 3 times in 2009.

Science and Technology Committee

The Science and Technology Committee is currently composed of Joseph B. Martin, M.D., Ph.D. (Chair), James R. Gavin III, M.D., Ph.D., Wayne T. Hockmeyer, Ph.D. and Carole J. Shapazian. The Science and Technology Committee was formed in May 2009 to review and assist in the oversight of Baxter's long-term research and development (R&D) strategies and objectives, R&D pipeline and technology platforms. The Committee is also responsible for identifying and discussing significant emerging issues and trends in science and technology applicable to the company's business. The Science and Technology Committee met for 2 extended sessions in 2009.

Corporate Governance

Director Independence

To be considered independent, the Board must affirmatively determine that a director does not have any direct or indirect material relationship with Baxter (either directly or as a partner, shareholder or officer of an organization that has a relationship with Baxter). Baxter's Corporate Governance Guidelines require that the Board be composed of a majority of directors who meet the criteria for independence established by rules of the New York Stock Exchange.

In making its independence determinations, the Board considers transactions, relationships and arrangements between Baxter and entities with which directors are associated as executive officers, directors and trustees. When these transactions, relationships and arrangements exist, they are in the ordinary course of business and are of a type customary for a global diversified company such as Baxter. More specifically, with respect to each of the three most recent fiscal years, the Board evaluated for directors Fosler and Stroucken the annual amount of purchases by Baxter from the company where he or she served as an executive officer, and determined that the amount of purchases in each fiscal year was below two percent of the consolidated gross revenues of each of those companies during the

companies last completed fiscal year.

Director Qualifications

As discussed below in Nomination of Directors, directors are selected on the basis of the specific criteria set forth in Baxter's Corporate Governance Guidelines. The experience, expertise and knowledge represented by the Board of Directors as a collective body allows the Board to lead Baxter in a manner that serves its shareholders' interests appropriately. Set forth below is a discussion of the key qualifications for each of the directors.

General Boomer Superior leadership skills as a result of his 34 years of service in the United States Marine Corps as well as significant financial and business experience gained as President and Chief Executive Officer of Rogers Corporation and through his roles at McDermott International, Inc. and Babcock & Wilcox Power Generation Group

Mr. Devitt Significant accounting expertise and knowledge of the healthcare industry through his 33-year career at Ernst & Young, including his service as Director of the Pharmaceutical and Medical Device Industry Practice

Mr. Forsyth Extensive experience in the healthcare industry as well as an understanding of the challenges associated with leading and operating within large, complex organizations as current Chairman and Chief Executive Officer of Wellmark Blue Cross Blue Shield and given his 25 years of management experience at the University of Michigan Health System

Ms. Fosler Substantial experience with respect to corporate best practices as well as significant global economic expertise, with an emphasis on emerging markets, especially China, as a result of her more than 20-year leadership career at The Conference Board and her other public-company board service

Dr. Gavin Extensive medical and scientific expertise and knowledge of the healthcare industry as a result of the positions he has held at Emory University, the Morehouse School of Medicine and Howard Hughes Medical Institute as well as leadership experience given his service as Chief Executive Officer and Chief Medical Officer of Healing Our Village, Inc.

Mr. Hellman Significant financial and operational expertise and experience leading complex, multi-faceted corporations with a considerable global presence as a result of the various senior positions held at Nordson Corporation and TRW Inc. as well as extensive experience serving on public-company boards

Dr. Hockmeyer Substantial experience developing and running a significant healthcare company as founder and Chairman and Chief Executive Officer of MedImmune and significant scientific and clinical expertise as a result of his roles at Praxis Biologics Inc. and Walter Reed Army Institute of Research

Dr. Martin Extensive medical, scientific and organizational expertise as a result of his experience in leading two major medical and educational institutions at Harvard University and the University of California, San Francisco and as a result of his experience as a physician and academic investigator at McGill University, the Massachusetts General Hospital, the University of California, San Francisco, and Harvard Medical School

Mr. Parkinson Substantial knowledge of the healthcare industry and extensive experience leading and operating within global, multi-faceted corporations as a result of his roles at Baxter and Abbott Laboratories as well as an understanding of the complexities involved in managing large not-for-profit organizations through his service as Dean of Loyola University Chicago School of Business Administration and Graduate School of Business and other directorships

Ms. Shapazian Significant experience with, and insight into, global supply and service operations, manufacturing and distribution practices, research, product development and quality systems and organizational change as a result of

her senior management positions with both Maytag Corporation and Polaroid Corporation

Mr. Stallkamp Significant experience leading complex organizations through his senior management roles at DaimlerChrysler Corporation and its predecessor Chrysler Corporation and MSX International, Inc. as well as financial and business development expertise as an Industrial Partner in Ripplewood Holdings L.L.C.

Mr. Storm Extensive international business experience and established leadership skills gained as Chief Executive Officer of AEGON N.V. and through his board service at global organizations such as KLM Royal Dutch

Airlines, PON Holdings B.V., Anheuser-Busch InBev S.A. and Unilever N.V. and Plc., as well as significant accounting expertise as a registered accountant

Mr. Stroucken Substantial experience leading and operating large, multi-faceted corporations and financial expertise as a result of serving as Chairman, President and Chief Executive Officer of Owens-Illinois, Inc. and H.B. Fuller Company as well as experience in the healthcare and chemical industries through his roles at Bayer

Corporate Governance Guidelines

Baxter's Board of Directors has long adhered to corporate governance principles designed to ensure effective corporate governance. Since 1995, the Board of Directors has had in place a set of corporate governance guidelines reflecting these principles. Baxter's current Corporate Governance Guidelines cover topics including, but not limited to, director qualification standards, director responsibilities (including those of the lead director), director access to management and independent advisors, director compensation, director orientation and continuing education, succession planning and the annual evaluations of the Board and its committees. Baxter's Corporate Governance Guidelines are available on Baxter's website at www.baxter.com under About Baxter Corporate Governance Guidelines.

Code of Conduct

Baxter has adopted a code of conduct that applies to all members of Baxter's Board of Directors and all employees of the company, including the Chief Executive Officer, Chief Financial Officer, Controller and other senior financial officers. Any amendment to, or waiver from, a provision of the Code of Conduct that applies to Baxter's Chief Executive Officer, Chief Financial Officer, Controller or persons performing similar functions will be disclosed on the company's website, at www.baxter.com under About Baxter Corporate Governance. The Code of Conduct is available on Baxter's website at www.baxter.com under About Baxter Corporate Governance Guidelines Code of Conduct.

Executive Sessions

The independent directors of the Board met in executive session without management at every regularly scheduled meeting during 2009 pursuant to Baxter's Corporate Governance Guidelines. The Audit Committee is required by its charter to hold separate sessions during at least five committee meetings with each of the internal auditor, the independent registered public accounting firm and management. The Corporate Governance and Compensation Committees also meet in executive session as deemed appropriate.

Board Leadership Structure; Lead Director

Mr. Parkinson serves as Chairman of the Board and Chief Executive Officer. General Boomer serves as the lead director. As Chairman of the Board and pursuant to Baxter's Bylaws, Mr. Parkinson presides at all Board and shareholder meetings; serves as the primary spokesperson for Baxter; and acts as a liaison between the Board and the directors. As Chief Executive Officer and pursuant to Baxter's Bylaws, Mr. Parkinson supervises the business of the company, subject to the direction of the Board. As lead director and pursuant to Baxter's Corporate Governance Guidelines, General Boomer presides at all executive sessions of the Board and acts as the liaison between non-management directors and the Chairman of the Board. In addition, General Boomer serves as the contact person to facilitate communications by Baxter employees and shareholders directly with the non-management members of the Board. The full Board annually assesses Mr. Parkinson's performance as Chairman of the Board and as Chief Executive Officer. The Corporate Governance Committee recommends a lead director to the full Board for approval on an annual basis.

The Board has determined that this structure is appropriate in light of the requirements for these roles as set forth in Baxter's Bylaws and Corporate Governance Guidelines and the skills and experience that Mr. Parkinson and General Boomer bring to these roles. The positions of Chairman of the Board and Chief Executive Officer are currently held by the same person because the Board believes that the unification of these positions provides a single vision for the company and results in an effective and efficient organizational structure.

Board's Oversight of Risk

Baxter's risk management activities include the identification and assessment of the key risks facing the company among the universe of business risks (*i.e.*, strategic, operational, financial and regulatory/compliance). These risks are identified across the organization from multiple businesses, regions and functions. The Board reviews these risks on an annual basis after they have been identified and assessed by management and regularly reviews the initiatives put in place to mitigate the effects of these risks. These reviews include updates throughout the year from the businesses, regions and functions from which the key risks arise. Depending on the risk, the update may be presented to the full Board or if appropriate to a committee. For example, the Audit Committee regularly reviews internal audit's financial risk assessment process and findings while the Public Policy Committee regularly reviews updates from the ethics and compliance and governmental affairs functions. Some risks are reviewed by the Board as well as a committee. For example, regulatory updates are provided at least annually to the full Board although more frequently provided to the Public Policy Committee. The oversight of risk within the organization is an evolving process requiring the company to continually look for opportunities to further embed systematic enterprise risk management into ongoing business processes across the organization. The Board actively encourages management to continue to drive this evolution.

In addition to the Board's role in enterprise risk management, various committees of the Board are also expressly tasked by their charters to be responsible for the oversight of certain risks. More specifically, the Audit Committee is charged with oversight of the process by which management assesses and manages risk as well as the company's major financial risk exposures and the steps taken to monitor and control these exposures, while the Finance Committee is charged with oversight of risk management relating to the company's hedging activities, use of derivative instruments and insurance coverage.

Nomination of Directors

It is the policy of the Corporate Governance Committee to consider candidates for director recommended by shareholders, members of the Board and management. The Corporate Governance Committee also considers directors recommended by the independent search firm retained by the Board to help identify and evaluate potential director nominees. The Corporate Governance Committee evaluates all candidates for director in the same manner regardless of the source of the recommendation. Shareholder recommendations for candidates for director should include the information required by Baxter's Bylaws and be sent to the Corporate Governance Committee, c/o Corporate Secretary, Baxter International Inc., One Baxter Parkway, Deerfield, Illinois 60015.

Pursuant to Baxter's Corporate Governance Guidelines, nominees for director must:

Possess fundamental qualities of intelligence, honesty, perceptiveness, good judgment, maturity, high ethics and standards, integrity, fairness and responsibility.

Have a genuine interest in the company and recognition that as a member of the Board, each director is accountable to all shareholders of the company, not to any particular interest group.

Have a background that demonstrates an understanding of business and financial affairs and the complexities of a large, multifaceted, global business, governmental or educational organization.

Be or have been in a senior position in a complex organization such as a corporation, university or major unit of government or a large not-for-profit institution.

Have no conflict of interest or legal impediment that would interfere with the duty of loyalty owed to the company and its shareholders.

Have the ability and be willing to spend the time required to function effectively as a director.

Be compatible and able to work well with other directors and executives in a team effort with a view to a long-term relationship with the company as a director.

Have independent opinions and be willing to state them in a constructive manner.

The Corporate Governance Guidelines also provide that directors are selected on the basis of talent and experience. Diversity of background, including diversity of gender, race, ethnic or national origin, age, and experience (including in business, government and education as well as healthcare, science and technology) is a relevant factor in the selection process. This factor is relevant as a diverse Board of Directors is likely to be a well-balanced Board with varying perspectives and a breadth of experience that will positively contribute to robust discussion at Board meetings. A nominee's ability to meet the independence criteria established by the New York Stock Exchange is also a factor in the nominee selection process.

Once a candidate has been identified, the Corporate Governance Committee may collect and review publicly available information regarding the person to assess whether the person should be considered further. If the Corporate Governance Committee or its Chair determines that the candidate warrants further consideration, the Corporate Governance Committee and the external search firm retained by the Committee will engage in a process that includes a thorough investigation of the candidate, an examination of his or her business background and education, research on the individual's accomplishments and qualifications, an in-person interview and reference checking. If this process generates a positive indication, the lead director, the members of the Committee and the Chairman of the Board will meet separately with the candidate and then confer with each other regarding their respective impressions of the candidate. If the individual was positively received, the Committee will then recommend the individual to the full Board for further meetings and evaluation and ultimately election. If the full Board agrees, the Chairman of the Board is then authorized to extend an offer to the individual candidate.

Communicating with the Board of Directors

Shareholders and other interested parties may contact any of Baxter's directors, including the lead director or the non-management directors as a group, by writing a letter to Baxter Director c/o Corporate Secretary, Baxter International Inc., One Baxter Parkway, Deerfield, Illinois 60015 or by sending an e-mail to boardofdirectors@baxter.com. Baxter's Corporate Secretary will forward communications directly to the lead director, unless a different director is specified.

Executive Compensation

Compensation Discussion and Analysis

The Compensation Committee has designed a compensation program that is straightforward and driven by a few key principles and objectives, with pay for performance being the most significant structural element of the program. The compensation package awarded to each named executive officer consists primarily of a base salary, a cash bonus and equity awards.

Year in Review

Despite the challenging global economic and regulatory environment, Baxter delivered strong financial results in 2009. Baxter reported net income for 2009 of \$2.2 billion, or \$3.59 per diluted share, an increase of 9% and 14%, respectively, over 2008. Baxter also generated record operating cash flows of \$2.9 billion in 2009, with cash flow from operations improving by approximately \$400 million. Due to the strong cash flow generated from the company's operations in 2009, Baxter was able to invest more than \$900 million in research and development while returning value to shareholders with the repurchase of approximately \$1.2 billion of common stock and the payment of \$632 million in dividends, representing a 16% increase from the prior year. Baxter exceeded the guidance it issued for full year 2009 for adjusted sales growth and adjusted diluted earnings per share. This strong financial performance was a significant factor in the compensation decisions that were made with respect to the company's 2009

performance.

A comparison of the performance of Baxter's common stock against the performance of its peers provides another perspective on Baxter's overall performance over the last five years and is another factor that the Committee considered when making compensation decisions. The following graph compares the change in Baxter's cumulative total shareholder return (including reinvested dividends) on Baxter's common stock with the Standard & Poor's 500 Composite Index and the Standard and Poor's 500 Health Care Index over the past five years.

For his service as Baxter's Chief Executive Officer and Chairman of the Board in 2009, Mr. Parkinson received total compensation of \$14,361,305, primarily driven by strong company and individual performance in 2009 and 2008 (as equity awards were made in early 2009 based, in part, on 2008 performance). Mr. Parkinson's compensation reflects the role he plays in establishing Baxter's strategic agenda and long-range plan, meeting the challenges that arise in the day-to-day operations of a company as large and diverse as Baxter and leading the company in a challenging global economic and regulatory environment. Mr. Parkinson's 2009 compensation also reflects the Board's annual review of competitive market data. Although his compensation is determined using the same methodology as used for each of the other named executive officers, Mr. Parkinson's compensation is significantly higher than the compensation paid to any of the other named executive officers as his responsibilities and obligations at Baxter are significantly greater than those of any of the other named executive officers.

Each of the other named executive officers received total compensation for his or her 2009 performance as follows: Mr. Davis, \$3,342,327; Ms. Amundson, \$3,433,735; Mr. Arduini, \$3,029,627; Mr. Greisch, \$2,657,249; Ms. Lichtenstein, \$2,802,915; and Mr. McGillivray, \$2,201,673. The compensation paid to Ms. Amundson, Mr. Arduini and Mr. McGillivray reflects the relative performances of the segments of the business for which these officers were responsible during 2009 and 2008 (as equity awards were made in early 2009 based, in part, on 2008 performance). The compensation paid to Mr. Davis reflects the performance of the function within the organization for which he was responsible during 2009 and 2008. The compensation paid to Mr. Greisch and Ms. Lichtenstein, who resigned from their respective positions as Corporate Vice President and President, International and Corporate Vice President and General Counsel during 2009, reflects the relative performances of the functions of the business for which these officers were responsible during 2008 and 2009 up to the date of their respective resignations. This compensation also includes certain payments made to Mr. Greisch and Ms. Lichtenstein after their resignations pursuant to the agreements entered into between Baxter and such former officers as of the date of their resignations and as approved by the Compensation Committee. For additional discussion of these agreements, please see [Separation Agreements](#) below.

