

APPLE INC
Form DEF 14A
January 23, 2008

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

Apple Inc.

(Name of Registrant as Specified in Its Charter)

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

Payment of Filing Fee (Check the appropriate box):

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APPLE INC.

NOTICE OF ANNUAL MEETING OF SHAREHOLDERS

To Be Held On March 4, 2008

To Holders of Common Stock of Apple Inc.:

Notice is hereby given that the Annual Meeting of Shareholders of Apple Inc., a California corporation (the *Company*), will be held on Tuesday, March 4, 2008 at 10:00 a.m. local time, at the Company's principal executive offices located at 1 Infinite Loop, Building 4, Cupertino, California 95014, for the following purposes, as more fully described in the accompanying Proxy Statement:

1. To elect the Company's Board of Directors.
2. To ratify the appointment of KPMG LLP as the Company's independent registered public accounting firm for fiscal year 2008.
3. To consider two shareholder proposals, if properly presented at the meeting.
4. To transact such other business as may properly come before the meeting and any postponement(s) or adjournment(s) thereof.

All shareholders are cordially invited to attend the meeting in person. However, to ensure that each shareholder's vote is counted at the meeting, shareholders are requested to mark, sign, date and return the enclosed proxy card as promptly as possible in the envelope provided or to submit the proxy via the Internet or by telephone. Shareholders attending the meeting may vote in person even if they have previously returned proxy cards.

Only shareholders of record as of the close of business on January 15, 2008 are entitled to receive notice of, to attend and to vote at the meeting.

Sincerely,

/s/ DANIEL COOPERMAN
DANIEL COOPERMAN
*Senior Vice President,
General Counsel and Secretary*

Cupertino, California

January 22, 2008

APPLE INC.

1 Infinite Loop

Cupertino, California 95014

PROXY STATEMENT

Introduction

The enclosed proxy is solicited on behalf of the Board of Directors (the *Board*) of Apple Inc., a California corporation (the *Company*), for use at the Company's annual meeting of shareholders (the *Annual Meeting*) to be held on Tuesday, March 4, 2008 at 10:00 a.m. local time, and at any postponement(s) or adjournment(s) thereof. The purposes of the Annual Meeting are set forth in this proxy statement (this *Proxy Statement*) and in the accompanying Notice of Annual Meeting of Shareholders. The Annual Meeting will be held at the Company's principal executive offices in Building 4 at the address shown above.

The Company's complete mailing address is 1 Infinite Loop, Cupertino, California 95014, and its telephone number is (408) 996-1010. Georgeson Inc., which is assisting with the mechanics of the return of the proxies, may be contacted at (800) 261-1052.

These proxy solicitation materials were first sent on or about January 22, 2008 to all shareholders entitled to vote at the Annual Meeting.

Procedural Matters

Only shareholders of record as of the close of business on January 15, 2008 (the *Record Date*) are entitled to receive notice of, to attend, and to vote at the Annual Meeting. There were 878,795,201 shares of the Company's common stock issued and outstanding on the Record Date, held by 31,035 holders of record. Each share has one vote on each matter. The closing sale price of the Company's common stock as reported on the NASDAQ Global Select Market on the Record Date was \$169.04 per share.

A shareholder may revoke any proxy given pursuant to this solicitation by attending the Annual Meeting and voting in person, or by delivering to the Company's Corporate Secretary at the Company's principal executive offices referred to above, prior to the Annual Meeting, a written notice of revocation or a duly executed proxy bearing a date later than that of the previously submitted proxy.

The Company will bear the cost of this solicitation. The Company has retained the services of Georgeson Inc. to assist in obtaining proxies from brokers and nominees of shareholders for the Annual Meeting. The estimated cost of such services is \$14,000 plus out-of-pocket expenses. In addition, the Company will reimburse brokerage firms and other persons representing beneficial owners of shares for their reasonable expenses in forwarding solicitation material to such beneficial owners. Certain of the Company's directors, officers and regular employees, without additional compensation, may solicit proxies personally or by telephone, facsimile or email.

Attendance at the Annual Meeting is limited to shareholders. Admission to the Annual Meeting will be on a first-come, first-served basis. Registration will begin at 9:00 a.m. local time and each shareholder may be asked to present valid picture identification such as a driver's license or passport. The use of cell phones, PDAs, pagers, recording and photographic equipment, camera phones and/or computers is not permitted in the meeting rooms at the Annual Meeting.

Voting of Proxies

All valid proxies received prior to the Annual Meeting will be voted. All shares represented by a proxy will be voted, and where a shareholder specifies by means of the proxy a choice with respect to any matter to be acted upon, the shares will be voted in accordance with the specification so made. If no choice is indicated on the proxy, the shares will be voted FOR each of the nominees of the Board (Proposal No. 1), FOR the ratification of the appointment of KPMG LLP as the Company's independent registered public accounting firm for fiscal year 2008 (Proposal No. 2), AGAINST each shareholder proposal, if properly presented at the Annual Meeting (Proposals No. 3 and No. 4) and as the proxy holders may determine in their discretion with respect to any other matters that properly come before the Annual Meeting. See **OTHER MATTERS**.

Quorum

For business to be conducted at the Annual Meeting, a quorum must be present. The presence at the Annual Meeting, either in person or by proxy, of holders of shares of outstanding common stock entitled to vote and representing a majority of the voting power of such shares will constitute a quorum for the transaction of business. Abstentions and broker non-votes (i.e., shares held by a broker or nominee that are represented at the Annual Meeting, but with respect to which such broker or nominee is not instructed to vote on a particular proposal and does not have discretionary voting power) will be counted for the purpose of determining whether a quorum is present for the transaction of business. If a quorum is not present, the Annual Meeting will be adjourned until a quorum is obtained.

Votes Required; Abstentions; Broker Non-Votes

For Proposal No. 1, the eight nominees receiving the highest number of affirmative votes of the outstanding shares of the Company's common stock present or represented by proxy and voting at the Annual Meeting will be elected as directors to serve until the next annual meeting of shareholders and until their successors are duly elected and qualified. Abstentions will have no effect on the outcome of the election of candidates for director. Additionally, the election of directors is a matter on which a broker or other nominee is generally empowered to vote, and therefore no broker non-votes are expected to exist in connection with Proposal No. 1.

Approval of Proposals No. 2, No. 3 and No. 4 require a vote that satisfies two criteria: (i) the affirmative vote must constitute a majority of the voting power present or represented by proxy and voting at the Annual Meeting and (ii) the affirmative vote must constitute a majority of the voting power required to constitute the quorum. For purposes of these proposals, abstentions and broker non-votes will not affect the outcome under clause (i), which recognizes only actual votes cast for or against the proposal. However, abstentions and broker non-votes may affect the outcome under clause (ii) because abstentions and broker non-votes are counted for purposes of determining the quorum and have the effect of a vote against the proposal.

The ratification of the appointment of the independent registered public accounting firm for the 2008 fiscal year is a matter on which a broker or other nominee is generally empowered to vote. Accordingly, no broker non-votes are expected to exist in connection with Proposal No. 2. In contrast, since shareholder proposals are not matters on which brokers are empowered to vote without instructions, there may be broker non-votes on Proposals No. 3 and No. 4.

Voting via the Internet and by Telephone

Shareholders whose shares are registered in the name of a bank or brokerage firm may be eligible to vote electronically through the Internet or by telephone. Many banks and brokerage firms participate in the Broadridge Financial Solutions, Inc. (*Broadridge*) online and telephone program. This program provides eligible shareholders the opportunity to vote via the Internet or by telephone. Voting forms will provide instructions for shareholders whose banks or brokerage firms participate in Broadridge's online and telephone program.

Registered shareholders may vote electronically through the Internet or by telephone by following the instructions included with their proxy card. A shareholder not wishing to vote electronically through the Internet or by telephone or whose form does not reference Internet or telephone voting information should complete and return the enclosed paper proxy card. Signing and returning the proxy card or submitting the proxy via the Internet or by telephone does not affect the right to vote in person at the Annual Meeting.