Consistent with past years, the most significant component of the total compensation paid to the named executive officers in 2009 was in the form of equity. The grant-date fair value of the equity awards granted to Mr. Parkinson in 2009 represented approximately 54% of his overall compensation. The grant-date fair value of the equity awards granted to the other named executive officers in 2009 (except for Mr. Greisch and Ms. Lichtenstein) represented approximately 49% of their overall compensation. The greater emphasis on equity awards in Mr. Parkinson's compensation is consistent with the Committee's view that with his greater responsibilities more of his compensation should be based on the company's future performance. These grants are described below.

If the economy does not improve and the use of the Internet and electronic business does not grow, our revenues may not grow.

Acceptance and use of the Internet may not continue to develop at historical rates and a sufficiently broad base of consumers may not adopt or continue to use the Internet and other online services as a medium of commerce. Demand for Internet services and products are subject to a high level of uncertainty and are subject to significant pricing pressure, especially in Asia-Pacific. As a result, we cannot be certain that a viable market for our IBX hubs will materialize. If the market for our IBX hubs grows more slowly than we currently anticipate, our revenues will not grow and our operating results will suffer.

Government regulation may adversely affect the use of the Internet and our business.

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Various laws and governmental regulations governing Internet related services, related communications services and information technologies, and electronic commerce remain largely unsettled, even in areas where there has been some legislative action. This is true both in the U.S. and the various foreign countries in which we now operate. It may take years to determine whether and how existing laws, such as those governing intellectual property, privacy, libel, telecommunications services, and taxation, apply to the Internet and to related services such as ours. We have limited experience with such international regulatory issues and substantial resources may be required to comply with regulations or bring any non-compliant business practices into compliance with such regulations. In addition, the development of the market for online commerce and the displacement of traditional telephony service by the Internet and related communications services may prompt an increased call for more

stringent consumer protection laws or other regulation both in the U.S. and abroad that may impose additional burdens on companies conducting business online and their service providers. The compliance with, adoption or modification of, laws or regulations relating to the Internet, or interpretations of existing laws, could have a material adverse effect on our business, financial condition and results of operation.

Terrorist activity throughout the world and military action to counter terrorism could adversely impact our business.

The September 11, 2001 terrorist attacks in the U.S., the ensuing declaration of war on terrorism and the continued threat of terrorist activity and other acts of war or hostility appear to be having an adverse effect on business, financial and general economic conditions internationally. These effects may, in turn, increase our costs due to the need to provide enhanced security, which would have a material adverse effect on our business and results of operations. These circumstances may also adversely affect our ability to attract and retain customers, our ability to raise capital and the operation and maintenance of our IBX hubs.

Risks Related to the Debentures

Your right to receive payments on the debentures is junior to existing and future senior indebtedness.

The debentures are contractually subordinated in right of payment to existing and future senior debt. The indenture does not limit the creation of additional senior debt (or any other indebtedness) in the future. Any significant senior debt incurred may materially adversely impact our ability to service our debt, including the debentures. Due to the subordination provisions, in the event of our insolvency, funds which we would otherwise use to pay the holders of the debentures will be used to pay the holders of senior debt to the extent necessary to pay the senior debt in full. As a result of these payments, our general creditors may recover less, ratably, than the holders of our senior debt and such general creditors may recover more, ratably, than the holders of our debentures or our other subordinated indebtedness. In addition, the holders of our senior debt may, under certain circumstances, restrict or prohibit us from making payments on the debentures.

We are not required by the indenture to comply with financial covenants.

The indenture does not contain any financial covenants. Consequently, we are not required under the indenture to meet any financial tests, such as those that measure our working capital, interest coverage, fixed charge coverage or net worth, in order to maintain compliance with the terms of the indenture.

We may not have the ability to raise the funds necessary to purchase the debentures upon a fundamental change or other purchase date, as required by the indenture governing the debentures.

Holders of the debentures may require us to purchase their debentures on February 15, 2009, February 15, 2014 and February 15, 2019. In addition, holders of the debentures also may require us to purchase their debentures for cash upon a fundamental change event as described under Description of Debentures Fundamental Change Permits Purchase of Debentures By Us at the Option of the Holder. A fundamental change also may constitute an event of default, and result in the acceleration of the maturity of our then existing indebtedness, under another indenture or other agreement. We cannot assure you that we would have sufficient financial resources, or would be able to arrange financing, to pay the purchase price for the debentures tendered by holders. Failure by us to purchase the debentures when required will result in an event of default with respect to the debentures.

The trading prices for the debentures will be directly affected by the trading prices of our common stock.

The trading prices of the debentures in the secondary market will be directly affected by the trading prices of our common stock, the general level of interest rates and our credit quality. It is impossible to predict whether the price of our common stock or interest rates will rise or fall. Trading prices of our common stock will be influenced by our operating results and prospects and by economic, financial and other factors. In addition, general market conditions, including the level of, and fluctuations in, the trading prices of stocks generally, and sales of substantial amounts of common stock by us in the market after the offering of the debentures, or the perception that such sales could occur, could affect the price of our common stock. Fluctuations in interest rates may give rise to arbitrage

opportunities based upon changes in the relative value of our common stock. Any other arbitrage could, in turn, affect the trading prices of the debentures.

The trading market for the debentures is not active.

We have not listed the debentures on any securities exchange or have not included them in any automated quotation system. We cannot assure you that trading market for the debentures will more actively develop or as to the liquidity or sustainability of any such market, your ability to sell the debentures or the price at which you will be able to sell your debentures. Future trading prices of the debentures will depend on many factors, including, among other things, prevailing interest rates, our operating results, the price of our common stock and the market for similar securities.

If you hold debentures, you will not be entitled to any rights with respect to our common stock, but you will be subject to all changes made with respect to our common stock.

If you hold debentures, you will not be entitled to any rights with respect to our common stock (including, without limitation, voting rights and rights to receive any dividends or other distributions on our common stock), but you will be subject to all changes affecting the common stock. You will only be entitled to rights on the common stock if and when we deliver shares of common stock to you in exchange for your debentures and in limited cases under the anti-dilution adjustments of the debentures. For example, in the event that an amendment is proposed to our certificate of incorporation or by-laws requiring stockholder approval and the record date for determining the stockholders of record entitled to vote on the amendment occurs prior to delivery of the common stock, you will not be entitled to vote on the amendment, although you will nevertheless be subject to any changes in the powers, preferences or special rights of our common stock.

If the market price of our stock continues to be highly volatile, the value of an investment in our common stock may decline.

Within the last 12 months, our common stock has traded between \$5.00 and \$37.54 per share. The market price of the shares of our common stock has been and may continue to be highly volatile. Announcements may have a significant impact on the market price of our common stock. These announcements may include:

our operating results;

developments in our relationships with corporate customers;

changes in regulatory policy or interpretation;

changes in the ratings of our stock by securities analysts;

market conditions for telecommunications stocks in general; and

general economic and market conditions.

The stock market has from time to time experienced extreme price and volume fluctuations, which have particularly affected the market prices for emerging telecommunications companies, and which have often been unrelated to their operating performance. These broad market fluctuations may adversely affect the market price of our common stock. In addition, sales of substantial amounts of our common stock in the public market could lower the market price of our common stock.

USE OF PROCEEDS

We will not receive any proceeds from the sale by the selling security holders of the debentures or the shares of common stock issuable upon conversion of the debentures.

DESCRIPTION OF DEBENTURES

The debentures were issued under the indenture between us and U.S. Bank National Association, as trustee.

We have summarized portions of the indenture below. This summary is not complete. We urge you to read the indenture because it defines your rights as a holder of the debentures. In this section, Equinix, we, our and us each refers only to Equinix, Inc. and not to any existing or future subsidiary.

General

The debentures are unsecured subordinated obligations of Equinix and are convertible into our common stock as described under Conversion Rights below. The debentures are limited to an aggregate principal amount of \$86,250,000 and will mature on February 15, 2024.

The debentures bear interest at the rate of 2.50% per year from the date of issuance of the debentures, or from the most recent date to which interest had been paid or provided for. Interest is payable semi-annually in arrears on February 15 and August 15 of each year, commencing August 15, 2004, to holders of record at the close of business on the preceding February 1 and August 1, respectively. Interest is computed on the basis of a 360-day year comprised of twelve 30-day months. In the event of the maturity, conversion, purchase by us at the option of the holder or redemption of a debenture, interest ceases to accrue on the debenture under the terms of and subject to the conditions of the indenture.

Principal is payable, and debentures may be presented for conversion, registration of transfer and exchange, without service charge, at our office or agency in New York, New York, which is initially the office or agency of the trustee in New York, New York. See Form, Denomination and Registration.

The indenture does not contain any financial covenants or any restrictions on the payment of dividends, the incurrence of senior debt or other indebtedness, or the issuance or repurchase of securities by us. The indenture contains no covenants or other provisions to protect holders of the debentures in the event of a highly leveraged transaction or a fundamental change, except to the extent described under Fundamental Change Permits Purchase of Debentures By Us at the Option of the Holder below.

Ranking

The debentures are unsecured obligations and are subordinated in right of payment, as provided in the indenture, to the prior payment in full of all of our existing and future senior debt and equal in right of payment with all of our future subordinated debt.

As of March 31, 2004, we had approximately \$33.6 million of senior debt principal outstanding. These convertible secured notes will remain senior debt and the indenture does not limit the creation of additional senior debt (or other indebtedness) in the future (see Use of Proceeds).

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Any senior debt will continue to be senior debt and will be entitled to the benefits of the subordination provisions irrespective of any amendment, modification or waiver of any of its terms.

The indenture provides that in the event of any payment or distribution of our assets upon our dissolution, winding up, liquidation or reorganization, the holders of our senior debt shall first be paid in respect of all senior debt in full in cash or other payment satisfactory to the holders of senior debt before we make any payments of principal of, and interest (including liquidated damages, if any) on the debentures. In addition, if the debentures are accelerated because of an event of default, the holders of any senior debt would be entitled to payment in full in cash or other payment satisfactory to the holders of senior debt of all obligations in respect of senior debt before the holders of the debentures are entitled to receive any payment or distribution. Under the indenture, we must promptly notify holders of senior debt if payment of the debentures is accelerated because of an event of default.

The indenture further provides that if any default by us has occurred and is continuing in the payment of principal of, premium, if any, or interest on, other payment obligations in respect of, any senior debt whether by acceleration or otherwise, then no payment shall be made on account of principal of, or interest on the debentures (including any liquidated damages), until (i) all such payments due in respect of that senior debt have been paid in full in cash or other payment satisfactory to the holders of that senior debt and (ii) at the time of, or immediately after giving effect to, any such payment of principal of or interest on the debentures, there does not exist under any senior debt or any agreement pursuant to which any senior debt has been issued any default which shall not have been cured or waived and which shall have resulted in the full amount of such senior debt being declared due and payable.

During the continuance of any event of default with respect to any designated senior debt (other than a default in payment of the principal of or premium, if any, or interest on, rent or other payment obligations in respect of any designated senior debt), permitting the holders thereof to accelerate the maturity thereof (or, in the case of any lease, permitting the landlord either to terminate the lease or to require us to make an irrevocable offer to terminate the lease following an event of default thereunder), no payment may be made by us, directly or indirectly, with respect to principal of or, or interest on the debentures (including any liquidated damages, if any) for 179 days following written notice to us, from any holder, representative or trustee under any agreement pursuant to which that designated senior debt may have been issued, that such an event of default has occurred and is continuing, unless such event of default has been cured or waived or that designated senior debt has been paid in full in cash or other payment satisfactory to the holders of that designated senior debt.

Notwithstanding the foregoing (but subject to the provisions described above limiting payment on the debentures in certain circumstances), unless the holders of such designated senior debt or the representative of such holders shall have accelerated the maturity of such designated senior debt, we may resume payments on the debentures after the end of such blockage period. Not more than one payment blockage notice may be given in any consecutive 365-day period, irrespective of the number of defaults with respect to one or more issues of designated senior debt during such period.

Senior debt means the principal of, premium, if any, interest (including all interest accruing subsequent to the commencement of any bankruptcy or similar proceeding, whether or not a claim for post petition interest is allowable as a claim in any such proceeding) and rent payable on or termination payment with respect to or in connection with, and all fees, costs, expenses and other amounts accrued or due on or in connection with, our indebtedness (including convertible notes issued to a subsidiary of STT Communications and entities affiliated with Crosslink Capital in connection with financing transactions in December 2002 and June 2003), whether outstanding on the date of the indenture or subsequently created, incurred, assumed, guaranteed or in effect guaranteed by us (including all deferrals, renewals, extensions or refundings of, or amendments, modifications or supplements to, the foregoing), except for:

any indebtedness that by its terms expressly provides that such indebtedness shall not be senior in right of payment to the debentures or expressly provides that such indebtedness is equal in right of payment with the debentures;

any indebtedness between or among us or any of our subsidiaries, or a majority of the voting stock of which we directly or indirectly own or any of our affiliates other than (i) indebtedness held by an affiliate on the date of the indenture, (ii) indebtedness acquired after the date of the indenture by operation of the pay-in-kind terms of any indebtedness held by an affiliate on the date of the indenture as such pay-in-kind terms are in effect on the date of the indenture, (iii) indebtedness acquired by an affiliate pursuant to preemptive rights held by such affiliate on the date of the indenture, or (iv) unless the amount under (iii) is greater, up to 25% of the aggregate principal amount of any future series of indebtedness issued after the date of the indenture acquired directly from us in connection with a bona fide offering of such series of indebtedness directed principally to unaffiliated third parties;

our real property leases;

any liability for federal, state, local or other taxes owed or owing by us; and

our trade payables and accrued expenses (including, without limitation, accrued compensation) for goods, services or materials purchased or provided in the ordinary course of business.

Designated senior debt is our senior debt which, on the date of a payment event of default or the delivery of a payment blockage notice, has an aggregate amount outstanding of, or under which, on such date, the holders thereof are committed to lend up to, at least \$5.0 million and is specifically designated in the instrument evidencing or governing that senior debt as designated senior debt for purposes of the indenture. However, the instrument may place limitations and conditions on the right of that senior debt to exercise the rights of designated senior debt. At March 31, 2004, we had \$33.6 million designated senior debt principal outstanding.

By reason of these subordination provisions, in the event of insolvency, funds which we would otherwise use to pay the holders of debentures will be used to pay the holders of senior debt to the extent necessary to pay senior debt in full in cash or other payment satisfactory to the holders of senior debt. As a result of these payments, our general creditors may recover less, ratably, than holders of senior debt and such general creditors may recover more, ratably, than holders of debentures.

The debentures are effectively subordinated to all existing and future liabilities of our subsidiaries. Any right we have to receive assets of our existing subsidiaries or any future subsidiaries upon the latter's liquidation or reorganization (and the consequent right of the holders of the debentures to participate in those assets) will be effectively subordinated to the claims of that subsidiary's creditors, except to the extent that we are ourselves recognized as a creditor of that subsidiary, in which case our claims would still be subordinate to any security interests in the assets of that subsidiary and any indebtedness of that subsidiary senior to that held by us. There are no restrictions in the indenture on the ability of our existing subsidiaries or any future subsidiaries to incur indebtedness or other liabilities.

We will be obligated to pay reasonable compensation to the trustee and to indemnify the trustee against any losses, liabilities or expenses incurred by it in connection with its duties relating to the debentures. The trustee's claims for such payments will be senior to those of holders of the debentures in respect of all funds collected or held by the trustee.

Conversion Rights

Subject to the conditions and during the periods described below, holders may convert their debentures into our common stock at an initial conversion rate of 25.3165 shares of our common stock per \$1,000 principal amount of debenture, unless previously redeemed or purchased. This is equivalent to an initial conversion price of approximately \$39.50 per share.