Internet and Electronic Availability of Proxy Materials

As permitted by the Securities and Exchange Commission (the *SEC*), the Company is sending a Notice of Internet Availability of Proxy Materials (the *Notice*) to shareholders who hold shares in street name through a bank, broker or other holder of record. All such shareholders will have the ability to access this Proxy Statement and the Company's Annual Report on Form 10-K for the fiscal year ended September 29, 2007 as filed with the SEC on November 15, 2007 (the *Annual Report*) on a website referred to in the Notice or to request a printed set of these materials at no charge. Instructions on how to access these materials over the Internet or to request a printed copy may be found in the Notice.

In addition, any shareholder may request to receive proxy materials in printed form by mail or electronically by email on an ongoing basis. Choosing to receive future proxy materials by email will save the Company the cost of printing and mailing documents to shareholders and will reduce the impact of annual meetings on the environment. A shareholder's election to receive proxy materials by email will remain in effect until the shareholder terminates it.

Directors

Listed below are the Company's eight directors. The Board appointed Ms. Andrea Jung to fill a vacancy on the Board on January 4, 2008 and has nominated her for election at the Annual Meeting. The remaining seven of the Company's directors are nominated for re-election at the Annual Meeting. All of the directors elected at the Annual Meeting will serve a one-year term expiring at the next annual meeting of shareholders.

Name	Position With the Company	Age as of the Annual Meeting	Director Since
William V. Campbell	Co-lead Director	67	1997
Millard S. Drexler	Director	63	1999
Albert A. Gore, Jr.	Director	59	2003
Steven P. Jobs	Director and Chief Executive Officer	53	1997
Andrea Jung	Director	49	2008
Arthur D. Levinson, Ph.D.	Co-lead Director	57	2000
Eric E. Schmidt, Ph.D.	Director	52	2006
Jerome B. York	Director	69	1997

William V. Campbell has been the Chairman of the Board of Directors of Intuit, Inc. (*Intuit*) since August 1998. From September 1999 to January 2000, Mr. Campbell acted as the Chief Executive Officer of Intuit. From January 1994 to August 1998, Mr. Campbell was the President and Chief Executive Officer and a director of Intuit. From January 1991 to December 1993, Mr. Campbell was the President and Chief Executive Officer of GO Corporation. Mr. Campbell is also a member of the Board of Directors of Highlands Acquisition Corp., a blank check company formed for the purpose of acquiring one or more operating businesses.

Millard S. Drexler has been the Chairman and Chief Executive Officer of J. Crew Group, Inc. since January 2003. Previously, Mr. Drexler was the Chief Executive Officer of Gap Inc. (*Gap*) from 1995 and President from 1987 until September 2002. Mr. Drexler was also a member of the Board of Directors of Gap from November 1983 until October 2002.

Albert A. Gore, Jr. has served as a Senior Advisor to Google, Inc. (*Google*) since 2001. He has also served as the Executive Chairman of Current TV since 2002, the Chairman of Generation Investment Management since 2004 and a partner of Kleiner Perkins Caufield & Byers since 2007. He is a visiting professor at Middle Tennessee State University. Mr. Gore was inaugurated as the 45th Vice President of the United States in 1993. He was re-elected in 1996 and served for a total of eight years as President of the Senate, a member of the Cabinet and the National Security Council. Prior to 1993, he served eight years in the U.S. Senate and eight years in the U.S. House of Representatives.

Steven P. Jobs is one of the Company's co-founders and currently serves as its Chief Executive Officer (the *CEO*). Mr. Jobs is also a director of The Walt Disney Company.

Andrea Jung has been Chairman and Chief Executive Officer of Avon Products, Inc. (*Avon*) since September 2001, having previously served as Chief Executive Officer of Avon since November 1999. Ms. Jung has been a member of the Board of Directors of Avon since January 1998 and was President from January 1998 to January 2001 and Chief Operating Officer from July 1998 to November 1999. She was elected Executive Vice President of Avon in March 1997 concurrently continuing as President, Global Marketing, a position she held from July 1996 to the end of 1997. Ms. Jung joined Avon in January 1994 as President, Product Marketing for Avon U.S. Previously, she was Executive Vice President for Neiman Marcus and a Senior Vice President for I. Magnin. Ms. Jung is a director of the General Electric Company. She is also a member of the N.Y. Presbyterian Hospital Board of Trustees and a director of Catalyst, a nonprofit corporate membership research and advisory organization.

Arthur D. Levinson, Ph.D. has been the Chief Executive Officer and a Director of Genentech Inc. (*Genentech*) since July 1995. Dr. Levinson has been the Chairman of the Board of Directors of Genentech since September 1999. He joined Genentech in 1980 and served in a number of executive positions, including the Senior Vice President of Research and Development from 1993 to 1995. Dr. Levinson is also a member of the Board of Directors of Google.

Eric E. Schmidt, Ph.D. has served as the Chief Executive Officer of Google since July 2001 and as a member of Google's Board of Directors since March 2001, where he served as the Chairman of the Board from March 2001 to April 2004. In April 2004, Dr. Schmidt was named the Chairman of the Executive Committee of Google's Board of Directors. From April 1997 to November 2001, Dr. Schmidt served as Chairman of the Board of Directors of Novell, Inc. (*Novell*), a computer networking company, and, from April 1997 to July 2001, as the Chief Executive Officer of Novell.

Jerome B. York has been the Chief Executive Officer of Harwinton Capital LLC (formerly Harwinton Capital Corporation), a private investment company that he controls, since September 2003. From January 2000 until September 2003, Mr. York was the Chairman and Chief Executive Officer of MicroWarehouse, Inc., a reseller of computer hardware, software and peripheral products. From September 1995 to October 1999, he was the Vice Chairman of Tracinda Corporation. From May 1993 to September 1995 he was the Senior Vice President and Chief Financial Officer of IBM Corporation (*IBM*), and served as a member of IBM's Board of Directors from January 1995 to August 1995. Mr. York is also a member of the Board of Directors of Tyco International Ltd.

Role of the Board; Corporate Governance Matters

It is the paramount duty of the Board to oversee the CEO and other senior management in the competent and ethical operation of the Company on a day-to-day basis and to assure that the long-term interests of the shareholders are being served. To satisfy this duty, the directors take a proactive, focused approach to their position, and set standards to ensure that the Company is committed to business success through maintenance of high standards of responsibility and ethics.

Members of the Board bring a wide range of experience, knowledge and judgment to the Company. These varied skills mean that governance is far more than a "check the box" approach to standards or procedures. The

governance structure in the Company is designed to be a working structure for principled actions, effective decision-making and appropriate monitoring of both compliance and performance. The key practices and procedures of the Board are outlined in the Corporate Governance Guidelines available on the Company's website at www.apple.com/investor.

The Board met a total of seven (7) times during fiscal year 2007. The Board has determined that all Board members, excluding Steve Jobs, are independent under the applicable NASDAQ rules.

Board Committees

The Board has a standing Audit and Finance Committee (the *Audit Committee*), Compensation Committee (the *Compensation Committee*) and Nominating and Corporate Governance Committee (the *Nominating Committee*). All committee members are independent under the listing standards of the NASDAQ Global Select Market. The members of the committees are identified in the table below.

Director	Audit and Finance Committee	Compensation Committee	Nominating and Corporate Governance Committee
William V. Campbell	X	Chair	
Millard S. Drexler		X	X
Albert A. Gore, Jr.		X	X
Steven P. Jobs			
Andrea Jung			
Arthur D. Levinson, Ph.D.	X		Chair
Eric E. Schmidt, Ph.D.			
Jerome B. York		Chair	

The Audit Committee is primarily responsible for overseeing the services performed by the Company's independent registered public accounting firm and internal audit department, evaluating the Company's accounting policies and its system of internal controls and reviewing significant financial transactions. Members of the Audit Committee are Messrs. Campbell and York and Dr. Levinson. The Audit Committee met a total of fourteen (14) times during fiscal year 2007.