The conversion rate and the equivalent conversion price in effect at any given time are referred to as the applicable conversion rate and the applicable conversion price, respectively, and will be subject to adjustment as described below. A holder may convert fewer than all of such holder's debentures so long as the debentures converted are an integral multiple of \$1,000 principal amount.

Upon conversion of a debenture, a holder will not receive any cash payment of interest (unless such conversion occurs between a regular record date and the interest payment date to which it relates) and we will not adjust the conversion rate to account for accrued and unpaid interest. Our delivery to the holder of the full number of shares of our common stock into which the debenture is convertible, together with any cash payment for such holder's fractional shares, will be deemed to satisfy our obligation to pay the principal amount of the debenture. As a result, any accrued but unpaid interest to the conversion date is deemed to be cancelled, extinguished and forfeited upon conversion. For a discussion of the tax treatment to you of receiving our common stock upon conversion, see Certain U.S. Federal Income Tax Considerations. We are not required to issue fractional shares of common stock upon conversion of debentures and, in lieu of fractional shares, we will pay a cash adjustment based upon the market price of the common stock on the last trading day prior to the date of conversion.

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

If a holder wishes to exercise its conversion right, such holder must deliver an irrevocable duly completed conversion notice, together, if the debentures are in certificated form, with the certificated security, to the conversion agent along with appropriate endorsements and transfer documents, if required, and pay any transfer or similar tax, if required. The conversion agent will, on the holder's behalf, convert the debentures into shares of our common stock. Holders may obtain copies of the required form of the conversion notice from the conversion agent. A certificate, or a book-entry transfer through The Depository Trust Company, New York, New York, or DTC, for the number of full shares of our common stock into which any debentures are converted, together with a cash payment for any fractional shares, will be delivered through the conversion agent as soon as practicable, but no later than the fifth business day, following the conversion date. The trustee will initially act as the conversion agent.

If a holder has already delivered a purchase notice as described under either *Purchase of Debentures By Us at the Option of the Holder* or *Fundamental Change Permits Purchase of Debentures By Us at the Option of the Holder* with respect to a debenture, however, the holder may not surrender that debenture for conversion until the holder has withdrawn the purchase notice in accordance with the indenture.

Holders of debentures at the close of business on a regular record date will receive payment of interest payable on the corresponding interest payment date notwithstanding the conversion of such debentures at any time after the close of business on the applicable regular record date. Debentures surrendered for conversion by a holder during the period from the close of business on any regular record date to the opening of business on the next interest payment date must be accompanied by payment of an amount equal to the interest that the holder is to receive on the debentures; *provided, however*, that no such payment need be made (1) if we have specified a redemption date that is after a record date and on or prior to the next interest payment date, (2) if we have specified a purchase date following a fundamental change that is after a record date and on or prior to the next interest payment date or (3) only to the extent of overdue interest, if any overdue interest exists at the time of conversion with respect to such debenture.

Holders may surrender their debentures for conversion into shares of our common stock prior to stated maturity in only the following circumstances:

Conversion Upon Satisfaction of Sale Price Condition

A holder may surrender any of its debentures for conversion into shares of our common stock in any calendar quarter (and only during such calendar quarter) after the quarter ending June 30, 2004 if the sale price of our common stock, for at least 20 trading days during the period of 30 consecutive trading days ending on the last trading day of the previous calendar quarter, is greater than or equal to 120% of the applicable conversion price per share of our common stock on such last trading day.

The *sale price* of our common stock on any date means the closing sale price per share (or if no closing sale price is reported, the average of the bid and asked prices or, if more than one in either case, the average of the average bid and the average asked prices) on that date as reported in transactions for the principal U.S. securities exchange on which our common stock is traded or, if our common stock is not listed on a U.S. national or regional securities exchange, as reported by the Nasdaq National Market. The sale price will be determined without reference to after-hours or extended market trading.

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If our common stock is not listed for trading on a U.S. national or regional securities exchange and not reported by the Nasdaq National Market on the relevant date, the sale price will be the last quoted bid price for our common stock in the over-the-counter market on the relevant date as reported by the National Quotation Bureau or similar organization.

If our common stock is not so quoted, the sale price will be the average of the mid-point of the last bid and asked prices for our common stock on the relevant date from each of at least three nationally recognized independent investment banking firms selected by us for this purpose.

Trading day means a day during which trading in securities generally occurs on The New York Stock Exchange or, if our common stock is not then listed on The New York Stock Exchange, on the principal other national or regional securities exchange on which our common stock is then listed or, if our common stock is not then listed on a national or regional securities exchange, on the National Association of Securities Dealers Automated Quotation System (Nasdaq) or, if our common stock is not then quoted on Nasdaq, on the principal other market on which our common stock is then traded.

Conversion Upon Satisfaction of Trading Price Condition

Holders may surrender their debentures for conversion into our common stock prior to maturity during the five business days immediately following any five consecutive trading-day period in which the trading price per \$1,000 principal amount of debentures (as determined following a request by a holder of the debentures in accordance with the procedures described below) for each day of that period was less than 98% of the product of the sale price of our common stock and the then applicable conversion rate (the 98% Trading Exception); *provided, however*, that if, on the date of any conversion of the debentures pursuant to the 98% Trading Exception that is on or after February 15, 2019, the sale price of our common stock is greater than the applicable conversion price for the debentures, then holders will receive upon conversion of the debentures, in lieu of common stock based on the then applicable conversion rate for their debentures, cash, common stock or a combination of cash and common stock, at our option, with a value equal to the principal amount of their debenture plus accrued and unpaid interest, if any, as of the conversion date, which we refer to as a principal value conversion.

The trading price of the debentures on any date of determination means the average of the secondary market bid quotations per \$1,000 principal amount of debentures obtained by the trustee for \$2,000,000 principal amount of the debentures at approximately 3:30 p.m., New York City time, on such determination date from three independent nationally recognized securities dealers we select, provided that if three such bids cannot reasonably be obtained by the trustee, but two such bids are obtained, then the average of the two bids shall be used, and if only one such bid can reasonably be obtained by the trustee, this one bid shall be used. If the trustee cannot reasonably obtain at least one bid for \$2,000,000 principal amount of the debentures from a nationally recognized securities dealer, then the trading price per \$1,000 principal amount of the debentures will be deemed to be less than 98% of the product of the sale price of our common stock and the then applicable conversion rate.

In connection with any conversion upon satisfaction of the above trading price condition, the trustee shall have no obligation to determine the trading price of the debentures unless we have requested such determination; and we shall have no obligation to make such request unless you provide us with reasonable evidence that the trading price per \$1,000 principal amount of the debentures would be less than 98% of the product of the sale price of our common stock and the then applicable conversion rate; at which time, we shall instruct the trustee to determine the trading price of the debentures beginning on the next trading day and on each successive trading day until the trading price is greater than or equal to 98% of the product of the sale price of our common stock and the then applicable conversion rate.

Conversion Upon Notice of Redemption

If we call any or all of the debentures for redemption, holders may convert debentures into our common stock at any time prior to the close of business on the business day immediately preceding the redemption date, even if the debentures are not otherwise convertible at such time. If a holder already has delivered a purchase notice with respect to a debenture, however, the holder may not surrender that debenture for conversion until the holder has withdrawn the purchase notice in accordance with the indenture.

Conversion Upon Specified Corporate Transactions

If we elect to:

distribute to all holders of our common stock certain rights entitling them to purchase, for a period expiring within 60 days after the date of the distribution, shares of our common stock at less than the sale price of a share of our common stock on the trading day immediately preceding the declaration date of the distribution, or

distribute to all holders of our common stock our assets, debt securities or certain rights to purchase our securities, which distribution has a per share value as determined by our board of directors exceeding 10% of the sale price of a share of our common stock on the trading day immediately preceding the declaration date of the distribution,

we must notify the holders of the debentures at least 20 days prior to the ex-dividend date for such distribution. Once we have given such notice, holders may surrender their debentures for conversion at any time until the earlier of the close of business on the business day immediately prior to the ex-dividend date or our announcement that such distribution will not take place, even if the debentures are not otherwise convertible at such time. No holder may exercise this right to convert if the holder otherwise may participate in the distribution without conversion. The ex-dividend date is the first date upon which a sale of the common stock does not automatically transfer the right to receive the relevant distribution from the seller of the common stock to its buyer.

In addition, if we are party to a consolidation, merger or binding share exchange pursuant to which our common stock would be converted into cash or property other than securities, a holder may surrender debentures for conversion at any time from and after the date that is 15 days prior to the anticipated effective date of the transaction until 15 days after the actual effective date of such transaction. If we engage in certain reclassifications of our common stock or are a party to a consolidation, merger, binding share exchange or transfer of all or substantially all of our assets pursuant to which our common stock is converted into cash, securities or other property, then at the effective time of the transaction, the right to convert a debenture into our common stock will be changed into a right to convert a debenture into the kind and amount of cash, securities or other property that the holder would have received if the holder had converted its debentures immediately prior to the applicable record date for such transaction. If the transaction also constitutes a fundamental change, as defined below, a holder can require us to purchase all or a portion of its debentures as described below under Fundamental Change Permits Purchase of Debentures By Us at the Option of the Holder.

Conversion Rate Adjustments

The initial conversion price will be adjusted for certain events, including:

the issuance of our common stock as a dividend or distribution on our common stock;

certain subdivisions and combinations of our common stock;

the issuance to all holders of our common stock of certain rights or warrants to purchase our common stock for a period expiring 60 days from the date of issuance of such rights or warrants (or securities convertible into our common stock) at less than (or having a conversion price per share less than) the current market price of our common stock;

the dividend or other distribution to all holders of our common stock of shares of our capital stock (other than common stock) or evidences of our indebtedness or our assets (including securities, but excluding those rights and warrants referred to above and dividends and distributions in connection with a reclassification, change, consolidation, merger, combination, sale or conveyance resulting in a change in the conversion consideration pursuant to the second succeeding paragraph or dividends or distributions paid exclusively in cash);

dividends or other distributions consisting exclusively of cash to all holders of our common stock; and

payments to holders of our common stock pursuant to a tender or exchange offer made by us or any of our subsidiaries to the extent that the same involves an aggregate consideration that, together with any

cash and the fair market value of any other consideration paid in any other tender or exchange offer by us or any of our subsidiaries for our common stock expiring within the 12 months preceding such tender or exchange offer for which no adjustment has been made exceeds 10% of our market capitalization on the expiration of such tender or exchange offer.

No adjustment in the conversion price will be required unless such adjustment would require a change of at least 1% in the conversion price then in effect at such time. Any adjustment that would otherwise be required to be made shall be carried forward and taken into account in any subsequent adjustment. Except as stated above, the conversion price will not be adjusted for the issuance of our common stock or any securities convertible into or exchangeable for our common stock or carrying the right to purchase any of the foregoing.

In the case of any recapitalization, reclassification or change of our common stock (other than changes resulting from a subdivision or combination), a consolidation, merger or combination involving us, a sale, conveyance or lease to another corporation of all or substantially all of our property and assets, or any statutory share exchange, in each case as a result of which holders of our common stock are entitled to receive stock, other securities, other property or assets (including cash or any combination thereof) with respect to or in exchange for our common stock, the holders of the debentures then outstanding will be entitled thereafter to convert those debentures into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) which they would have owned or been entitled to receive upon such recapitalization, reclassification, change, consolidation, merger, combination, sale, conveyance or statutory share exchange had such debentures been converted into our common stock immediately prior to such recapitalization, reclassification, change, consolidation, merger, combination, sale, conveyance or statutory share exchange. We may not become a party to any such transaction unless its terms are consistent with the foregoing.

If a taxable distribution to holders of our common stock or other transaction occurs which results in any adjustment of the conversion price, the holders of debentures may, in certain circumstances, be deemed to have received a distribution subject to U.S. income tax as a dividend. In certain other circumstances, the absence of an adjustment may result in a taxable dividend to the holders of common stock. See Material United States Federal Income Tax Considerations.

We may from time to time, to the extent permitted by law, reduce the conversion price of the debentures by any amount for any period of at least 20 days. In that case we will give at least 15 days notice of such decrease. We may make such reductions in the conversion price, in addition to those set forth above, as our board of directors deems advisable to avoid or diminish any income tax to holders of our common stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes.

Optional Redemption

There is no sinking fund for the debentures. On and after February 15, 2009, we will be entitled to redeem some or all of the debentures on at least 20 but not more than 60 days notice, at a redemption price equal to 100% of the principal amount of the debentures plus any accrued and unpaid interest to, but excluding, the date fixed for redemption. However, if a redemption date is an interest payment date, the semi-annual payment of interest becoming due on such date shall be payable to the holder of record as of the relevant record date and the redemption price shall not include such interest payment.

If we do not redeem all of the debentures, the trustee will select the debentures to be redeemed in principal amounts of \$1,000 or whole multiples of \$1,000 by lot, on a *pro rata* basis or in accordance with any other method the trustee considers fair and appropriate. If any debentures are to be redeemed in part only, a new debenture or debentures in principal amount equal to the unredeemed principal portion thereof will be issued. If a portion of a holder's debentures is selected for partial redemption and the holder converts a portion of its debentures, the converted portion will be deemed to be taken from the portion selected for redemption.

Purchase of Debentures by Us at the Option of the Holder

Holders have the right to require us to purchase all or a portion of their debentures on February 15, 2009, February 15, 2014 and February 15, 2019. The purchase price payable will be equal to 100% of the principal amount of the debentures to be purchased plus any accrued and unpaid interest to but excluding the purchase date.

We will be required to purchase any outstanding debentures for which a holder delivers a written purchase notice to the paying agent. This notice must be delivered during the period beginning at any time from the opening of business on the date that is 23 business days prior to the relevant purchase date until the close of business on the third business day prior to the purchase date. If the purchase notice is given and withdrawn during such period, we will not be obligated to purchase the related debentures. Also, as described in the Risk Factors section of this prospectus under the caption We may not have the ability to raise the funds necessary to purchase the debentures upon a fundamental change or other purchase date, as required by the indenture governing the debentures, we may not have funds sufficient to purchase the debentures when we are required to do so.

On or before the 23rd business day prior to each purchase date, we will provide to the trustee, any paying agent and to all holders of the debentures at their addresses shown in the register of the registrar, and to beneficial owners as required by applicable law, a notice stating, among other things:

the name and address of the trustee, any paying agent and the conversion agent; and

the procedures that holders must follow to require us to purchase their debentures.

The purchase notice given by each holder electing to require us to purchase their debentures must state:

in the case of debentures in certificated form, the certificate numbers of the holder's debentures to be delivered for purchase;

the portion of the principal amount of debentures to be purchased, in integral multiples of \$1,000; and

that the debentures are to be purchased by us pursuant to the applicable provision of the debentures and the indenture.

If the debentures are not in certificated form, your notice must comply with appropriate DTC procedures.

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

No debentures may be purchased at the option of holders if there has occurred and is continuing an event of default other than an event of default that is cured by the payment of the purchase price of the debentures.

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You may withdraw any purchase notice in whole or in part by a written notice of withdrawal delivered to the trustee or any paying agent prior to the close of business on the third business day prior to the purchase date. The notice of withdrawal must state:

the principal amount of the withdrawn debentures;

if certificated debentures have been issued, the certificate numbers of the withdrawn debentures; and

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

If the debentures are not in certificated form, your notice must comply with appropriate DTC procedures.

You must either effect book-entry transfer or deliver the debentures, together with necessary endorsements, to the office of the trustee or any paying agent after delivery of the purchase notice to receive payment of the purchase price. You will receive payment promptly following the later of the purchase date or the time of bookentry transfer or the delivery of the debentures. If the trustee or any paying agent holds money or securities sufficient to pay the purchase price of the debentures on the business day following the purchase date, then:

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

all other rights of the holder will terminate (other than the right to receive the purchase price upon delivery or transfer of the debentures).

Fundamental Change Permits Purchase of Debentures By Us at the Option of the Holder

If a fundamental change occurs, each holder of debentures will have the right to require us to purchase some or all of that holder's debentures not previously called for redemption, or any portion of those debentures that is equal to \$1,000 or a whole multiple of \$1,000, on the date that is 45 days after the date we give notice at a purchase price equal to 100% of the principal amount of the debentures to be purchased, plus any accrued and unpaid interest to but excluding the purchase date.

Within 30 days after the occurrence of a fundamental change, we are required to give notice to all holders of debentures, as provided in the indenture, of the occurrence of the fundamental change and of their resulting repurchase right. We must also deliver a copy of our notice to the trustee. To exercise the repurchase right, a holder of debentures must deliver prior to or on the 30th day after the date of our notice irrevocable written notice to the trustee of the holder's exercise of its repurchase right, together with the debentures with respect to which the right is being exercised.

A fundamental change will be deemed to have occurred at such time after the original issuance of the debentures when the following has occurred:

the acquisition by any person, including any syndicate or group deemed to be a person under Section 13(d)(3) of the Exchange Act, of beneficial ownership, directly or indirectly, through a purchase, merger or other acquisition transaction or series of transactions of shares of our capital stock entitling that person to exercise 50% or more of the total voting power of all shares of our capital stock entitled to vote generally in elections of directors, other than any acquisition by us, any of our subsidiaries or any of our employee benefit plans; provided, however, that the conversion of notes or exercise of warrants outstanding on the date the debentures are issued by the holders thereof, shall not be deemed a fundamental change; and provided further, that shares issuable upon conversion of payment-in-kind notes issued to any holder of such notes as payment of interest on such notes shall not be deemed a fundamental change;

(a) the direct or indirect sale or transfer of all or substantially all of the Company's assets; (b) any business combination which results in the holders of the Company's capital stock, calculated on an as-converted basis, prior to such business combination beneficially owning less than 50% of the voting securities of the resulting parent entity in such business combination; or (c) a change in the composition of the board of directors of the Company, as a result of which fewer than 50% of the incumbent directors are directors who either (i) had been members of the Company's board of directors on the corresponding calendar day of the second preceding year (the Original Directors); or (ii) were nominated for election or appointed to the board of directors of the Company by a majority of the aggregate of the Original Directors and other directors nominated or appointed in a manner consistent with this clause (ii);

our common stock (or other common stock into which the debentures are then convertible) is neither listed for trading on a U.S. national securities exchange nor approved for trading on the Nasdaq National Market; or

our stockholders pass a resolution approving a plan of liquidation or dissolution.

However, a fundamental change will not be deemed to have occurred if:

the daily market price per share of common stock for any five trading days within the period of 10 consecutive trading days beginning immediately after the later of the fundamental change or the public announcement of the fundamental change (in the case of a fundamental change under the first bullet point above or under (c) of the second bullet point above) or the period of 10 consecutive trading days ending immediately before the fundamental change (in the case of a fundamental change under (a) and (b) of the second bullet point above) shall equal or exceed 110% of the conversion price of the debentures in effect on the date of the fundamental change or the public announcement of the fundamental change, as applicable; or

in the case of the second bullet point above, at least 95% of the consideration (excluding cash payments for fractional shares) in the transaction or transactions constituting the fundamental change consists of shares of common stock that are, or upon issuance will be, traded on the New York Stock Exchange or quoted on the Nasdaq National Market.

The beneficial owner shall be determined in accordance with Rule 13d-3 promulgated by the SEC under the Exchange Act. The term "person" includes any syndicate or group which would be deemed to be a "person" under Section 13(d)(3) of the Exchange Act.

Rule 13e-4 under the Exchange Act, as amended, requires the dissemination of certain information to security holders if an issuer tender offer occurs and may apply if the repurchase option becomes available to holders of the debentures. We will comply with this rule to the extent applicable at that time.

We may, to the extent permitted by applicable law, at any time purchase the debentures in the open market or by tender at any price or by private agreement. Any debenture so purchased by us may, to the extent permitted by applicable law, be reissued or resold or may be surrendered to the trustee for cancellation. Any debentures surrendered to the trustee may not be reissued or resold and will be canceled promptly.

The foregoing provisions would not necessarily protect holders of the debentures if highly leveraged or other transactions involving us occur that may adversely affect holders.

Our ability to repurchase debentures upon the occurrence of a fundamental change is subject to important limitations. The occurrence of a fundamental change could cause an event of default under, or be prohibited or limited by, the terms of existing or future senior debt. As a result, any repurchase of the debentures would, absent a waiver, be prohibited under the subordination provisions of the indenture until the senior debt is paid in full. Further, we cannot assure you that we would have the financial resources, or would be able to arrange financing, to pay the repurchase price for all the debentures that might be delivered by holders of debentures seeking to exercise the repurchase right. Any failure by us to repurchase the debentures when required following a fundamental change would result in an event of default under the indenture, whether or not such repurchase is permitted by the subordination provisions of the indenture. Any such default may, in turn, cause a default under existing or future senior debt. See "Ranking" above.

Consolidation, Merger and Sale of Assets

We may, without the consent of the holders of debentures, consolidate with, merge into or transfer all or substantially all of our assets to any corporation, limited liability company, partnership or trust organized under the laws of the United States or any of its political subdivisions provided that:

the surviving entity assumes all our obligations under the indenture and the debentures;

at the time of such transaction, no event of default, and no event which, after notice or lapse of time, would become an event of default, shall have happened and be continuing; and

an officers' certificate and an opinion of counsel, each stating that the consolidation, merger or transfer complies with the provisions of the indenture, have been delivered to the trustee.

Information Requirement

We have agreed that for a period of two years after February 11, 2004, during any period in which we are not subject to the reporting requirements of the Exchange Act, to make available to holders of the debentures, or beneficial owners of interests therein, or any prospective purchaser of the debentures, the information required by Rule 144A(d)(4) to be made available in connection with the sale of debentures or beneficial interests in the debentures.

Events of Default

Each of the following will constitute an event of default under the indenture:

our failure to pay when due the principal on any of the debentures at maturity, upon redemption or exercise of a repurchase right or otherwise, whether or not such payment is prohibited by the subordination provisions of the indenture;

our failure to pay an installment of interest (including liquidated damages, if any) on any of the debentures for 30 days after the date when due, whether or not such payment is prohibited by the subordination provisions of the indenture;

our failure to deliver shares of common stock, together with cash instead of fractional shares, when those shares of common stock or cash instead of fractional shares are required to be delivered following conversion of a debenture, and that failure continues for 10 days;

our failure to perform or observe any other term, covenant or agreement contained in the debentures or the indenture for a period of 60 days after written notice of such failure, requiring us to remedy the same, shall have been given to us by the trustee or to us and the trustee by the holders of at least 25% in aggregate principal amount of the debentures then outstanding;

our failure to make any payment by the end of the applicable grace period, if any, after the maturity of any indebtedness for borrowed money in an amount in excess of \$5.0 million, or if there is an acceleration of indebtedness for borrowed money in an amount in excess of \$5.0 million because of a default with respect to such indebtedness without such indebtedness having been discharged or such acceleration having been cured, waived, rescinded or annulled, in either case, for a period of 30 days after written notice to us by the trustee or to us and the trustee by holders of at least 25% in aggregate principal amount of the debentures then outstanding;

our failure to give timely notice of a fundamental change; and

certain events of our bankruptcy, insolvency or reorganization.

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If an event of default specified in the seventh bullet point above occurs and is continuing, then the principal of all the debentures and the interest thereon shall automatically become immediately due and payable. If an event of default shall occur and be continuing, other than an event of default specified in the seventh bullet point above, the trustee or the holders of at least 25% in aggregate principal amount of the debentures then outstanding may declare the debentures due and payable at their principal amount together with accrued interest, and thereupon the trustee may, at its discretion, proceed to protect and enforce the rights of the holders of debentures by appropriate judicial

proceedings. Such declaration may be rescinded and annulled with the written consent of the holders of a majority in aggregate principal amount of the debentures then outstanding, subject to the provisions of the indenture.

The holders of a majority in aggregate principal amount of debentures at the time outstanding through their written consent, or the holders of a majority in aggregate principal amount of debentures then outstanding represented at a meeting at which a quorum is present by a written resolution, may waive any existing default or event of default and its consequences except any default or event of default:

in any payment on the debentures;

in respect of the conversion rights of the debentures; or

in respect of the covenants or provisions in the indenture that may not be modified or amended without the consent of the holder of each debenture affected as described in Modification, Waiver and Meetings below.

Holders of a majority in aggregate principal amount of the debentures then outstanding through their written consent, or the holders of a majority in aggregate principal amount of the debentures then outstanding represented at a meeting at which a quorum is present by a written resolution, may direct the time, method and place of conducting any proceeding for any remedy available to the trustee or exercising any trust or power conferred upon the trustee, subject to the provisions of the indenture. The indenture contains a provision entitling the trustee, subject to the duty of the trustee during a default to act with the required standard of care, to be indemnified by the holders of debentures before proceeding to exercise any right or power under the indenture at the request of such holders. The rights of holders of the debentures to pursue remedies with respect to the indenture and the debentures are subject to a number of additional requirements set forth in the indenture.

The right of any holder:

to receive payment of principal and interest (including liquidated damages, if any), payments required by exercise of our option to purchase debentures or the holders' rights to require us to purchase the debentures, the fundamental change purchase price in respect of the debentures held by that holder on or after the respective due dates expressed in the debentures;

to convert those debentures; or

to bring suit for the enforcement of any such payment on or after the respective due dates expressed in the debentures and the right to convert,

will not be impaired or affected without that holder's consent.

The indenture provides that the trustee shall, within 90 days of the occurrence of a default, give to the registered holders of the debentures notice of all uncured defaults known to it, but the trustee shall be protected in withholding such notice if it, in good faith, determines that the withholding of such notice is in the best interest of such registered holders, except in the case of a default in the payment of the principal of, or premium, if any, or interest on, any of the debentures when due or in the payment of any redemption or repurchase obligation.

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We are required to furnish annually to the trustee a statement as to the fulfillment of our obligations under the indenture. In addition, we are required to file with the trustee a written notice of the occurrence of any default or event of default within five business days of our becoming aware of the occurrence of any default or event of default.

Modification, Waiver and Meetings

The indenture contains provisions for convening meetings of the holders of debentures to consider matters affecting their interests.

The indenture (including the terms and conditions of the debentures) may be modified or amended by us and the trustee, without the consent of the holder of any debenture, for the purposes of, among other things:

adding to our covenants for the benefit of the holders of debentures;

surrendering any right or power conferred upon us;

providing for conversion rights of holders of debentures if any reclassification or change of our common stock or any consolidation, merger or sale of all or substantially all of our assets occurs;

providing for the assumption of our obligations to the holders of debentures in the case of a merger, consolidation, conveyance, transfer or lease;

reducing the conversion price, provided that the reduction will not adversely affect the interests of holders of debentures in any material respect;

complying with the requirements of the SEC in order to effect or maintain the qualification of the indenture under the Trust Indenture Act of 1939, as amended;

making any changes or modifications to the indenture necessary in connection with the registration of the debentures under the Securities Act, as contemplated by the registration rights agreement, provided that this action does not adversely affect the interests of the holders of the debentures in any material respect;

curing any ambiguity or correcting or supplementing any defective provision contained in the indenture; or

adding or modifying any other provisions which we and the trustee may deem necessary or desirable and which will not adversely affect the interests of the holders of debentures in any material respect.

Modifications and amendments to the indenture or to the terms and conditions of the debentures may also be made, and noncompliance by us with any provision of the indenture or the debentures may be waived, either:

with the written consent of the holders of at least a majority in aggregate principal amount of the debentures at the time outstanding; or

by the adoption of a resolution at a meeting of holders at which a quorum is present by at least a majority in aggregate principal amount of the debentures represented at such meeting.

However, no such modification, amendment or waiver may, without the written consent or the affirmative vote of the holder of each debenture affected:

change the maturity of the principal of or any installment of interest on any debenture (including any payment of liquidated damages);

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reduce the principal amount of, or any premium, if any, on any debenture;

reduce the interest rate or interest (including any liquidated damages) on any debenture;

change the currency of payment of principal of, premium, if any, or interest on any debenture;

impair the right to institute suit for the enforcement of any payment on or with respect to, or the conversion of, any debenture;

modify our obligations to maintain an office or agency in New York City;

except as otherwise permitted or contemplated by provisions of the indenture concerning specified reclassifications or corporate reorganizations, adversely affect the conversion rights of holders of the debentures;

adversely affect any repurchase option of holders;

modify the subordination provisions of the debentures in a manner adverse to the holders of debentures;

reduce the percentage in aggregate principal amount of debentures outstanding necessary to modify or amend the indenture or to waive any past default; or

reduce the percentage in aggregate principal amount of debentures outstanding required for the adoption of a resolution or the quorum required at any meeting of holders of debentures at which a resolution is adopted.

The quorum at any meeting called to adopt a resolution will be persons holding or representing a majority in aggregate principal amount of the debentures at the time outstanding.

Satisfaction and Discharge

We may discharge our obligations under the indenture while debentures remain outstanding, subject to certain conditions, if:

all outstanding debentures have become due and payable or will become due and payable at their scheduled maturity within one year;
or

all outstanding debentures are scheduled for redemption within one year,

and, in either case, we have deposited with the trustee an amount sufficient to pay and discharge all outstanding debentures on the date of their scheduled maturity or the scheduled date of redemption.

Form, Denomination and Registration

The debentures were issued in fully registered form, without coupons, in denominations of \$1,000 principal amount and whole multiples of \$1,000.

Global Debentures: Book-Entry Form. The debentures were initially issued only to qualified institutional buyers as defined in Rule 144A under the Securities Act (QIBs) and outside the United States in accordance with Regulation S under the Securities Act. The debentures are evidenced by one or more global debentures deposited with the trustee as custodian for DTC, and registered in the name of Cede & Co., as DTC's nominee.

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Record ownership of the global debentures may be transferred, in whole or in part, only to another nominee of DTC or to a successor of DTC or its nominee, except as set forth below.

A QIB may hold its interests in a global debenture directly through DTC if such QIB is a participant in DTC, or indirectly through organizations which are direct DTC participants. Transfers between direct DTC participants will be effected in the ordinary way in accordance with DTC's rules and will be settled in same-day funds. QIBs may also beneficially own interests in the global debentures held by DTC through certain banks, brokers, dealers, trust companies and other parties that clear through or maintain a custodial relationship with a direct DTC participant, either directly or indirectly.

So long as Cede & Co., as nominee of DTC, is the registered owner of the global debentures, Cede & Co. for all purposes will be considered the sole holder of the global debentures. Except as provided below, owners of

beneficial interests in the global debentures will not be entitled to have certificates registered in their names, will not receive or be entitled to receive physical delivery of certificates in definitive form, and will not be considered holders thereof. The laws of some states require that certain persons take physical delivery of securities in definitive form. Consequently, the ability to transfer a beneficial interest in the global debentures to such persons may be limited.

We will wire, through the facilities of the trustee, principal, premium, if any, and interest payments on the global debentures to Cede & Co., the nominee for DTC, as the registered owner of the global debentures. We, the trustee and any paying agent will have no responsibility or liability for paying amounts due on the global debentures to owners of beneficial interests in the global debentures.

It is DTC's current practice, upon receipt of any payment of principal of and premium, if any, and interest on the global debentures, to credit participants' accounts on the payment date in amounts proportionate to their respective beneficial interests in the debentures represented by the global debentures, as shown on the records of DTC, unless DTC believes that it will not receive payment on the payment date. Payments by DTC participants to owners of beneficial interests in debentures represented by the global debentures held through DTC participants will be the responsibility of DTC participants, as is now the case with securities held for the accounts of customers registered in street name.