The Compensation Committee is primarily responsible for reviewing the compensation arrangements for the Company's executive officers, including the CEO, and for administering the Company's equity compensation plans. Members of the Compensation Committee are Messrs. Campbell, Drexler and Gore. The Compensation Committee met a total of five (5) times during fiscal year 2007.

The Nominating Committee assists the Board in identifying qualified individuals to become directors, determines the composition of the Board and its committees, monitors the process to assess the Board's effectiveness and helps develop and implement the Company's corporate governance guidelines. The Nominating Committee also considers nominees proposed by shareholders. The Nominating Committee is committed to actively seeking out highly qualified women and individuals from minority groups to include in the pool from which Board nominees are chosen. Members of the Nominating Committee are Messrs. Drexler and Gore and Dr. Levinson. The Nominating Committee met a total of three (3) times during fiscal year 2007 and met subsequent to the end of the last fiscal year to recommend to the full Board each of the nominees for election to the Board, as presented herein.

The Audit, Compensation and Nominating Committees operate under written charters adopted by the Board. These charters are available on the Company's website at www.apple.com/investor.

During fiscal year 2007, each member of the Board attended or participated in seventy-five percent (75%) or more of the aggregate of (i) the total number of meetings of the Board held during the fiscal year or the portion thereof following such person's appointment to the Board and (ii) the total number of meetings held by all

committees on which such director served during the past fiscal year or the portion thereof following such person's appointment to one or more of those committees. There are no family relationships among executive officers or directors of the Company.

Audit Committee Financial Expert

The Board has determined that all members of the Audit Committee, Messrs. Campbell and York and Dr. Levinson, qualify as audit committee financial experts as defined by the SEC and also meet the additional criteria for independence of Audit Committee members set forth in Rule 10A-3(b)(1) under the Securities Exchange Act of 1934, as amended (the *Exchange Act*).

Code of Ethics

The Company has a code of ethics that applies to all of the Company's employees, including its principal executive officer, principal financial officer and principal accounting officer, and the Board. A copy of this code, *Ethics: The Way We Do Business Worldwide*, is available on the Company's website at www.apple.com/investor. The Company intends to disclose any changes in or waivers from its code of ethics by posting such information on its website or by filing a Form 8-K.

Compensation of Directors

The form and amount of director compensation are determined by the Board after a review of recommendations made by the Nominating Committee. The current practice of the Board is to base a substantial portion of a director's annual retainer on equity. Under the Company's 1997 Director Stock Option Plan (the *Director Plan*), members of the Board who are not also employees (*Non-Employee Directors*) are granted an option to acquire 30,000 shares of the Company's common stock upon their initial election to the Board (an *Initial Option*). Initial Options vest and become exercisable in equal installments on each of the first three anniversaries of the grant date. On the fourth anniversary of a Non-Employee Director's initial election to the Board and on each subsequent anniversary thereafter, the director is granted an option to acquire 10,000 shares of the Company's common stock (an *Annual Option*). Annual Options are fully vested and immediately exercisable on the date of grant.

Upon his initial appointment to the Board on August 29, 2006, Dr. Schmidt declined the annual retainer fee and the automatic stock option grant to purchase 30,000 shares to which new directors are entitled under the Director Plan. Instead, Dr. Schmidt purchased 10,000 shares of the Company's common stock on the open market.

Non-Employee Directors also receive a \$50,000 annual retainer paid in quarterly installments. Beginning in the 2008 fiscal year, the chairperson of the Audit Committee is also entitled to an annual retainer of \$25,000, in addition to the annual retainer paid to all Non-Employee Directors. In addition, each Non-Employee Director is eligible to receive free of charge one of each new product introduced by the Company and is eligible to purchase additional equipment at a discount. Directors do not receive any additional consideration for serving as a member or chairperson of any other committee.

Communications with the Board

Any matter intended for the Board, or for any individual member or members of the Board, should be directed to the Company's Corporate Secretary at 1 Infinite Loop, Cupertino, California 95014, with a request to forward the same to the intended recipient. In general, all shareholder communication delivered to the Company's Corporate Secretary for forwarding to the Board or specified Board members will be forwarded in accordance with the shareholder's instructions. However, the Company's Corporate Secretary reserves the right not to forward to Board members any abusive, threatening or otherwise inappropriate materials. Information

regarding the submission of comments or complaints relating to the Company's accounting, internal accounting controls or auditing matters can be found on the Company's website at www.apple.com/investor.

The Company encourages all incumbent directors and nominees for election as director to attend the Annual Meeting. Directors Steve Jobs, William Campbell, Arthur Levinson, Ph.D. and Eric Schmidt, Ph.D. attended the Annual Meeting in May 2007.

Compensation Committee Interlocks and Insider Participation

The Compensation Committee members whose names appear in the section entitled **Board Committees** were Compensation Committee members during all of fiscal year 2007. Mr. Campbell formerly served as an officer of the Company and of FileMaker, Inc., a subsidiary of the Company. No other member of the Compensation Committee is or has been a former or current executive officer of the Company, and no member of the Compensation Committee had any relationships requiring disclosure by the Company under the SEC's rules requiring disclosure of certain relationships and related-party transactions. None of the Company's executive officers served as a director or a member of a compensation committee (or other committee serving an equivalent function) of any other entity, the executive officers of which served as a director of the Company or member of the Compensation Committee during the 2007 fiscal year.

Executive Officers

The following sets forth certain information regarding executive officers of the Company. Information pertaining to Mr. Jobs, who is both a director and an executive officer of the Company, may be found in the section entitled **Directors**.

Name	Position With the Company	Age as of the Annual Meeting
Timothy D. Cook	Chief Operating Officer	47
Daniel Cooperman	Senior Vice President, General Counsel and Secretary	57
Tony Fadell	Senior Vice President, iPod Division	38
Ronald B. Johnson	Senior Vice President, Retail	49
Peter Oppenheimer	Senior Vice President and Chief Financial Officer	45
Philip W. Schiller	Senior Vice President, Worldwide Product Marketing	47
Bertrand Serlet, Ph.D.	Senior Vice President, Software Engineering	47
Sina Tamaddon	Senior Vice President, Applications	50

Timothy D. Cook, Chief Operating Officer, joined the Company in March 1998. Mr. Cook also served in the position of Executive Vice President, Worldwide Sales and Operations from 2002 to 2005. In 2004, his responsibilities were expanded to include the Company's Macintosh hardware engineering. From 2000 to 2002, Mr. Cook served in the role of Senior Vice President, Worldwide Operations, Sales, Service and Support. From 1998 to 2000, Mr. Cook served in the position of Senior Vice President, Worldwide Operations. Prior to joining the Company, Mr. Cook held the position of Vice President, Corporate Materials for Compaq Computer Corporation (*Compaq*). Prior to his work at Compaq, Mr. Cook was the Chief Operating Officer of the Reseller Division at Intelligent Electronics. Mr. Cook also spent 12 years with IBM, most recently as Director of North American Fulfillment. Mr. Cook is also a member of the Board of Directors of Nike, Inc.

Daniel Cooperman, Senior Vice President, General Counsel and Secretary, joined the Company in November 2007. Prior to joining the Company, he served as Senior Vice President, General Counsel and Secretary of Oracle Corporation since February 1997. Prior to that, he had been associated with the law firm of McCutchen, Doyle, Brown & Enersen (which is now Bingham McCutchen LLP) since October 1977, and had served as a partner since June 1983. From September 1995 until February 1997, Mr. Cooperman was Chair of the

law firm's Business and Transactions Group and from April 1989 through September 1995, he served as the Managing Partner of the law firm's San Jose office.

Tony Fadell, Senior Vice President, iPod Division, joined the Company in 2001. From 2004 to April 2006, Mr. Fadell was Vice President of iPod Engineering. From 2001 to 2004, Mr. Fadell was the Senior Director of the Company's iPod Engineering Team. Prior to joining the Company, Mr. Fadell was a co-founder, Chief Technology Officer, and director of engineering of the Mobile Computing Group at Philips Electronics where he was responsible for all aspects of business and product development for a variety of products. Mr. Fadell later became Vice President of Business Development for Philips U.S. Strategy & Ventures, focusing on building the company's digital media strategy and investment portfolio.

Ronald B. Johnson, Senior Vice President, Retail, joined the Company in January 2000. Prior to joining the Company, Mr. Johnson spent 16 years with Target Stores, most recently as Senior Merchandising Executive.

Peter Oppenheimer, Senior Vice President and Chief Financial Officer, joined the Company in July 1996. Mr. Oppenheimer also served the Company in the position of Vice President and Corporate Controller, and as Senior Director of Finance for the Americas. Prior to joining the Company, Mr. Oppenheimer was Chief Financial Officer of one of the four business units for Automatic Data Processing, Inc. (*ADP*). Prior to joining ADP, Mr. Oppenheimer spent six years in the Information Technology Consulting Practice with Coopers and Lybrand.

Philip W. Schiller, Senior Vice President, Worldwide Product Marketing, rejoined the Company in 1997. Prior to rejoining the Company, Mr. Schiller was Vice President of Product Marketing at Macromedia, Inc. from December 1995 to March 1997 and Director of Product Marketing at FirePower Systems, Inc. from 1993 to December 1995. Prior to that, Mr. Schiller spent six years at the Company in various marketing positions.

Bertrand Serlet, Ph.D., Senior Vice President, Software Engineering, joined the Company in February 1997 upon the Company's acquisition of NeXT and also served the Company in the position of Vice President of Platform Technology. At NeXT, Dr. Serlet held several engineering and managerial positions, including Director of Web Engineering. Prior to NeXT, from 1985 to 1989, Dr. Serlet worked as a research engineer at Xerox PARC.

Sina Tamaddon, Senior Vice President, Applications, joined the Company in September 1997. Mr. Tamaddon has also served with the Company in the position of Senior Vice President, Worldwide Service and Support, and Vice President and General Manager, Newton Group. Before joining the Company, Mr. Tamaddon held the position of Vice President, Europe with NeXT from September 1996 through March 1997. From August 1994 to August 1996, Mr. Tamaddon held the position of Vice President, Professional Services with NeXT.

Security Ownership of Certain Beneficial Owners and Management

The following table sets forth certain information as of January 4, 2008 (the *Table Date*) with respect to the beneficial ownership of the Company's common stock by (i) each person the Company believes beneficially holds more than 5% of the outstanding shares of the Company's common stock; (ii) each director; (iii) each named executive officer listed in the Summary Compensation Table under the section entitled

Executive Compensation ; and (iv) all directors and executive officers as a group. On the Table Date, 878,711,290 shares of the Company's common stock were issued and outstanding. Unless otherwise indicated, all persons named as beneficial owners of the Company's common stock have sole voting power and sole investment power with respect to the shares indicated as beneficially owned. In addition, unless otherwise indicated, all persons named below can be reached at Apple Inc., 1 Infinite Loop, Cupertino, California 95014.

Security Ownership of 5% Holders, Directors, Nominees and Executive Officers

Name of Beneficial Owner	Shares of Common Stock Beneficially Owned(1)	Percent of Common Stock Outstanding
Fidelity Investments	56,583,870(2)	6.44%
Steven P. Jobs	5,546,451	*
William V. Campbell	112,900(3)	*
Timothy D. Cook	13,327(4)	*
Millard S. Drexler	210,000(5)	*
Tony Fadell	379,586(6)	*
Albert A. Gore, Jr.	70,000(7)	*
Ronald B. Johnson	696,120(8)	*
Andrea Jung	77	*
Arthur D. Levinson, Ph.D.	365,015(9)	*
Peter Oppenheimer	14,873(10)	*
Eric E. Schmidt, Ph.D.	12,284(11)	*
Jerome B. York	90,000(12)	*
All current executive officers and directors as a group (16 persons)	7,701,153(13)	*

- (1) Represents shares of the Company's common stock held and options held by such individuals that were exercisable at the Table Date or within 60 days thereafter. This does not include options or restricted stock units that vest more than 60 days after the Table Date.
- (2) Based on a Form 13G/A filed February 14, 2007 by FMR Corp. FMR Corp. lists its address as 82 Devonshire Street, Boston, MA 02109, in such filing.
- (3) Includes 110,000 shares of the Company's common stock that Mr. Campbell has the right to acquire by exercise of stock options.
- (4) Excludes 600,000 unvested restricted stock units.
- (5) Includes 20,000 shares of the Company's common stock that Mr. Drexler holds indirectly and 190,000 shares of the Company's common stock that Mr. Drexler has the right to acquire by exercise of stock options.
- (6) Includes 275 shares of the Company's common stock that Mr. Fadell holds indirectly, 216,062 shares of the Company's common stock that Mr. Fadell has the right to acquire by exercise of stock options within 60 days after the Table Date, 6,641 shares of the Company's common stock held by Mr. Fadell's spouse, and 149,875 shares of the Company's common stock that Mr. Fadell's spouse has the right to acquire by exercise of stock options within 60 days after the Table Date. Excludes 260,000 unvested restricted stock units held by Mr. Fadell and 55,000 unvested restricted stock units held by Mr. Fadell's spouse.
- (7) Includes 70,000 shares of the Company's common stock that Mr. Gore has the right to acquire by exercise of stock options.
- (8) Includes 600,000 shares of the Company's common stock that Mr. Johnson has the right to acquire by exercise of stock options and excludes 450,000 unvested restricted stock units.
- (9)

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Includes 2,000 shares of the Company's common stock held by Dr. Levinson's spouse and 110,000 shares of the Company's common stock that Dr. Levinson has the right to acquire by exercise of stock options.

- (10) Excludes 450,000 unvested restricted stock units.
- (11) Consists of 12,284 shares of the Company's common stock that Dr. Schmidt holds indirectly. Dr. Schmidt has declined to participate in the 1997 Director Stock Option Plan.
- (12) Includes 40,000 shares of the Company's common stock that Mr. York holds jointly with his spouse and 50,000 shares of the Company's common stock that Mr. York has the right to acquire by exercise of stock options.

- (13) Includes 1,529,233 shares of the Company's common stock that executive officers or directors have the right to acquire by exercise of stock options and excludes 3,148,000 unvested restricted stock units.

* Represents less than 1% of the issued and outstanding shares of the Company's common stock on the Table Date.

Compliance with Section 16(a) of the Exchange Act

Section 16(a) of the Exchange Act requires the Company's executive officers and directors, and persons who own more than ten percent of a registered class of the Company's equity securities, to file reports of securities ownership and changes in such ownership with the SEC. Executive officers, directors and greater than ten percent shareholders also are required by rules promulgated by the SEC to furnish the Company with copies of all Section 16(a) forms they file.

Based solely upon a review of the copies of such forms furnished to the Company or written representations that no Forms 5 were required, the Company believes that all Section 16(a) filing requirements were met during fiscal year 2007, except that (i) one Form 4 was filed for William Campbell on October 26, 2007 with respect to the purchase by Mr. Campbell's independent money manager of 3,600, 2,600 and 2,900 shares of the Company's common stock, in February 2006, September 2006 and January 2007, respectively, and the sale by Mr. Campbell's independent money manager of 2,200, 1,400 and 2,600 shares of the Company's common stock in April 2006, June 2006 and July 2007, respectively, and (ii) one Form 4 was filed for Tony Fadell on November 15, 2007 with respect to the acquisition by Mr. Fadell's spouse of 40,000 restricted stock units in December 2006 and 25,000 restricted stock units in October 2007.