If you would like to convert your debentures into common stock pursuant to the terms of the debentures, you should contact your broker or other direct or indirect DTC participant to obtain information on procedures, including proper forms and cut-off times, for submitting those requests.

Because DTC can only act on behalf of DTC participants, who in turn act on behalf of indirect DTC participants and other banks, your ability to pledge your interest in the debentures represented by global debentures to persons or entities that do not participate in the DTC system, or otherwise take actions in respect of such interest, may be affected by the lack of a physical certificate.

Neither we nor the trustee (nor any registrar, paying agent or conversion agent under the indenture) will have any responsibility for the performance by DTC or direct or indirect DTC participants of their obligations under the rules and procedures governing their operations. DTC has advised us that it will take any action permitted to be taken by a holder of debentures, including, without limitation, the presentation of debentures for conversion as described below, only at the direction of one or more direct DTC participants to whose account with DTC interests in the global debentures are credited and only for the principal amount of the debentures for which directions have been given.

DTC has advised us as follows: DTC is a limited purpose trust company organized under the laws of the State of New York, a member of the Federal Reserve System, a clearing corporation within the meaning of the Uniform Commercial Code and a clearing agency registered pursuant to the provisions of Section 17A of the Exchange Act. DTC was created to hold securities for DTC participants and to facilitate the clearance and settlement of securities transactions between DTC participants through electronic book-entry changes to the accounts of its participants, thereby eliminating the need for physical movement of certificates. Participants include securities brokers and dealers, banks, trust companies and clearing corporations and may include certain other organizations such as the initial purchasers of the debentures. Certain DTC participants or their representatives, together with other entities, own DTC. Indirect access to the DTC system is available to others such as banks, brokers, dealers and trust companies that clear through, or maintain a custodial relationship with, a participant, either directly or indirectly.

Although DTC has agreed to the foregoing procedures in order to facilitate transfers of interests in the global debentures among DTC participants, it is under no obligation to perform or continue to perform such procedures, and such procedures may be discontinued at any time. If DTC is at any time unwilling or unable to continue as depository and a successor depository is not appointed by us within 90 days, we will cause debentures to be issued in definitive form in exchange for the global debentures. None of us, the trustee or any of their respective agents will have any responsibility for the performance by DTC, direct or indirect DTC participants of their obligations under the rules and procedures governing their operations, including maintaining, supervising or reviewing the records relating to, or payments made on account of, beneficial ownership interests in global debentures.

According to DTC, the foregoing information with respect to DTC has been provided to its participants and other members of the financial community for informational purposes only and is not intended to serve as a representation, warranty or contract modification of any kind.

Certificated Debentures. The debentures represented by a global debenture are exchangeable for debentures in definitive form of like tenor as that global debenture in denominations of \$1,000 and in any greater amount that is an integral multiple of \$1,000 if:

DTC notifies us in writing that it is unwilling or unable to continue as depository for that global debenture or if at any time DTC ceases to be a clearing agency registered under the Exchange Act and a successor depository is not appointed by us within 90 days;

we, at our option, notify the trustee in writing that we elect to issue the debentures in definitive form in exchange for all or any part of the debentures represented by the global debentures; or

there is, or continues to be, an event of default and the registrar has received a request from DTC for the issuance of definitive debentures in exchange for the global debentures.

Any debenture that is exchangeable pursuant to the preceding sentence is exchangeable for debentures registered in the names which DTC will instruct the trustee. It is expected that DTC's instructions may be based upon directions received by DTC from its participants with respect to ownership of beneficial interests in that global debenture. Subject to the foregoing, a global debenture is not exchangeable except for a global debenture or global debentures of the same aggregate denominations to be registered in the name of DTC or its nominee.

Notices

Except as otherwise provided in the indenture, notices to holders of debentures will be given by mail to the addresses of holders of the debentures as they appear in the debenture register.

Governing Law

The indenture, the debentures and the registration rights agreement will be governed by, and construed in accordance with, the law of the State of New York.

Information Regarding the Trustee

U.S. Bank National Association, as trustee under the indenture, has been appointed by us as paying agent, conversion agent, registrar and custodian with regard to the debentures. Equiserv is the transfer agent and registrar for our common stock. The trustee or its affiliates may from time to time in the future provide banking and other services to us in the ordinary course of their business.

Registration Rights

We have agreed to file with the SEC, at our expense, a shelf registration statement on such form as we deem appropriate covering resales by holders of all debentures and the common stock issuable upon conversion of the debentures. Under the terms of the registration rights agreement, we agreed to use our commercially reasonable best efforts to:

file such shelf registration statement with the SEC within 120 days after the earliest date of original issuance of any of the debentures;

cause such registration statement to become effective as promptly as is practicable, but in no event later than 210 days after the earliest date of original issuance of any of the debentures; and

keep the registration statement effective until such date that is the earliest of (1) the second anniversary of the date of the indenture or, if later, the second anniversary of the last date on which any notes are issued upon exercise of the initial purchasers' option; (2) the date on which all the debentures and the common stock issuable upon conversion of the debentures may be sold by our non-affiliates pursuant to paragraph (k) of Rule 144 (or any successor provision) promulgated by the SEC under the Securities Act; and (3) the date as of which all the debentures or the common stock issuable upon conversion of the debentures have been sold either under Rule 144 under the Securities Act (or any similar provision then in force) or pursuant to the shelf registration statement.

We also agreed to provide to each registered holder copies of the prospectus contained in the shelf registration statement, notify each registered holder when the shelf registration statement has become effective and take certain other actions as are required to permit unrestricted resales of the debentures and the common stock issuable upon conversion of the debentures. A holder who sells those securities pursuant to the shelf registration statement generally will be required to be named as a selling stockholder in the related prospectus and to deliver a prospectus to purchasers and will be bound by the provisions of the registration rights agreement, which are applicable to that holder (including certain indemnification provisions). If a shelf registration statement covering those securities is not effective, they may not be sold or otherwise transferred except pursuant to an exemption from registration under the Securities Act and any other applicable securities laws or in a transaction not subject to those laws.

We may suspend the holder's use of the prospectus for a period not to exceed 45 days in any 90-day period, and not to exceed an aggregate of 90 days in any 12 month period, if (i) we, in our reasonable judgment, believe we may possess material non-public information the disclosure of which would be seriously detrimental to us and our subsidiaries taken as a whole or (ii) the prospectus would, in our judgment, contain a material misstatement or omission as a result of an event that has occurred or is continuing. However, if the disclosure relates to a previously undisclosed proposed or pending material business transaction, the disclosure of which we determine in good faith would be reasonably likely to impede our ability to consummate such transaction, we may extend the suspension period from 45 days to 60 days. We need not specify the nature of the event giving rise to a suspension in any notice to holders of the Debentures of the existence of such a suspension. Each holder, by its acceptance of a debenture, agrees to hold any communication by us in response to a notice of a proposed sale in confidence.

If,

on the 120th day following the earliest date of original issuance of any of the debentures, the shelf registration statement has not been filed with the SEC; or

on the 210th day following the earliest date of original issuance of any of the debentures, the shelf registration statement is not declared effective; or

the registration statement shall cease to be effective or fail to be usable without being succeeded within five business days by a post-effective amendment or a report filed with the SEC pursuant to the Exchange Act that cures the failure of the registration statement to be effective or usable; or

prior to or on the 45th, 60th or 90th day, as the case may be, of any period that the prospectus has been suspended as described in the preceding paragraph, such suspension has not been terminated

(each, a registration default), additional interest as liquidated damages will accrue on the debentures, from and including the day following the registration default to but excluding the day on which the registration default has been cured. Liquidated damages will be paid semi-annually in arrears, with the first semi-annual payment due on the first interest payment date, as applicable, following the date on which such liquidated damages begin to accrue, and will accrue at a rate per year equal to:

an additional 0.25% of the principal amount to and including the 90th day following such registration default; and

an additional 0.50% of the principal amount from and after the 91st day following such registration default.

In no event will liquidated damages accrue at a rate per year exceeding 0.50%. If a holder has converted some or all of its debentures into common stock, the holder will be entitled to receive equivalent amounts based on the principal amount of the debentures converted.

We have agreed to distribute a questionnaire to each holder to obtain certain information regarding the holder for inclusion in the prospectus. Holders are required to complete and deliver the questionnaire within 20 days after receipt of the questionnaire so that they may be named as selling stockholders in the related prospectus at the time of effectiveness. A holder will not be entitled to sell securities pursuant to the shelf registration statement or to receive liquidated damages unless it has provided all information requested by the questionnaire prior to the deadline. Under the terms of the Registration Rights Agreement we will not be required to supplement the shelf registration statement more than once per quarter for the purpose of including selling stockholders or their transferees.

The specific provisions relating to the registration described above are contained in the registration rights agreement which was entered into on the closing of the initial offering of the debentures.

MATERIAL UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS

The following is a summary of certain material United States federal income tax considerations relating to the purchase, ownership and disposition of the debentures and common stock into which the debentures are convertible, but does not purport to be a complete analysis of all the potential tax considerations relating thereto. This summary is based upon the provisions of the Internal Revenue Code of 1986, as amended, which we refer to as the Code, Treasury Regulations promulgated thereunder, administrative rulings and judicial decisions, all as of the date hereof. These authorities may be changed, possibly retroactively, so as to result in United States federal income tax consequences different from those set forth below. We have not sought any ruling from the Internal Revenue Service, or the IRS, with respect to the statements made and the conclusions reached in the following summary, and there can be no assurance that the IRS will agree with such statements and conclusions.

This summary is limited to holders who purchase debentures upon their initial issuance at their initial issue price and who hold the debentures and any common stock received in conversion thereof as capital assets. This summary also does not address the tax considerations arising under the laws of any foreign, state or local jurisdiction. In addition, this discussion does not address tax considerations applicable to an investor's particular circumstances or to investors that may be subject to special tax rules, including, without limitation:

banks, insurance companies, thrifts, real estate investment trusts, regulated investment companies or other financial institutions;

persons subject to the alternative minimum tax;

partnerships or other entities treated as pass-through entities for U.S. federal income tax purposes;

tax-exempt organizations;

dealers in securities or currencies;

traders in securities that elect to use a mark-to-market method of accounting for their securities holdings;

foreign persons or entities (except to the extent specifically set forth below);

persons that own, or are deemed to own, more than 5% of our company (except to the extent specifically set forth below);

certain U.S. expatriates or former long-term residents of the United States;

U.S. holders (as defined below) whose functional currency is not the U.S. dollar;

persons who hold the debentures as a position in a hedging transaction, straddle, conversion transaction, synthetic security or other risk reduction transaction; or

persons deemed to sell the debentures or common stock under the constructive sale provisions of the Code.

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In addition, if a holder is an entity treated as a partnership for United States federal income tax purposes, the tax treatment of each partner of such partnership will generally depend upon the status of the partner and upon the activities of the partnership. Partners in partnerships which hold the debentures or common stock should consult their tax advisors.

YOU ARE URGED TO CONSULT YOUR TAX ADVISOR WITH RESPECT TO THE APPLICATION OF THE UNITED STATES FEDERAL INCOME TAX LAWS TO YOUR PARTICULAR SITUATION, AS

WELL AS ANY TAX CONSEQUENCES OF THE PURCHASE, OWNERSHIP AND DISPOSITION OF THE DEBENTURES AND COMMON STOCK ARISING UNDER THE FEDERAL ESTATE OR GIFT TAX RULES OR UNDER THE LAWS OF ANY STATE, LOCAL, FOREIGN OR OTHER TAXING JURISDICTION OR UNDER ANY APPLICABLE TAX TREATY.

Consequences Applicable to all Holders

Contingent Payments

In certain circumstances, we may be obligated to pay you amounts in excess of the stated interest and principal payable on the debentures. The obligation to make such additional interest payments, including liquidated damages payable in certain circumstances (as described above under [Description of Debentures Registration Rights](#)), may implicate the provisions of Treasury regulations relating to contingent payment debt instruments. If the debentures were deemed to be contingent payment debt instruments, you might, among other things, be required to treat any gain recognized on the sale or other disposition of a debenture as ordinary income rather than as capital gain. The regulations applicable to contingent payment debt instruments have not been the subject of authoritative interpretation and therefore the scope of the regulations is not certain. We intend to take the position that the likelihood that such payments will be made is remote and therefore the debentures are not subject to the rules governing contingent payment debt instruments. This determination will be binding on you unless you explicitly disclose on a statement attached to your timely filed U.S. federal income tax return for the taxable year that includes the acquisition date of the debenture, or in such other method as may be required, that your determination is different. It is possible, however, that the IRS may take a contrary position from that described above, in which case the timing and character of your income from the debentures and with respect to the payments of additional interest may be different than described herein. If you are considering the purchase of debentures, you should consult your tax advisor regarding the possible application of the contingent payment debt instrument rules to the debentures. This summary assumes that the debentures will not be considered to be contingent payment debt instruments.

Consequences to U.S. Holders

The following is a summary of certain material United States federal income tax consequences that will apply to you if you are a U.S. holder of the debentures or common stock. Certain consequences to non-U.S. holders of the debentures or common stock are described under [Consequences to Non-U.S. Holders](#) below. U.S. holder means a beneficial owner of a debenture that is for United States federal income tax purposes:

an individual citizen or resident of the United States;

a corporation or other entity taxable as a corporation created or organized in the United States or under the laws of the United States, any state thereof, or the District of Columbia;

an estate, the income of which is subject to United States federal income taxation regardless of its source; or

a trust that (1) is subject to the primary supervision of a United States court and the control of one or more United States persons or (2) has a valid election in effect under applicable Treasury Regulations to be treated as a United States person.

Interest

You must include interest paid on the debentures as ordinary income at the time it is received or accrued, in accordance with your regular method of accounting for United States federal income tax purposes.

Constructive Dividends

Holders of convertible debt instruments such as the debentures may, in certain circumstances, be deemed to have received distributions of stock if the conversion price of such instruments is adjusted. However, adjustments to

the conversion price made pursuant to a bona fide reasonable adjustment formula which has the effect of preventing the dilution of the interest of the holders of the debt instruments will generally not be deemed to result in a constructive distribution of stock. Certain of the possible adjustments provided in the debentures (including, without limitation, adjustments in respect of taxable dividends to our stockholders) will not qualify as being pursuant to a bona fide reasonable adjustment formula. If such adjustments are made, you will be deemed to have received constructive distributions includible in your income in the manner described under **Dividends** below even though you have not received any cash or property as a result of such adjustments. In certain circumstances, the failure to provide for such an adjustment may also result in a constructive distribution to you.

Sale, Exchange or Other Taxable Disposition of the Debentures

Upon the sale, exchange (other than a conversion) or other taxable disposition of a debenture (including a redemption), you generally will recognize capital gain or loss equal to the difference between (i) the amount of cash proceeds and the fair market value of any property received on the sale, exchange or other taxable disposition (except to the extent such amount is attributable to accrued interest income not previously included in income, which will be taxable as ordinary income) and (ii) your adjusted tax basis in the debenture. Your adjusted tax basis in a debenture generally will equal the cost of the debenture. Such capital gain or loss will be long-term capital gain or loss if you have held the debenture for more than one year at the time of sale, exchange or other disposition. Long-term capital gains recognized by certain noncorporate U.S. holders, including individuals, will generally be subject to a reduced tax rate if the debenture is held for more than one year. The deductibility of capital losses is subject to limitations.

Conversion of the Debentures

You generally will not recognize any income, gain or loss upon conversion of a debenture into shares of common stock except with respect to cash received in lieu of a fractional share of common stock. Your aggregate tax basis in the shares of common stock received on conversion of a debenture will be the same as your aggregate tax basis in the debenture at the time of conversion (reduced by any basis allocable to a fractional share interest for which you received cash), and the holding period for such shares received on conversion will generally include the holding period of the debenture converted.

You will recognize gain or loss for federal income tax purposes upon the receipt of cash in lieu of a fractional share of common stock in an amount equal to the difference between the amount of cash received and the holder's tax basis in such fractional share. This gain or loss should be capital gain or loss and should be taxable as described under **Sale, Exchange or Other Disposition of the Debentures**, above.

Dividends

Distributions, if any, made on our common stock generally will be included in your income as ordinary dividend income to the extent of our current or accumulated earnings and profits. Under recently enacted legislation, however, with respect to noncorporate taxpayers for taxable years beginning after December 31, 2002 and before January 1, 2009, such dividends are generally taxed at the lower applicable capital gains rate provided certain holding period requirements are satisfied. Distributions in excess of our current and accumulated earnings and profits will be treated as a return of capital to the extent of your adjusted tax basis in the common stock and thereafter as capital gain. Dividends received by a corporate U.S. holder may be eligible for a dividends received deduction subject to certain holding period requirements and other requirements and limitations.

Sale, Exchange or Redemption of Common Stock

Upon the sale, exchange or redemption of our common stock, you generally will recognize capital gain or loss equal to the difference between (i) the amount of cash and the fair market value of any property received upon the sale, exchange or redemption and (ii) your adjusted tax basis in the common stock. Such capital gain or loss will be long-term capital gain or loss if your holding period in the common stock is more than one year at the time of the sale, exchange or redemption. Long-term capital gains recognized by certain non-corporate U.S. holders, including individuals, will generally be subject to a reduced rate of United States federal income tax. Your adjusted tax basis

and holding period in common stock received upon a conversion of a debenture are determined as discussed above under Conversion of the Debentures. The deductibility of capital losses is subject to limitations.

Backup Withholding and Information Reporting

We are required to furnish to the record holders of the debentures and common stock, other than corporations and other exempt holders, and to the IRS, information with respect to interest paid on the debentures and dividends paid on the common stock.

You may be subject to backup withholding (which is currently imposed at a 28% rate but will increase to a 31% rate in 2011) with respect to interest paid on the debentures, dividends paid on the common stock or with respect to proceeds received from a disposition of the debentures or shares of common stock. Certain holders (including, among others, corporations and certain tax-exempt organizations) are generally not subject to backup withholding provided that they properly certify their qualification for exemption. You will be subject to backup withholding if you are not otherwise exempt and you (i) fail to furnish your taxpayer identification number (TIN), which, for an individual, is ordinarily his or her social security number; (ii) furnish an incorrect TIN; (iii) are notified by the IRS that you have failed to properly report payments of interest or dividends; or (iv) fail to certify, under penalties of perjury, that you have furnished a correct TIN and that the IRS has not notified you that you are subject to backup withholding. Backup withholding is not an additional tax but, rather, is a method of tax collection. You generally will be entitled to credit any amounts withheld under the backup withholding rules against your U.S. federal income tax liability (or in some cases you may be entitled to a refund) provided that the required information is furnished to the IRS in a timely manner.

Consequences to Non-U.S. Holders

The following is a summary of certain material United States federal income tax consequences that will apply to you if you are a non-U.S. holder of the debentures. For purposes of this discussion, a non-U.S. holder means a beneficial owner of debentures that is a nonresident alien or a corporation, estate or trust that is not a U.S. holder.

In general, subject to the discussion below concerning backup withholding:

Interest

You will not be subject to the 30% United States federal withholding tax with respect to payments of interest on the debentures provided that either such interest is effectively connected with the conduct of a United States trade or business, or it is not effectively connected with the conduct of a United States trade or business and:

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

you are not a controlled foreign corporation with respect to which we are, directly or indirectly, a related person;

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you are not a bank receiving interest pursuant to a loan agreement entered into in the ordinary course of its trade or business; and

you provide your name and address, and certify, under penalties of perjury, that you are not a United States person (which certification may be made on an IRS Form W-8BEN (or successor form)), or that you hold your debentures through certain intermediaries, and you and the intermediaries satisfy the certification requirements of applicable Treasury Regulations.

Special certification rules apply to non-U.S. holders that are pass-through entities rather than corporations or individuals. Prospective investors should consult their tax advisors regarding the certification requirements for non-U.S. holders.

If you cannot satisfy the requirements enumerated in the bullet points described above, you will be subject to the 30% United States federal withholding tax with respect to payments of interest on the debentures, unless you provide us with a properly executed (1) IRS Form W-8BEN (or successor form) claiming an exemption from or reduction in withholding under the benefit of an applicable United States income tax treaty or (2) IRS Form W-8ECI (or successor form) stating that interest paid on the debenture is not subject to withholding tax because it is effectively connected with the conduct of a United States trade or business.

If you are engaged in a trade or business in the United States and interest on a debenture is effectively connected with your conduct of that trade or business, you will be subject to United States federal income tax on that interest on a net income basis (although you will be exempt from the 30% withholding tax, provided the certification requirements described above are satisfied) in the same manner as if you were a United States person as defined under the Code. In addition, if you are a foreign corporation, you may be subject to a branch profits tax equal to 30% (or lower rate as may be prescribed under an applicable United States income tax treaty) of your earnings and profits for the taxable year, subject to adjustments, that are effectively connected with your conduct of a trade or business in the United States.

Absent further relevant guidance from the IRS, we intend to treat payments of additional interest made to you as liquidated damages as described above under **Description of Debentures** **Registration Rights** as subject to U.S. federal withholding tax. Therefore, we intend to withhold on such payments at a rate of 30% unless we receive an IRS Form W-8BEN or an IRS Form W-8ECI from you claiming, respectively, that such payments are subject to reduction or elimination of withholding under an applicable treaty or that such payments are effectively connected with the conduct of a U.S. trade or business. If you are considering the purchase of debentures, you should consult your tax advisors regarding whether you can obtain a refund for the withholding tax imposed on payments of additional interest on the grounds that such payments represent interest qualifying for an exemption or some other grounds.

Sale, Exchange or Other Disposition of the Debentures or Common Stock

Any gain realized by you on the sale, exchange or other disposition of a debenture (except with respect to accrued and unpaid interest, which would be taxable as described above) or a share of common stock generally will not be subject to United States federal income tax unless:

the gain is effectively connected with your conduct of a trade or business in the United States;

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

we are or have been a United States real property holding corporation for United States federal income tax purposes at any time during the shorter of the five-year period ending on the date of disposition or the period that you held our common stock (such period is referred to herein as the applicable period).

If your gain is described in the first bullet point above, you generally will be subject to United States federal income tax on the net gain derived from the sale. If you are a corporation, then any such effectively connected gain received by you may also, under certain circumstances, be subject to the branch profits tax at a 30% rate (or such lower rate as may be prescribed under an applicable United States income tax treaty).

If you are an individual described in the second bullet point above, you will be subject to a flat 30% United States federal income tax on the gain derived from the sale, which may be offset by United States source capital losses, even though you are not considered a resident of the United States.

We do not believe that we are currently a United States real property holding corporation. However, since our business involves the ownership of significant amounts of property that is considered United States real property, there can be no assurance that we will not become a United States real

property holding corporation in the future. In addition, there is some uncertainty as to whether certain of our assets are considered United States real property. Accordingly, there can be no assurance that the Internal Revenue Service would agree with our determination that we are not currently a United States real property holding corporation. Even if we were, or were to become, a United States real property holding corporation, no adverse tax consequences would apply to you if our common stock remains regularly traded on an established securities market at the time you dispose of debentures or common stock, unless (i) the fair market value of all of your debentures (determined as of any date(s) you purchased any debentures) was more than five percent of the fair market value of our common stock (determined on such date(s)) or (ii) you hold, directly and indirectly, at any time during the applicable period, more than five percent of our common stock.

Conversion of the Debentures

You generally will not recognize any income, gain or loss on the conversion of a debenture into common stock. To the extent you receive cash in lieu of fractional shares of common stock upon conversion of a debenture, you generally would be subject to the rules described under **Consequences to Non-U.S. Holders Sale, Exchange or Other Disposition of the Debentures or Common Stock** above.

Dividends

In general, dividends, if any, received by you with respect to our common stock (and any deemed distributions to you as a debenture holder that result from certain adjustments, or failures to make certain adjustments, to the conversion price of the debentures, see **Consequences to U.S. Holders Constructive Dividends** above) will be subject to withholding of United States federal income tax at a 30% rate, unless such rate is reduced by an applicable United States income tax treaty. Dividends that are effectively connected with your conduct of a trade or business in the United States are generally subject to United States federal income tax on a net income basis and are exempt from the 30% withholding tax (assuming compliance with certain certification requirements). Any such effectively connected dividends received by a non-U.S. holder that is a corporation may also, under certain circumstances, be subject to the branch profits tax at a 30% rate or such lower rate as may be prescribed under an applicable United States income tax treaty.

In order to claim the benefit of a United States income tax treaty or to claim exemption from withholding because dividends paid to you on our common stock are effectively connected with your conduct of a trade or business in the United States, you must provide a properly executed IRS Form W-8BEN for treaty benefits or W-8ECI for effectively connected income (or such successor form as the IRS designates), prior to the payment of dividends. These forms must be periodically updated. You may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund.

Backup Withholding and Information Reporting

Backup withholding generally will not apply to interest payments made to you in respect of the debentures and dividends paid to you on our common stock if you furnish us or our paying agent with appropriate documentation of your non-U.S. status. However, certain information reporting may still apply with respect to interest and dividend payments even if certification is provided. The payment of proceeds from your disposition of debentures (including a redemption) or common stock to or through the U.S. office of any broker, domestic or foreign, will be subject to information reporting and possible backup withholding unless you certify as to your non-U.S. status under penalties of perjury or otherwise establish an exemption. The payment of the proceeds from your disposition of debentures or common stock to or through a non-U.S. office of either a U.S. broker or a non-U.S. broker that is a U.S.-related person will be subject to information reporting, but not backup withholding, unless such broker has documentary evidence in its files that you are not a U.S. person and the broker has no knowledge to the contrary, or you establish an exemption. For this purpose, a U.S.-related person is (i) a controlled foreign corporation for U.S. federal income tax purposes, (ii) a foreign person 50% or more of whose gross income from all sources for the three-year period ending with the close of its taxable year preceding payment (or for such part of the period that the broker has been in existence) is derived from activities that are effectively

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connected with the conduct of a U.S. trade or business or (iii) a foreign partnership that is either engaged in the conduct of a trade or business in the U.S. or of which 50% or more of its income or capital interests are held by U.S. persons. Neither information reporting nor backup withholding will apply to a payment of the proceeds of your disposition of debentures or common stock by or through a non-U.S. office of a non-U.S. broker that is not a U.S.-related person.

Copies of any information returns filed with the IRS may be made available by the IRS, under the provisions of a specific treaty or agreement, to the taxing authorities of the country in which you reside.

You generally will be entitled to credit any amounts withheld under the backup withholding rules against your U.S. federal income tax liability (or in some cases you may be entitled to a refund), provided that the required information is furnished to the IRS in a timely manner.

The preceding discussion of material U.S. Federal income tax considerations is for general information only. It is not tax advice. You should consult your own tax advisor regarding the particular U.S. Federal, state, local, and foreign tax consequences of any change or proposed change in applicable laws.

SELLING SECURITYHOLDERS

We originally issued the debentures on February 11, 2004 and February 18, 2004. The debentures were resold by the initial purchasers to qualified institutional buyers under Rule 144A under the Securities Act and outside the United States in accordance with Regulation S under the Securities Act. Selling securityholders may offer and sell the debentures and the underlying common stock pursuant to this prospectus.

The table below sets forth the name of each selling securityholder and the principal amount of debentures and shares of common stock issuable upon conversion of the debentures owned by each selling securityholder that may be offered pursuant to this prospectus. Because the selling securityholders may offer all or some of their debentures or the underlying common stock from time to time, we cannot estimate the amount of the debentures or underlying common stock that will be held by the selling securityholders upon the termination of any particular offering. The column showing ownership after completion of the offering assumes that the selling securityholders will sell all of the securities offered by this prospectus. The selling securityholders listed in the table may have sold or transferred, in transactions exempt from the registration requirements of the Securities Act, some or all of their debentures since the date on which the information in table is presented. Information about the selling securityholders may change over time. Any change in this information will be set forth in prospectus supplements, if required. To our knowledge and based on representations made by the selling securityholders, none of the selling securityholders (other than Citigroup Global Markets Inc.) has had any material relationship with us or any of our affiliates within the past three years. Citigroup Global Markets Inc. and its affiliates have engaged in various general financing and banking transactions with us and our affiliates in the past and may do so from time to time in the future.

We have prepared the table below based on information given to us by the selling securityholders on or prior to June 9, 2004.

NAME OF SELLING SECURITYHOLDER	PRINCIPAL AMOUNT OF DEBENTURES THAT MAY BE SOLD	NUMBER OF SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF DEBENTURES THAT MAY BE SOLD ⁽¹⁾
Advent Convertible Master (Cayman) L.P.	\$ 6,202,000	157,013
Alexandra Global Master Fund, LTD	\$ 2,500,000	63,291
Alpha U.S. Sub. Fund 4 LLC	\$ 240,000	6,076
Arbitex Master Fund L.P.	\$ 6,000,000	151,899
BNP Paribus Equity Strategies, SNC	\$ 1,092,000	27,646
Calamos [®] Market Neutral Fund Calamo [®] Investment Trust	\$ 1,500,000	37,975
Citigroup Global Markets Inc.	\$ 11,150,000	291,139
CNH CA Master Account, L.P.	\$ 500,000	12,658
CooperNeff Convertible Strategies (Cayman) Master Fund, LP	\$ 1,179,000	29,848
DKR SoundShare Strategic Holding Fund Ltd.	\$ 500,000	12,658
Geode U.S. Convertible Arbitrage Fund, a series of Geode Investors LLC	\$ 5,000,000	126,582
Grace Convertible Arbitrage Fund, Ltd.	\$ 4,500,000	113,924
Hamilton Multi-Strategy Master Fund	\$ 3,507,000	88,785
HFR Arbitrage	\$ 354,000	8,962
JMG Triton Offshore Fund, LTD	\$ 600,000	15,190
KBC Financial Products	\$ 1,500,000	37,975
LDG Limited	\$ 268,000	6,785
Lexington Vantage Fund	\$ 83,000	2,101
Lyxor	\$ 635,000	16,076
Lyxor/Convertible Arbitrage Fund Limited	\$ 198,000	5,013
ManMAC 2 Limited	\$ 3,093,000	78,304
Morgan Stanley Convertible Securities Trust	\$ 600,000	15,190

NAME OF SELLING SECURITYHOLDER	PRINCIPAL AMOUNT OF DEBENTURES THAT MAY BE SOLD	NUMBER OF SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF DEBENTURES THAT MAY BE SOLD ⁽¹⁾
National Bank of Canada c/o Putnam Lovell NBF Securities Inc.	\$ 3,500,000	88,608
Radcliffe SPC, Ltd for and on behalf of the Class A Convertible Crossover Segregated Portfolio	\$ 2,500,000	63,291
Singlehedge US Convertible Arbitrage Fund	\$ 1,179,000	29,848
Sphinx Fund	\$ 246,000	6,228
Sturgeon Limited	\$ 281,000	7,114
Sunrise Partners Limited Partnership	\$ 12,000,000	303,798
TAG Associates	\$ 69,000	1,747
TQA Master Fund, Ltd.	\$ 3,534,000	89,469
TQA Master Plus Fund, Ltd.	\$ 5,493,000	139,064
Tribeca Investments LTD	\$ 4,000,000	101,266
Van Kampen Harbor Fund	\$ 450,000	11,392
Wachovia Bank National Association	\$ 1,000,000	25,317
Xavex-Convertible Arbitrage 7 Fund	\$ 1,035,000	26,203
Zurich Institutional Benchmarks Master Fund, Ltd.	\$ 747,000	18,911
Any other holder of debentures or future transferees, pledgee, donee or successor ⁽²⁾⁽³⁾	\$ 5,217,000	115,216
Total	\$ 86,250,000	2,183,547

(1) Includes only full shares of common stock issuable upon conversion of the debentures based on an initial conversion price of approximately \$39.50 per share (initially equivalent to a conversion price of 25.3165 shares per \$1,000 principal amount of debentures). A cash payment will be made instead of any fractional interest upon conversion. The conversion price and, therefore, the number of shares of common stock issuable upon conversion of the debentures is subject to adjustment in certain events.