Review, Approval or Ratification of Transactions with Related Persons

The Board has adopted a written policy for approval of transactions between the Company and its directors, director nominees, executive officers, greater than five percent beneficial owners and their respective immediate family members, where the amount involved in the transaction exceeds or is expected to exceed \$120,000 in a single calendar year. A copy of this policy is available on the Company's website at www.apple.com/investor.

The policy provides that the Audit Committee reviews certain transactions subject to the policy and determines whether or not to approve or ratify those transactions. In doing so, the Audit Committee takes into account, among other factors it deems appropriate:

the related person's interest in the transaction;

the approximate dollar value of the amount involved in the transaction;

the approximate dollar value of the amount of the related person's interest in the transaction without regard to the amount of any profit or loss;

whether the transaction was undertaken in the ordinary course of business of the Company;

whether the transaction with the related person is proposed to be, or was, entered into on terms no less favorable to the Company than terms that could have been reached with an unrelated third party;

the purpose of, and the potential benefits to the Company of, the transaction; and

any other information regarding the transaction or the related person in the context of the proposed transaction that would be material to investors in light of the circumstances of the particular transaction.

In addition, the Audit Committee has delegated authority to the Chair of the Audit Committee to pre-approve or ratify certain transactions. A summary of any new transactions pre-approved or ratified by the Chair is provided to the full Audit Committee for its review in connection with

its next scheduled Audit Committee meeting.

The Audit Committee has considered and adopted standing pre-approvals under the policy for limited transactions with related persons. Pre-approved transactions include:

employment of executive officers, subject to certain conditions;

any compensation paid to a director if the compensation is required to be reported in the Company's proxy statement under Item 402 of Regulation S-K promulgated by the SEC;

any transaction with another company at which a related person's only relationship is as an employee (other than an executive officer or director) or beneficial owner of less than ten percent of that company's equity, if the aggregate amount involved does not exceed the greater of \$1,000,000, or two percent of that company's total annual revenue;

any charitable contribution, grant or endowment by the Company to a charitable organization, foundation or university at which a related person's only relationship is as an employee (other than an executive officer or director), if the aggregate amount involved does not exceed the lesser of \$1,000,000, or two percent of the charitable organization's total annual receipts; and

any transaction where the related person's interest arises solely from the ownership of the Company's common stock and all holders of the Company's common stock received the same benefit on a pro rata basis, such as dividends.

A summary of new transactions covered by the standing pre-approvals described above is provided to the Audit Committee for its review at each regularly scheduled Audit Committee meeting. The related person transactions described below were approved by the Board before this policy was adopted.

Transactions with Related Persons

In 2001, the Company entered into a Reimbursement Agreement with the CEO, Mr. Jobs, for the reimbursement of expenses incurred by Mr. Jobs in the operation of his private plane when used for the Company's business. The Company recognized a total of \$776,000, \$202,000, and \$1,100,000 in expenses pursuant to the Reimbursement Agreement during 2007, 2006 and 2005, respectively.

The Company enters into commercial dealings with The Walt Disney Company, Genentech and Google that it considers arms-length, including sales arrangements and, in the case of Google, licensing agreements and similar arrangements and, in the case of The Walt Disney Company, iTunes Store content licensing agreements and similar agreements. The Company enters into these commercial dealings in the ordinary course of its business. Mr. Jobs is a Director of The Walt Disney Company. Dr. Levinson is the Chief Executive Officer and a Director of Genentech. Dr. Schmidt is the Chief Executive Officer and a Director of Google, Dr. Levinson is a Director of Google and Mr. Gore is a Senior Advisor to Google. The Company does not believe that any of Messrs. Jobs or Gore or Drs. Levinson or Schmidt has a material direct or indirect interest in any of such commercial dealings.

Mr. Fadell's spouse is the Vice President, Human Resources of the Company. She earned \$318,467 in salary and \$218,750 in bonus during fiscal year 2007 and participates in the Company's equity award and benefit programs. Her compensation is commensurate with that of her peers.

The Board has determined all Board members, excluding Mr. Jobs, are independent under the applicable NASDAQ rules. The Board has also determined the members of each committee of the Board are independent under the listing standards of the NASDAQ Global Select Market. In making these determinations, the Board considered, among other things, the types and amounts of the commercial dealings between the Company and the companies and organizations with which the directors are affiliated.

Report of the Compensation Committee

The following report of the Compensation Committee shall not be deemed to be soliciting material or to otherwise be considered filed with the SEC, nor shall such information be incorporated by reference into any future filing under the Securities Act of 1933, as amended (the Securities Act) or the Exchange Act except to the extent that the Company specifically incorporates it by reference into such filing.

The Compensation Committee consists of three Non-Employee Directors: Messrs. Campbell, Drexler and Gore, each of whom the Board has determined is independent as defined by the NASDAQ Global Select Market listing standards. The Compensation Committee has certain duties and powers as described in its written charter adopted by the Board. A copy of the charter can be found on the Company's website at www.apple.com/investor.

The Compensation Committee has reviewed and discussed with management the disclosures contained in the section entitled **Compensation Discussion and Analysis** of this Proxy Statement. Based upon this review and discussion, the Compensation Committee recommended to the Board that the section entitled **Compensation Discussion and Analysis** be included in this Proxy Statement for the Company's 2008 Annual Meeting of Shareholders.

Members of the Compensation Committee

William V. Campbell

Millard S. Drexler

Albert A. Gore, Jr.

(Chair)

Executive Compensation

Compensation Discussion and Analysis

A. EXECUTIVE SUMMARY

This section explains the Company's executive compensation program as it relates to the following named executive officers:

Steven P. Jobs	Chief Executive Officer
Timothy D. Cook	Chief Operating Officer
Peter Oppenheimer	Senior Vice President and Chief Financial Officer
Ronald B. Johnson	Senior Vice President, Retail
Tony Fadell	Senior Vice President, iPod Division

The Company's executive compensation program for the named executive officers consists of long-term equity awards in the form of restricted stock units (*RSUs*) and cash compensation in the form of performance-based cash incentives and base salaries. Each year, the Compensation Committee, which is made up entirely of independent directors, determines the compensation for the named executive officers.

The Company relies heavily on long-term equity awards to attract and retain an outstanding executive team and to ensure a strong connection between executive compensation and financial performance. An RSU award gives the named executive officer the right to receive, at no cost, a specified number of shares of the Company's common stock when the award vests, typically at intervals of two to four years. Because the value of the RSUs depends on the Company's future share price, the award links compensation to future financial performance. The officer is generally not eligible to receive the shares if employment is terminated before the RSUs vest. The Compensation Committee reviews annually the outstanding, unvested equity awards of each named executive officer to determine, in the Compensation Committee's discretion, whether additional awards are warranted in light of the officer's performance, the competitive environment and the other factors discussed in the section entitled **Executive Compensation Program Design and Implementation 3. The Crucial Role of Long-Term Equity Awards** below.

The performance-based cash incentives compensate the named executive officers for achieving specific financial goals established annually by the Compensation Committee, as described in the section entitled **Executive Compensation Program Design and Implementation 4. The Minor Role of Cash Compensation** below. The Compensation Committee sets aggressive performance goals each year based on the revenue and operating income objectives in the Company's internal business plan. Payments are not automatic, however, because the Compensation Committee may exercise its discretion to reduce (but not increase) the amount of any incentive payment based on an officer's overall performance.

Based on the factors discussed in the section entitled **Executive Compensation Program Design and Implementation 3. The Crucial Role of Long-Term Equity Awards** below and the Compensation Committee's belief that the outstanding, unvested equity awards still had significant retention value, the Compensation Committee made no new equity awards to the named executive officers in fiscal year 2007. The officers earned cash incentives in fiscal year 2007 at the maximum amount allowed by the plan 100% of base salary because the Company's financial performance significantly exceeded the annual performance goals set by the Compensation Committee. The Compensation Committee assessed both the amount and allocation of the compensation components for each officer based on the Company's overall annual financial performance and each officer's individual performance. The Compensation Committee did not increase base salaries for the named executive officers because it concluded that the total compensation for each officer was appropriate.