(2) Information about other selling securityholders will be set forth in prospectus supplements, if required.

(3) Assumes that any other holders of debentures, or any future transferees, pledgees, donees or successors of or from another such holders of debentures, do not beneficially own any common stock other than the common stock issuable upon conversion of the debentures at the initial conversion price.

We prepared this table based on the information supplied to us by the selling securityholders named in the table. The selling securityholders listed in the above table may have sold or transferred, in transactions exempt from the registration requirements of the Securities Act, some or all of their notes since the date on which the information is presented in the above table. Information about the selling securityholders may change over time. Any changed information will be set forth in prospectus supplements.

Because the selling securityholders may offer all or some of their notes or the underlying common stock from time to time, we cannot estimate the amount of the notes or the underlying common stock that will be held by the selling securityholders upon the termination of any particular offering. See Plan of Distribution.

PLAN OF DISTRIBUTION

We will not receive any of the proceeds of the sale of the debentures and the underlying common stock offered by this prospectus. The debentures and the underlying common stock may be sold from time to time to purchasers:

directly by the selling securityholders; or

through underwriters, broker-dealers or agents who may receive compensation in the form of discounts, concessions or commissions from the selling securityholders or the purchasers of the debentures and the underlying common stock.

The selling securityholders and any such broker-dealers or agents who participate in the distribution of the debentures and the underlying common stock may be deemed to be underwriters. As a result, any profits on the sale of the debentures and the underlying common stock by selling securityholders and any discounts, commissions or concessions received by any such broker-dealers or agents might be deemed to be underwriting discounts and commissions under the Securities Act. If the selling securityholders were deemed to be underwriters, the selling securityholders may be subject to certain statutory liabilities of, including, but not limited to, Sections 11, 12 and 17 of the Securities Act and Rule 10b-5 under the Exchange Act.

If the debentures and the underlying common stock are sold through underwriters or broker-dealers, the selling securityholders will be responsible for underwriting discounts or commissions or agents' commissions.

The debentures and the underlying common stock may be sold in one or more transactions at:

fixed prices;

prevailing market prices at the time of sale;

varying prices determined at the time of sale; or

negotiated prices.

These sales may be effected in transactions:

on any national securities exchange or quotation service on which the debentures and underlying common stock may be listed or quoted at the time of the sale, including the Nasdaq National Market in the case of the common stock;

in the over-the-counter market;

in transactions otherwise than on such exchanges or services or in the over-the-counter market; or

through the writing of options.

These transactions may include block transactions or crosses. Crosses are transactions in which the same broker acts as an agent on both sides of the trade.

In connection with sales of the debentures and the underlying common stock or otherwise, the selling securityholders may enter into hedging transactions with broker-dealers or other financial institutions that in turn may engage in short sales of the debentures and the underlying common stock in the course of hedging their positions. The selling securityholders also may deliver the debentures and the underlying common stock to close out short positions, or loan or pledge debentures and the underlying common stock to broker-dealers or other financial institutions that in turn may sell the debentures and the underlying common stock.

The selling securityholders also may transfer and donate shares in other circumstances in which case the transferees, donees, pledgees or other successors in interest will be the selling securityholders for purposes of this prospectus.

To our knowledge, there are currently no plans, arrangements or understandings between any selling securityholders and any underwriter, broker-dealer or agent regarding the sale of the debentures and the underlying common stock by the selling securityholders. Selling securityholders may not sell any, or may not sell all, of the debentures and the underlying common stock offered by them pursuant to this prospectus. In addition, we cannot assure you that any such selling securityholder will not transfer, devise or gift the debentures and the underlying common stock by other means not described in this prospectus. Moreover, any debentures or underlying common stock covered by this prospectus that qualify for sale pursuant to Rule 144 or Rule 144A of the Securities Act may be sold under Rule 144 or Rule 144A rather than pursuant to this prospectus.

Our common stock is quoted on the Nasdaq National Market under the symbol EQIX. The debentures are currently designated for trading on the PORTAL market. Debentures sold by means of this prospectus will not be eligible for trading in the PORTAL market. We do not intend to apply for listing of the debentures on any securities exchange or for quotation through Nasdaq. Accordingly, no assurance can be given as to the development of liquidity or any trading market for the debentures.

The selling securityholders and any other person participating in the distribution of the debentures and the underlying common stock will be subject to the Exchange Act. The Exchange Act rules include, without limitation, Regulation M, which may limit the timing of purchases and sales of any of the debentures and the underlying common stock by the selling securityholders and any such other person. In addition, under Regulation M, any person engaged in the distribution of the debentures and the underlying common stock may not engage in market-making activities with respect to the debentures and the underlying common stock for certain periods prior to the commencement of such distribution. The foregoing may affect the marketability of the debentures and the underlying common stock and the ability of any person or entity to engage in market-making activities with respect to the debentures and the underlying common stock.

To the extent required, the specific debentures or common stock to be sold, the names of the selling securityholders, the respective purchase prices and public offering prices, the names of any agent, dealer or underwriter, and any applicable commissions or discounts with respect to a particular offer will be set forth in an accompanying prospectus supplement or, if appropriate, a post-effective amendment, to the registration statement of which this prospectus forms a part.

Pursuant to the registration rights agreement that has been filed as an exhibit to the registration statement, of which this prospectus is a part, we and the selling securityholders have agreed to indemnify each other against certain liabilities, including certain liabilities under the Securities Act, and that each is entitled to contribution from the others in connection with these liabilities.

We have agreed to pay substantially all of the expenses incidental to the issuance, registration, offering and sale of the debentures and the underlying common stock to the public other than commissions, fees and discounts of underwriters, brokers, dealers and agents. We estimate these expenses to be approximately \$53,428.

LEGAL MATTERS

The validity of the debentures and shares of common stock issuable upon conversion of the debentures have been passed upon for us by Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP, Menlo Park, California and Willkie Farr & Gallagher LLP, New York, New York.

EXPERTS

The financial statements incorporated in this Prospectus by reference to the Annual Report on Form 10-K for the year ended December 31, 2003 have been so incorporated in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

PART II**INFORMATION NOT REQUIRED IN PROSPECTUS****ITEM 14. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION.**

SEC registration fee	\$ 10,928
Fees and expenses of counsel	25,000
Fees and expenses of accountants	7,500
Miscellaneous	10,000
Total	\$ 53,428

Except for the SEC registration fee, all of the foregoing expenses have been estimated. All of such expenses will be paid by the Company.

ITEM 15. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

Section 145 of the Delaware General Corporation Law authorizes a court to award or a corporation's board of directors to grant indemnification to directors and officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities (including reimbursement for expenses incurred) arising under the Securities Act of 1933 (the "Act"). Article VI of the Registrant's Bylaws provides for mandatory indemnification of its directors and officers and those serving at the Registrant's request as directors, officers, employees or agents of other organizations to the maximum extent permitted by the Delaware General Corporation Law. The Registrant's Amended and Restated Certificate of Incorporation provides that, pursuant to Delaware law, its directors shall not be liable for monetary damages for breach of the directors' fiduciary duty as directors to the Registrant and its stockholders. This provision in the Amended and Restated Certificate of Incorporation does not eliminate the directors' fiduciary duty, and in appropriate circumstances equitable remedies such as injunctive or other forms of non-monetary relief will remain available under Delaware law. In addition, each director will continue to be subject to liability for breach of the director's duty of loyalty to the Registrant for acts or omissions not in good faith or involving intentional misconduct or knowing violations of law, for actions leading to improper personal benefit to the director, and for payment of dividends or approval of stock repurchases or redemptions that are unlawful under Delaware law. The provision also does not affect a director's responsibilities under any other law, such as the federal securities laws or state or federal environmental laws. The Registrant has entered into Indemnification Agreements with its officers and directors. The Indemnification Agreements provide the Registrant's officers and directors with further indemnification to the maximum extent permitted by the Delaware General Corporation Law. The Registrant maintains liability insurance for its directors and officers. Reference is also made to Section 3.1 of the Registration Rights Agreement contained in Exhibit 4.10 hereto and Section 6 of the Registration Rights Agreement contained in Exhibit 4.12 hereto, each indemnifying certain of the Company's stockholders, including controlling stockholders, against certain liabilities.

ITEM 16. EXHIBITS.**Exhibit****Number****Description of Document**

- | | |
|---------|--|
| 2.1(8) | Combination Agreement, dated as of October 2, 2002, by and among Equinix, Inc., Eagle Panther Acquisition Corp., Eagle Jaguar Acquisition Corp., i-STT Pte Ltd, STT Communications Ltd., Pihana Pacific, Inc. and Jane Dietze, as representative of the stockholders of Pihana Pacific, Inc. |
| 3.1(10) | Amended and Restated Certificate of Incorporation of the Registrant, as amended to date. |
| 3.2(10) | Certificate of Designation of Series A and Series A-1 Convertible Preferred Stock. |

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- 3.3(9) Bylaws of the Registrant.
- 3.4(13) Certificate of Amendment of the Bylaws of the Registrant.

Exhibit	
Number	Description of Document
4.1	Reference is made to Exhibits 3.1, 3.2, 3.3 and 3.4.
4.2(2)	Form of Registrant's Common Stock certificate.
4.10(9)	Registration Rights Agreement (See Exhibit 10.75).
4.11	Indenture (see Exhibit 10.99).
4.12	Registration Rights Agreement (see Exhibit 10.100).
5.1	Opinion of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP.
5.2	Opinion of Willkie Farr & Gallagher LLP.
10.2(1)	Warrant Agreement, dated as of December 1, 1999, by and among the Registrant and State Street Bank and Trust Company of California, N.A. (as warrant agent).
10.5(1)	Form of Indemnification Agreement between the Registrant and each of its officers and directors.
10.8(1)	The Registrant's 1998 Stock Option Plan.
10.9(1)+	Lease Agreement with Carlyle-Core Chicago LLC, dated as of September 1, 1999.
10.10(1)+	Lease Agreement with Market Halsey Urban Renewal, LLC, dated as of May 3, 1999.
10.11(1)+	Lease Agreement with Laing Beaumeade, dated as of November 18, 1998.
10.12(1)+	Lease Agreement with Rose Ventures II, Inc., dated as of June 10, 1999.
10.13(1)+	Lease Agreement with Carrier Central LA, Inc., as successor in interest to 600 Seventh Street Associates, Inc., dated as of August 8, 1999.
10.14(1)+	First Amendment to Lease Agreement with TrizecHahn Centers, Inc. (dba TrizecHahn Beaumeade Corporate Management), dated as of October 28, 1999.
10.15(1)+	Lease Agreement with Nexcomm Asset Acquisition I, L.P., dated as of January 21, 2000.
10.16(1)+	Lease Agreement with TrizecHahn Centers, Inc. (dba TrizecHahn Beaumeade Corporate Management), dated as of December 15, 1999.
10.20(1)+	Agreement between Equinix, Inc. and WorldCom, Inc., dated November 16, 1999.
10.21(1)	Customer Agreement between Equinix, Inc. and WorldCom, Inc., dated November 16, 1999.
10.23(1)	Purchase Agreement between International Business Machines Corporation and Equinix, Inc. dated May 23, 2000.
10.24(2)	2000 Equity Incentive Plan.
10.25(2)	2000 Director Option Plan.
10.26(2)	2000 Employee Stock Purchase Plan.
10.27(2)	Ground Lease by and between iStar San Jose, LLC and Equinix, Inc., dated June 21, 2000.
10.28(3)+	Lease Agreement with TrizecHahn Beaumeade Technology Center LLC, dated as of July 1, 2000.
10.29(3)+	Lease Agreement with TrizecHahn Beaumeade Technology Center LLC, dated as of May 1, 2000.
10.30(3)+	Lease Agreement with Carrier Central LA, Inc., as successor in interest to 600 Seventh Street Associates, Inc., dated as of August 24, 2000.
10.31(3)+	Lease Agreement with Burlington Associates III Limited Partnership, dated as of July 24, 2000.
10.42(4)+	First Amendment to Deed of Lease with TrizecHahn Beaumeade Technology Center LLC, dated as of March 22, 2001.

Exhibit	
Number	Description of Document
10.43(4)+	First Lease Amendment Agreement with Market Halsey Urban Renewal, LLC, dated as of May 23, 2001.
10.44(4)+	First Amendment to Lease with Nexcomm Asset Acquisition I, L.P., dated as of April 18, 2000.
10.45(4)+	Amendment to Lease Agreement with Burlington Realty Associates III Limited Partnership, dated as of December 18, 2000.
10.46(5)	First Modification to Ground Lease by and between iStar San Jose, LLC and Equinix, Inc., dated as of September 26, 2001.
10.48(5)	2001 Supplemental Stock Plan.
10.53(6)	Second Modification to Ground Lease by and between iStar San Jose, LLC and Equinix, Inc., dated as of May 20, 2002.
10.54(6)+	Amended and Restated Master Service Agreement by and between International Business Machines Corporation and Equinix, Inc., dated as of May 1, 2002.
10.56(7)+	Second Amendment to Lease Agreement with Burlington Realty Associates III Limited Partnership, dated as of October 1, 2002.
10.58(7)	Form of Severance Agreement entered into by the Company and each of the Company's executive officers.
10.60(9)	Governance Agreement by and among Equinix, Inc., STT Communications Ltd., i-STT Communications Ltd., STT Investments Pte Ltd and the Pihana Pacific stockholder named therein, dated as of December 31, 2002.
10.61(9)	Tenancy Agreement over units #06-01, #06-05, #06-06, #06-07 and #06-08 of Block 20 Ayer Rajah Crescent, Singapore 139964.
10.62(9)	Tenancy Agreement over units #05-05, #05-06, #05-07 and #05-08 of Block 20 Ayer Rajah Crescent, Singapore 139964.
10.63(9)	Tenancy Agreement over units #03-01 and #03-02 of Block 28 Ayer Rajah Crescent, Singapore 139959.
10.64(9)	Tenancy Agreement over units #05-01, #05-02, #05-03 and #05-04 of Block 20 Ayer Rajah Crescent, Singapore 139964.
10.65(9)	Tenancy Agreement over units #03-05, #03-06, #03-07 and #03-08 of Block 20 Ayer Rajah Crescent, Singapore 139964.
10.69(9)	Lease Agreement with Downtown Properties, LLC dated April 10, 2000, as amended.
10.70(9)	Lease Agreement with Comfort Development Limited dated November 10, 2000.
10.71(9)	Lease Agreement with PacEast Telecom Corporation dated June 15, 2000, as amended.
10.72(9)	Lease Agreement Lend Lease Real Estate Investments Limited dated October 20, 2000.
10.73(9)	Lease Agreement with AIPA Properties, LLC dated November 1, 1999, as amended.
10.74(9)	Third Modification to Ground Lease by and between iStar San Jose, LLC and Equinix, Inc., dated as of September 30, 2002.
10.75(9)	Registration Rights Agreement by and among Equinix and the Initial Purchasers, dated as of December 31, 2002.
10.76(9)	Securities Purchase Agreement by and among Equinix, the Guarantors and the Purchasers, dated as of October 2, 2002.
10.77(9)	Series A-1 Convertible Secured Note Due 2007 issued to i-STT Investments Pte Ltd on December 31, 2002.