The Company's shareholders have been generously rewarded for the Company's success, with a three-year annualized shareholder return of 101% through the end of fiscal year 2007. The Compensation Committee believes the compensation of the named executive officers has been appropriate and fair in light of the Company's performance.

B. EXECUTIVE COMPENSATION OBJECTIVES

The Company's goal for executive compensation is simple: attract and retain an exceptionally talented, entrepreneurial and creative team of executives who will provide the leadership for the Company's success in dynamic, highly-competitive markets.

C. EXECUTIVE COMPENSATION OVERVIEW

1. *Three Components*

The compensation program for the named executive officers consists of the following three components, in order of their importance:

long-term equity awards in the form of RSUs under the shareholder-approved Employee Stock Plan;

annual performance-based cash incentives under the shareholder-approved Performance Bonus Plan (the CEO, however, does not participate in this plan and is not eligible for performance-based cash incentives); and

base salary.

The named executive officers are also eligible to participate in the Company's health and welfare programs, Employee Stock Purchase Plan, 401(k) Plan, patent bonus program and other minor employee recognition programs on the same basis as other employees.

2. *Mix of Equity, Cash Incentives and Salary*

The Company relies heavily on long-term equity awards because the Compensation Committee believes they are the most effective compensation element for attracting entrepreneurial, creative executives and promoting their long-term commitment to the Company. An RSU award generally vests only if the named executive officer continues employment until the specified vesting date, typically two to four years after the date of grant. Equity awards also help to ensure a strong connection between executive compensation and the Company's financial performance because the value of RSUs depends on the Company's future share price.

Although the Compensation Committee reviews the compensation practices of its peer companies as described in the section entitled **Executive Compensation Program Design and Implementation 6. The Role of Peer Groups, Surveys and Benchmarking** below, the Compensation Committee does not adhere to strict formulas or survey data to determine the mix of compensation elements. Instead, as described in the section entitled **Executive Compensation Program Design and Implementation** below, the Compensation Committee considers various factors in exercising its discretion to determine compensation, including the experience, responsibilities and performance of each named executive officer as well as the Company's overall financial performance. This flexibility is particularly important in designing compensation arrangements to attract new executives in highly-competitive, rapidly changing markets.

3. *Elements of Compensation Not Included in the Compensation Program*

The current compensation program for the named executive officers, including the CEO, does not include the following:

employment contracts;

cash bonuses other than the performance-based cash incentives under the Performance Bonus Plan and payments under the patent bonus program;

severance and change of control arrangements beyond what is available to all U.S. employees (with the exception of rights to accelerated vesting previously granted as part of equity awards that will fully vest in March 2008);

perquisites or personal benefits that are not available to employees generally; and

guarantees of the value of equity awards.

4. CEO Compensation

The CEO, Mr. Jobs, currently holds approximately 5.5 million shares of the Company's common stock. Since rejoining the Company in 1997, Mr. Jobs has never sold a share of the Company's stock. His last equity grant was awarded in 2003, and vested in full in 2006. Mr. Jobs currently holds no unvested equity awards. In fiscal year 2007, Mr. Jobs's entire compensation consisted of his \$1 annual salary. Because Mr. Jobs's continued leadership is critical to the Company, the Compensation Committee is considering additional compensation arrangements for him.

Mr. Jobs has received a \$1 annual salary since he rejoined the Company in 1997 and began serving as interim CEO. In 1999, the Company awarded Mr. Jobs an aircraft as an executive bonus in recognition of his outstanding performance during the previous two years. Mr. Jobs also received two stock option grants, one in 2000 and another in 2001. Mr. Jobs never exercised these grants, and they were both cancelled in March 2003, when the Company awarded Mr. Jobs a grant of 5 million shares of restricted stock.

The 2003 restricted stock grant required Mr. Jobs to remain employed by the Company for three more years before it vested. This grant, which increased to 10 million shares when the Company's stock split in 2005, vested in full in March 2006. After a portion of these shares was withheld for the payment of taxes, Mr. Jobs received the remaining 5,426,447 shares. Due in large part to Mr. Jobs's leadership, the Company's stock price (after accounting for the stock split) increased from \$7.47 on the March 2003 grant date to \$64.66 on the March 2006 vesting date—more than an eight-fold increase in three years. Under Mr. Jobs's continued leadership, the Company's stock price increased from \$64.66 per share in March 2006 to \$189.95 per share as of October 31, 2007—a three-fold increase in approximately 18 months.

When he was elected to the Board in 1997, Mr. Jobs received the standard director's stock option grant for 30,000 shares. Because Mr. Jobs became employed later that year as the Company's interim CEO, he was no longer eligible for such director grants. When the 1997 director grant (which increased to 120,000 shares after two stock splits) was due to expire in August 2007, Mr. Jobs exercised the option and he currently holds these 120,000 shares.

D. EXECUTIVE COMPENSATION PROGRAM DESIGN AND IMPLEMENTATION

1. Team-Based Compensation

The compensation program for the named executive officers rests on two assumptions. First, each officer must demonstrate exceptional personal performance in order to remain part of the executive team. Second, each officer must contribute as a member of the team to the Company's overall success rather than merely achieve specific objectives within that officer's area of responsibility.

2. Independent Compensation Committee Determines All Executive Compensation

The Compensation Committee determines all compensation for the named executive officers. All three Compensation Committee members are independent of the Company's management. During the first quarter of each fiscal year, the Compensation Committee conducts an evaluation of each named executive officer to determine if any changes in the officer's compensation are appropriate based on the considerations described below. The CEO does not participate in the Compensation Committee's deliberations or decision with regard to his compensation. At the Compensation Committee's request, the CEO reviews with the Compensation Committee the performance of the other four named executive officers, but no other named executive officer has any input into executive compensation decisions. The Compensation Committee gives considerable weight to the

CEO's evaluation of the other named executive officers because of his direct knowledge of each officer's performance and contributions. For each officer, the Compensation Committee members independently determine each component of compensation based on their collective assessment of the officer's performance as well as the Company's overall financial performance.

3. The Crucial Role of Long-Term Equity Awards

Overview. The Compensation Committee believes that long-term equity awards are the most effective way to attract and retain a superlative executive team. Accordingly, executive compensation is heavily weighted toward long-term equity awards rather than cash compensation, and the awards have long vesting intervals to maximize their retention value. This approach is reflected in the following:

the CEO's compensation has been generally tied to long-term equity; for example, his last equity award did not vest for three years;

for the other four named executive officers, equity awards represented approximately 85% of their target total compensation in fiscal year 2007. This compares to approximately 70% at the Company's peer companies;

fiscal year 2004 equity awards vested 50% on the second anniversary of the grant date; the remaining 50% will vest on the fourth anniversary of the grant date; and

fiscal year 2006 equity awards do not vest at all until 2010, when they vest in full.

In designing long-term equity awards, the Compensation Committee seeks to maximize their effectiveness in accomplishing the Company's compensation objectives while recognizing the Board's duty to the Company's shareholders to limit equity dilution. The Compensation Committee believes this balance has been achieved as follows:

Restricted Stock Units Minimize Dilution and Support Long-Term Focus. Since fiscal year 2004, all equity awards to the named executive officers have been RSUs rather than stock options. A grant of RSUs gives an officer the right to receive a specified number of shares of the Company's common stock, at no cost to the officer, if the officer remains employed at the Company until the RSUs vest. RSUs granted in 2004 also provide for accelerated vesting if the named executive officer is terminated without cause or on a change of control, RSUs granted before 2007 provide for accelerated vesting on a change of control, and all RSUs provide for accelerated vesting upon the death of the officer. The compensation value of an RSU does not depend solely on future stock price increases; at grant, its value is equal to the Company's stock price. Although its value may increase or decrease with changes in the stock price during the period before vesting, an RSU will have value in the long term, encouraging retention. By contrast, the entire compensation value of a stock option depends on future stock price appreciation. Accordingly, RSUs can deliver significantly greater share-for-share compensation value at grant than stock options, and the Company can offer comparable grant date compensation value with fewer shares and less dilution for its shareholders.

Long Vesting Intervals to Maximize Retention. All vesting of RSUs is generally subject to continued employment. Except for occasional new hire grants, vesting occurs at intervals of no less than two years after the grant date. This ensures that a meaningful portion of a named executive officer's awards will vest every two years—a strong incentive to continue employment with the Company. The following table shows the grant and vesting patterns for ongoing RSU grants for the named executive officers since fiscal year 2004 (excluding those who were not named executive officers at the time of grant).

Equity Awards	FY05 vesting	FY06 vesting	FY07 vesting	FY08 vesting	FY09 vesting	FY10 vesting
Fiscal Year 2004 RSU (excluding the CEO)		50%		50%		
Fiscal Year 2006 RSU (excluding the CEO)						100%

Vesting Conditions. As noted above, the vesting of all RSUs is generally contingent on the named executive officer's continued employment with the Company, rather than on performance with regard to specific business objectives. From time to time, the Compensation Committee has considered various forms of performance-based vesting. After careful evaluation, the Compensation Committee has concluded that performance-based vesting would not serve the Company's current objectives as effectively as the program described above. The Compensation Committee generally grants RSUs with two to four year vesting periods to maximize the award's retention value. This retention value would be undermined if a named executive officer's equity awards (which represent approximately 85% of the officer's compensation) were at risk based on performance measures that were determined two or even four years prior to the vesting date. Given the intensely dynamic business environment in which the Company operates, it would be extremely difficult to craft meaningful objectives with such a long horizon. The Company imposes no requirement that the named executive officers hold their common stock for any period after vesting.

Annual Burn Rate Averages Less Than 2.5%. In fiscal year 2005, the Company committed to an annual burn rate (the total number of all equity award shares granted during the fiscal year divided by the total shares outstanding at the end of the fiscal year) of 2.5% from fiscal year 2005 through fiscal year 2007. This commitment represented a significant reduction from an average burn rate of 4.8% from fiscal year 2002 through fiscal year 2004. In fact, the Company's average annual burn rate from fiscal year 2005 through fiscal year 2007 was approximately 1.6%.

Overhang from Equity Plans at 12.9%. Overhang (granted and outstanding equity awards plus shares reserved for future awards, divided by the sum of total shares outstanding, granted and outstanding equity awards, and shares reserved for future awards) is another measure of equity dilution. The efficient use of equity awards, combined with the substantial exercise of employee stock options due to the significant increase in the Company's stock price over the past few years, has caused the Company's overhang to decline from approximately 14.5% at the end of fiscal year 2005 to approximately 12.9% at the end of fiscal year 2007.

Frequency and Size of Equity Awards. The named executive officers typically receive equity awards every two years, rather than every year. This practice is consistent with the long time horizon and lengthy vesting periods of the awards. By making awards less frequently, the Compensation Committee can provide larger grants, which in turn promotes greater retention.

To determine the size of RSU grants, the Compensation Committee first establishes a target compensation value that it wants to deliver to the named executive officers through long-term equity awards. In doing so, the Compensation Committee considers various factors, including the following:

the practice of granting equity only every two years;

the heavy weight placed on equity in the mix of total compensation;

the officer's experience and performance;

the scope, responsibility and business impact of the officer's position; and

the perceived retention value of the total compensation package in light of the competitive environment.

Once the target value has been established, the Compensation Committee determines the number of shares by reference to the current value of the Company's common stock.

4. The Minor Role of Cash Compensation

Base Salaries. The Compensation Committee believes that base salaries are significantly less important than performance-based bonuses and long-term equity awards in meeting the Company's compensation objectives. The minor role of salaries as part of total compensation is reflected in the following:

the CEO has received an annual base salary of \$1 since rejoining the Company in 1997;

the fiscal year 2007 average base salary for the other named executive officers was below median among the peer companies shown in the section entitled **Executive Compensation Program Design and Implementation 6. The Role of Peer Groups, Surveys and Benchmarking** below, despite the Company's significantly greater financial and business success; and

base salaries for the named executive officers have not increased since October 2005, except for a promotion-related increase for one officer.

Performance-Based Cash Incentives. The Performance Bonus Plan, which has been approved by the Company's shareholders, authorizes the Compensation Committee to issue plan-based cash incentive awards to compensate officers for achieving specific financial objectives that are established annually. The Compensation Committee believes that performance-based cash compensation is an important component of executive compensation; however, it represents a small percentage of total compensation because its effectiveness in meeting the Company's compensation objectives is limited. It is a less significant factor in attracting new executive talent than equity compensation, and it promotes retention only in the short-term over the performance period. Accordingly, the plan is modestly funded, as reflected by the following:

the CEO does not participate in the Performance Bonus Plan;

the Company's target payout of 50% of base salary is significantly lower than peer companies as a group, where median target bonus payouts range from 100% to 160% of base salary; and

the maximum payout of 100% for exceptional performance is also lower than peer companies, where 3 times the target range (*i.e.*, 300% to 480% of base salary) is becoming increasingly common.

The Compensation Committee establishes performance goals each year based on revenue and operating income objectives in the Company's internal business plan. The Compensation Committee has selected these performance goals because they are important indicators of increased shareholder value. These performance goals generally exclude the effects of extraordinary, unusual or infrequently occurring events or changes in accounting principles. The Company does not publicly disclose specific annual internal revenue or operating income objectives, as its business plan is highly confidential. Disclosing specific objectives would provide competitors and other third parties with insights into the planning process and would therefore cause competitive harm.

The Compensation Committee next determines the maximum amount of any cash incentive payment denominated as a percentage of base salary. The current payment structure is shown in the payout matrix below. Once the performance goals and payment structure are established, no one has the authority to modify or waive them.

Percentage of Salary Payable As Performance-Based Cash Incentives

	Below Objective	Revenue Meet Objective	Above Objective
Operating Income			
Below Objective	0%	25%	up to 50%
Meet Objective	25%	50%	up to 75%
Above Objective	up to 50%	up to 75%	up to 100%

The performance goals are aggressive. Thus, there is considerable risk that payments will not be made at all or will be made at less than 100%. For the past three years, the performance goals have reflected double-digit growth in both revenue and operating income. In four of the past eight years, the Company did not meet one or both performance goals. This uncertainty ensures that any payments under the plan are truly performance-based, consistent with the plan's objectives.

At the end of the year, the Compensation Committee determines the amount of the award to be paid to each officer by comparing actual results to the performance goals. The Compensation Committee may, in its discretion, reduce (but not increase) the amount of any individual award based on the officer's overall performance. The plan does not provide for the adjustment or recovery of an award paid to a named executive officer if the results in a previous year are subsequently restated or adjusted in a manner that would have originally resulted in a smaller award.

5. The Role of Consultants

The Compensation Committee has selected and directly retained the services of Frederic W. Cook & Co., Inc. (*F.W. Cook*), an executive compensation consulting firm. No member of the Compensation Committee or any named executive officer has any affiliation with F.W. Cook. The Compensation Committee periodically seeks input from F.W. Cook on a range of external market factors, including evolving compensation trends, appropriate comparison companies and market survey data. F.W. Cook also provides general observations on the Company's compensation programs, but it does not determine or recommend the amount or form of compensation for any executives.

6. The Role of Peer Groups, Surveys and Benchmarking

With the assistance of F.W. Cook, the Compensation Committee identified peer companies for fiscal year 2007 that compete with the Company in the labor and capital markets and that follow similar pay models. The Compensation Committee established the two peer groups listed below, one consisting of large technology companies and another consisting of large retailers. The retail peer group is a relevant comparison group for the Senior Vice President, Retail; the technology peer group is relevant for the other four named executive officers.