<u>Exhibit</u>	
<u>Number</u>	<u>Description of Document</u>
10.78(9)	Preferred Stock Warrant issued to i-STT Investments Pte Ltd on December 31, 2002.
10.79(9)	Change in Control Warrant issued to i-STT Investments Pte Ltd on December 31, 2002.
10.83(11)	Securities Purchase and Admission Agreement, dated April 29, 2003, among Equinix, certain of Equinix's subsidiaries, i-STT Investments Pte Ltd, STT Communications Ltd and affiliates of Crosslink Capital.
10.84(12)	Sublease by and between Electronics for Imaging as Landlord and Equinix Operating Co., Inc. as Tenant dated February 12, 2003.
10.90(13)	Expatriate Agreement with Philip Koen, President and Chief Operating Officer of the Company, dated as of June 24, 2003.
10.92(14)	Renewal of Tenancy Agreements over units #06-01, #06-05/08, #05-05/08, #03-05/08 & #05-01/04 of Block 20 Ayer Rajah Crescent, Singapore 139964.
10.94(15)	Fourth Modification to Ground Lease by and between iStar San Jose, LLC and Equinix, Inc., dated as of November 21, 2003.
10.95(15)+	Sublease Agreement between Sprint Communications Company, L.P. and Equinix Operating Co., Inc. dated October 24, 2003.
10.96(15)	Tenancy Agreement over units #03-01, #03-02, #03-03, #03-04 of Block 20 Ayer Rajah Crescent, Singapore 139964.
10.97(15)	Lease Agreement with JMA Robinson Redevelopment, LLC, as successor in interest to Carrier Central L.A., Inc., dated as of November 30, 2003.
10.98(16)	Purchase Agreement between Equinix, Inc. and Citigroup Global Markets Inc. as representative of the initial purchasers named therein dated February 5, 2004.
10.99(16)	Indenture among Equinix, Inc. and U.S. Bank National Association as Trustee dated February 11, 2004.
10.100(16)	Registration Rights Agreement between Equinix, Inc. and Citigroup Global Markets Inc. as representative of the initial purchasers named therein dated February 11, 2004.
10.101(16)	First Amendment to Lease Agreement dated September 1, 1999, between Lakeside Purchaser L.L.C. as successor in interest to Carlyle-Core Chicago, LLC and Equinix Operating Co., Inc.
10.102	Supplemental Lease Agreement with Comfort Development Limited dated May 18, 2004.
12.1	Computation of Ratio of Earnings to Fixed Charges.
16.1(1)	Letter regarding change in certifying accountant.
21.1(9)	Subsidiaries of Equinix.
23.1	Consent of PricewaterhouseCoopers LLP.

(1) Incorporated herein by reference to the exhibit of the same number in the Registrant's Registration Statement on Form S-4 (Commission File No. 333-93749).

(2) Incorporated herein by reference to the exhibit of the same number in the Registrant's Registration Statement in Form S-1 (Commission File No. 333-39752).

(3) Incorporated herein by reference to the exhibit of the same number in the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2000.

- (4) Incorporated herein by reference to the exhibit of the same number in the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2001.
 - (5) Incorporated herein by reference to the exhibit of the same number in the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2001.
 - (6) Incorporated herein by reference to the exhibit of the same number in the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2002.
 - (7) Incorporated herein by reference to the exhibit of the same number in the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2002.
 - (8) Incorporated herein by reference to Annex A of Equinix's Definitive Proxy Statement filed with the Commission December 12, 2002.
 - (9) Incorporated herein by reference to the exhibit of the same number in the Registrant's Annual Report on Form 10-K for the year ended December 31, 2002.
 - (10) Incorporated herein by reference to the exhibit of the same number in the Registrant's Annual Report on Form 10-K/A for the year ended December 31, 2002.
 - (11) Incorporated herein by reference to exhibit 10.1 in the Registrant's filing on Form 8-K on May 1, 2003.
 - (12) Incorporated herein by reference to the exhibit of the same number in the Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2003.
 - (13) Incorporated herein by reference to the exhibit of the same number in the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2003.
 - (14) Incorporated herein by reference to the exhibit of the same number in the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2003.
 - (15) Incorporated herein by reference to the exhibit of the same number in the Registrant's Annual Report on Form 10-K for the year ended December 31, 2003.
 - (16) Incorporated herein by reference to the exhibit of the same number in the Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2004.
- + Confidential treatment has been requested for certain portions which are omitted in the copy of the exhibit electronically filed with the Securities and Exchange Commission. The omitted information has been filed separately with the Securities and Exchange Commission pursuant to Equinix's application for confidential treatment.

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; (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) and (1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed 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.

(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.

The undersigned Registrant hereby undertakes that, for purposes of determining any liability 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 herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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 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 Act and will be governed by the final adjudication of such issue.

SIGNATURES FORM S-3

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 Foster City, State of California, on this 9th day of June, 2004.

EQUINIX, Inc.

By: /s/ PETER F. VAN CAMP
Peter F. Van Camp

Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each individual whose signature appears below constitutes and appoints Peter F. Van Camp and Renee F. Lanam, and each of them, his or her true and lawful attorneys-in-fact and agents with full power of substitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including 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 on filing pursuant to Rule 462(b) promulgated under the Securities Act of 1933, and all post-effective amendments thereto, and to file the same, with all exhibits thereto and all 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, as fully to all intents and purposes as 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, or his or her or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

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

<u>Signature</u>	<u>Title</u>	<u>Date</u>
/s/ PETER F. VAN CAMP	Chief Executive Officer and Director	June 9, 2004
Peter F. Van Camp	(Principal Executive Officer)	
/s/ RENEE F. LANAM	Chief Financial Officer and Secretary	June 9, 2004
Renee F. Lanam	(Principal Financial Officer)	
/s/ KEITH D. TAYLOR	Vice President, Finance	June 9, 2004
Keith D. Taylor	(Principal Accounting Officer)	

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/s/ LEE THENG KIAT

Chairman of the Board

June 9, 2004

Lee Theng Kiat

/s/ SCOTT KRIENS

Director

June 9, 2004

Scott Kriens

/s/ ANDREW S. RACHLEFF

Director

June 9, 2004

Andrew S. Rachleff

/s/ MICHELANGELO VOLPI

Director

June 9, 2004

Michelangelo Volpi

/s/ JEAN F.H.P. MANDEVILLE

Director

June 9, 2004

Jean F.H.P. Mandeville

/s/ STEVEN POY ENG

Director

June 9, 2004

Steven Poy Eng

/s/ GARY HROMADKO

Director

June 9, 2004

Gary Hromadko

/s/ DENNIS RANEY

Director

June 9, 2004

Dennis Raney

INDEX TO EXHIBITS

Exhibit Number	Description of Document
2.1(8)	Combination Agreement, dated as of October 2, 2002, by and among Equinix, Inc., Eagle Panther Acquisition Corp., Eagle Jaguar Acquisition Corp., i-STT Pte Ltd, STT Communications Ltd., Pihana Pacific, Inc. and Jane Dietze, as representative of the stockholders of Pihana Pacific, Inc.
3.1(10)	Amended and Restated Certificate of Incorporation of the Registrant, as amended to date.
3.2(10)	Certificate of Designation of Series A and Series A-1 Convertible Preferred Stock.
3.3(9)	Bylaws of the Registrant.
3.4(13)	Certificate of Amendment of the Bylaws of the Registrant.
4.1	Reference is made to Exhibits 3.1, 3.2, 3.3 and 3.4.
4.2(2)	Form of Registrant's Common Stock certificate.
4.10(9)	Registration Rights Agreement (See Exhibit 10.75).
4.11	Indenture (see Exhibit 10.99).
4.12	Registration Rights Agreement (see Exhibit 10.100).
5.1	Opinion of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP.
5.2	Opinion of Willkie Farr & Gallagher LLP.
10.2(1)	Warrant Agreement, dated as of December 1, 1999, by and among the Registrant and State Street Bank and Trust Company of California, N.A. (as warrant agent).
10.5(1)	Form of Indemnification Agreement between the Registrant and each of its officers and directors.
10.8(1)	The Registrant's 1998 Stock Option Plan.
10.9(1)+	Lease Agreement with Carlyle-Core Chicago LLC, dated as of September 1, 1999.
10.10(1)+	Lease Agreement with Market Halsey Urban Renewal, LLC, dated as of May 3, 1999.
10.11(1)+	Lease Agreement with Laing Beaumeade, dated as of November 18, 1998.
10.12(1)+	Lease Agreement with Rose Ventures II, Inc., dated as of June 10, 1999.
10.13(1)+	Lease Agreement with Carrier Central LA, Inc., as successor in interest to 600 Seventh Street Associates, Inc., dated as of August 8, 1999.
10.14(1)+	First Amendment to Lease Agreement with TrizecHahn Centers, Inc. (dba TrizecHahn Beaumeade Corporate Management), dated as of October 28, 1999.
10.15(1)+	Lease Agreement with Nexcomm Asset Acquisition I, L.P., dated as of January 21, 2000.
10.16(1)+	Lease Agreement with TrizecHahn Centers, Inc. (dba TrizecHahn Beaumeade Corporate Management), dated as of December 15, 1999.
10.20(1)+	Agreement between Equinix, Inc. and WorldCom, Inc., dated November 16, 1999.
10.21(1)	Customer Agreement between Equinix, Inc. and WorldCom, Inc., dated November 16, 1999.
10.23(1)	Purchase Agreement between International Business Machines Corporation and Equinix, Inc. dated May 23, 2000.
10.24(2)	2000 Equity Incentive Plan.
10.25(2)	2000 Director Option Plan.
10.26(2)	2000 Employee Stock Purchase Plan.

Exhibit Number	Description of Document
10.27(2)	Ground Lease by and between iStar San Jose, LLC and Equinix, Inc., dated June 21, 2000.
10.28(3)+	Lease Agreement with TrizecHahn Beaumeade Technology Center LLC, dated as of July 1, 2000.
10.29(3)+	Lease Agreement with TrizecHahn Beaumeade Technology Center LLC, dated as of May 1, 2000.
10.30(3)+	Lease Agreement with Carrier Central LA, Inc., as successor in interest to 600 Seventh Street Associates, Inc., dated as of August 24, 2000.
10.31(3)+	Lease Agreement with Burlington Associates III Limited Partnership, dated as of July 24, 2000.
10.42(4)+	First Amendment to Deed of Lease with TrizecHahn Beaumeade Technology Center LLC, dated as of March 22, 2001.
10.43(4)+	First Lease Amendment Agreement with Market Halsey Urban Renewal, LLC, dated as of May 23, 2001.
10.44(4)+	First Amendment to Lease with Nexcomm Asset Acquisition I, L.P., dated as of April 18, 2000.
10.45(4)+	Amendment to Lease Agreement with Burlington Realty Associates III Limited Partnership, dated as of December 18, 2000.
10.46(5)	First Modification to Ground Lease by and between iStar San Jose, LLC and Equinix, Inc., dated as of September 26, 2001.
10.48(5)	2001 Supplemental Stock Plan.
10.53(6)	Second Modification to Ground Lease by and between iStar San Jose, LLC and Equinix, Inc., dated as of May 20, 2002.
10.54(6)+	Amended and Restated Master Service Agreement by and between International Business Machines Corporation and Equinix, Inc., dated as of May 1, 2002.
10.56(7)+	Second Amendment to Lease Agreement with Burlington Realty Associates III Limited Partnership, dated as of October 1, 2002.
10.58(7)	Form of Severance Agreement entered into by the Company and each of the Company's executive officers.
10.60(9)	Governance Agreement by and among Equinix, Inc., STT Communications Ltd., i-STT Communications Ltd., STT Investments Pte Ltd and the Pihana Pacific stockholder named therein, dated as of December 31, 2002.
10.61(9)	Tenancy Agreement over units #06-01, #06-05, #06-06, #06-07 and #06-08 of Block 20 Ayer Rajah Crescent, Singapore 139964.
10.62(9)	Tenancy Agreement over units #05-05, #05-06, #05-07 and #05-08 of Block 20 Ayer Rajah Crescent, Singapore 139964.
10.63(9)	Tenancy Agreement over units #03-01 and #03-02 of Block 28 Ayer Rajah Crescent, Singapore 139959.
10.64(9)	Tenancy Agreement over units #05-01, #05-02, #05-03 and #05-04 of Block 20 Ayer Rajah Crescent, Singapore 139964.
10.65(9)	Tenancy Agreement over units #03-05, #03-06, #03-07 and #03-08 of Block 20 Ayer Rajah Crescent, Singapore 139964.
10.69(9)	Lease Agreement with Downtown Properties, LLC dated April 10, 2000, as amended.
10.70(9)	Lease Agreement with Comfort Development Limited dated November 10, 2000.
10.71(9)	Lease Agreement with PacEast Telecom Corporation dated June 15, 2000, as amended.
10.72(9)	Lease Agreement Lend Lease Real Estate Investments Limited dated October 20, 2000.

Exhibit Number	Description of Document
10.73(9)	Lease Agreement with AIPA Properties, LLC dated November 1, 1999, as amended.
10.74(9)	Third Modification to Ground Lease by and between iStar San Jose, LLC and Equinix, Inc., dated as of September 30, 2002.
10.75(9)	Registration Rights Agreement by and among Equinix and the Initial Purchasers, dated as of December 31, 2002.
10.76(9)	Securities Purchase Agreement by and among Equinix, the Guarantors and the Purchasers, dated as of October 2, 2002.
10.77(9)	Series A-1 Convertible Secured Note Due 2007 issued to i-STT Investments Pte Ltd on December 31, 2002.
10.78(9)	Preferred Stock Warrant issued to i-STT Investments Pte Ltd on December 31, 2002.
10.79(9)	Change in Control Warrant issued to i-STT Investments Pte Ltd on December 31, 2002.
10.83(11)	Securities Purchase and Admission Agreement, dated April 29, 2003, among Equinix, certain of Equinix's subsidiaries, i-STT Investments Pte Ltd, STT Communications Ltd and affiliates of Crosslink Capital.
10.84(12)	Sublease by and between Electronics for Imaging as Landlord and Equinix Operating Co., Inc. as Tenant dated February 12, 2003.
10.90(13)	Expatriate Agreement with Philip Koen, President and Chief Operating Officer of the Company, dated as of June 24, 2003.
10.92(14)	Renewal of Tenancy Agreements over units #06-01, #06-05/08, #05-05/08, #03-05/08 & #05-01/04 of Block 20 Ayer Rajah Crescent, Singapore 139964.
10.94(15)	Fourth Modification to Ground Lease by and between iStar San Jose, LLC and Equinix, Inc., dated as of November 21, 2003.
10.95(15)+	Sublease Agreement between Sprint Communications Company, L.P. and Equinix Operating Co., Inc. dated October 24, 2003.
10.96(15)	Tenancy Agreement over units #03-01, #03-02, #03-03, #03-04 of Block 20 Ayer Rajah Crescent, Singapore 139964.
10.97(15)	Lease Agreement with JMA Robinson Redevelopment, LLC, as successor in interest to Carrier Central L.A., Inc., dated as of November 30, 2003.
10.98(16)	Purchase Agreement between Equinix, Inc. and Citigroup Global Markets Inc. as representative of the initial purchasers named therein dated February 5, 2004.
10.99(16)	Indenture among Equinix, Inc. and U.S. Bank National Association as Trustee dated February 11, 2004.
10.100(16)	Registration Rights Agreement between Equinix, Inc. and Citigroup Global Markets Inc. as representative of the initial purchasers named therein dated February 11, 2004.
10.101(16)	First Amendment to Lease Agreement dated September 1, 1999, between Lakeside Purchaser L.L.C. as successor in interest to Carlyle-Core Chicago, LLC and Equinix Operating Co., Inc.
10.102	Supplemental Lease Agreement with Comfort Development Limited dated May 18, 2004.
12.1	Computation of Ratio of Earnings to Fixed Charges.
16.1(1)	Letter regarding change in certifying accountant.
21.1(9)	Subsidiaries of Equinix.
23.1	Consent of PricewaterhouseCoopers LLP.

(1) Incorporated herein by reference to the exhibit of the same number in the Registrant's Registration Statement on Form S-4 (Commission File No. 333-93749).

- (2) Incorporated herein by reference to the exhibit of the same number in the Registrant's Registration Statement in Form S-1 (Commission File No. 333-39752).
- (3) Incorporated herein by reference to the exhibit of the same number in the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2000.
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