	Technology Companies	Retail Companies
Adobe Systems	IBM	The Gymboree Corporation
Amazon.com	Intel	Limited Brands
Applied Materials	Microsoft	Nike
Cisco Systems	Motorola	Polo Ralph Lauren
Comcast	Oracle	Restoration Hardware
Dell	Qualcomm	Sharper Image
eBay	Sprint Nextel	Target
EMC	Sun Microsystems	Tiffany & Co.
Google	Texas Instruments	Tween Brands
Hewlett-Packard	Xerox	Wal-Mart

The Compensation Committee reviews compensation practices at peer companies (gathered from SEC filings and the Radford High Technology compensation survey) at a high level to ensure that the Company's total compensation is within a reasonably competitive range. The Compensation Committee, however, does not attempt to set compensation components to meet specific benchmarks, such as salaries above the median or equity compensation at the 75th percentile. Furthermore, the Compensation Committee believes that excessive reliance on benchmarking is detrimental to shareholder interests because it can result in compensation that is unrelated to the value delivered by the named executive officers.

7. Tax and Accounting Considerations

Tax Deductibility of Compensation Expense. Section 162(m) of the Internal Revenue Code of 1986, as amended (the *Internal Revenue Code*), places a limit of \$1,000,000 on the amount of compensation to certain officers that may be deducted by the Company as a business expense in any tax year unless, among other things, the compensation is performance-based and has been approved by the shareholders. To qualify as performance-based compensation, the amount of compensation must depend on the officer's performance against pre-determined performance goals established by a committee that consists solely of at least two outside directors who have never been employed by the Company or its subsidiaries. Two members of the Compensation Committee, Messrs. Drexler and Gore, qualify as outside directors under the IRS definition. Although Mr. Campbell is an independent director under SEC and NASDAQ governance standards, he does not qualify as an outside director because he was an officer of the Company from 1983 to 1987 and a subsidiary of the Company from 1987 to 1991. For this reason, he does not discuss or vote on any Section 162(m)-related matters.

Salaries for the named executive officers do not qualify as performance-based compensation. The Company's performance-based cash incentives, however, are exempt from the Section 162(m) limit because they are paid based on predetermined goals established by the Compensation Committee pursuant to the shareholder-approved Performance Bonus Plan. The RSUs do not qualify as performance-based compensation for purposes of Section 162(m) because vesting is based on continued employment rather than specific performance goals. See the section entitled **Executive Compensation Program Design and Implementation** **3. The Crucial Role of Long-Term Equity Awards** for an explanation of the Company's decision not to implement performance-based vesting.

Tax Implications for Officers. Section 409A of the Internal Revenue Code imposes additional income taxes on executive officers for certain types of deferred compensation that do not comply with Section 409A. Because the Company does not generally provide deferred compensation to the named executive officers, this limitation has no impact on the structure of the compensation program for the officers. Section 280G of the Internal Revenue Code imposes an excise tax on payments to executives of severance or change of control compensation that exceed the levels specified in Section 280G. The named executive officers could receive the amounts shown on the table in the section entitled **Potential Payments Upon Termination or Change in Control** below as severance or change of control payments, but the Compensation Committee does not consider their potential impact in compensation program design.

Accounting Considerations. The Compensation Committee also considers the accounting and cash flow implications of various forms of executive compensation. In its financial statements, the Company records salaries and performance-based compensation incentives as expenses in the amount paid, or to be paid, to the named executive officers. Accounting rules also require the Company to record an expense in its financial statements for equity awards, even though equity awards are not paid as cash to employees. The accounting expense of equity awards to employees is calculated in accordance with SFAS 123R. The Compensation Committee believes, however, that the many advantages of equity compensation, as discussed above, more than compensate for the non-cash accounting expense associated with them.

E. Fiscal Year 2007 Compensation Decisions**1. No Equity Grants or Salary Changes**

In fiscal year 2007, the Compensation Committee did not grant new equity awards or increase base salaries for the named executive officers. Based on its assessment of the factors discussed above and the Compensation Committee's belief that the outstanding, unvested equity grants at the beginning of fiscal year 2007 had significant retention value, the Compensation Committee concluded that the compensation packages for the named executive officers were reasonable without additional equity awards. The outstanding equity grants at the end of fiscal year 2007 are shown in the Outstanding Equity Awards at Fiscal Year-End table below. Based on a review of competitive practices and the Compensation Committee's approach to place less emphasis on cash compensation, the Compensation Committee concluded that the total compensation for the named executive officers was appropriate for fiscal year 2007 without a salary increase.

2. 2007 Performance-Based Cash Incentive Plan Payments

The Company's fiscal year 2007 performance significantly exceeded the revenue and operating income goals established under the cash incentive plan, so the Compensation Committee, in the exercise of its discretion, approved payouts to the named executive officers at the maximum of 100% of base salary, pursuant to the Percentage of Salary Payable As Performance-Based Cash Incentives chart in the section entitled **Executive Compensation Program Design and Implementation 4. The Minor Role of Cash Compensation** above. The specific payment amounts are shown in the Summary Compensation Table below.

Summary Compensation Table

The following table presents information regarding compensation of each of the Company's named executive officers for services rendered during fiscal year 2007.

Name and Principal Position	Year	Salary (\$)	Bonus (\$)	Stock Awards (\$)(1)	Option Awards (\$)(1)	Non-Equity Incentive Plan Compensation (\$)(2)	Change in Pension	All Other Compensation (\$)	Total (\$)
							Value and Nonqualified Deferred Compensation Earnings (\$)		
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
Steven P. Jobs Chief Executive Officer	2007		1						1
Timothy D. Cook Chief Operating Officer	2007	700,014		6,943,426		700,000		13,750(3)	8,357,190
Peter Oppenheimer Senior Vice President and Chief Financial Officer	2007	600,012		4,946,610		600,000		598,723(4)	6,745,345
Ronald B. Johnson Senior Vice President, Retail	2007	600,012		4,946,610		600,000		379(5)	6,147,001
Tony Fadell Senior Vice President, iPod Division	2007	500,009	6,750(6)	3,705,832	628,628	500,000		13,952(7)	5,355,171

(1) The amounts reported in Columns (e) and (f) of the table above reflect the aggregate dollar amounts recognized for stock awards and option awards, respectively, for financial statement reporting purposes with respect to fiscal year 2007

(disregarding any estimate of forfeitures related to service-based vesting conditions). No stock awards or option awards granted to named executive officers were forfeited during fiscal year 2007. Detailed information about the amount recognized for specific awards is reported in the Outstanding Equity Awards at Fiscal Year-End table below. For a discussion of the assumptions and methodologies used to value the awards reported in Column (e) and Column (f), please see the discussion of stock awards and option awards contained in Part II, Item 8, Financial Statements and Supplementary Data of the Annual Report in Notes to Consolidated Financial Statements at Note 7, Stock-Based Compensation.

- (2) As described in the section entitled **Compensation Discussion and Analysis** above, the named executive officers' annual bonuses are derived based on the performance of the Company and the individual executive relative to pre-established objectives for the fiscal year. The target and maximum amounts for each named executive officer's fiscal year 2007 bonus opportunity are reported in the Grants of Plan-Based Awards table below.
- (3) This amount represents the Company's contributions to Mr. Cook's account under its 401(k) plan in the amount of \$13,500 and a tax gross-up in the amount of \$250 for an iPhone given by the Company to each of its employees, including the named executive officers, other than Mr. Jobs.
- (4) This amount represents (i) the Company's contributions to Mr. Oppenheimer's account under its 401(k) plan in the amount of \$13,500; (ii) a tax gross-up in the amount of \$250 for an iPhone given by the Company to each of its employees, including the named executive officers, other than Mr. Jobs; and (iii) reimbursement by the Company of \$584,973 for payment of a tax liability under Internal Revenue Code Section 409A.
- (5) This amount represents a tax gross-up in the amount of \$379 for an iPhone given by the Company to each of its employees, including the named executive officers, other than Mr. Jobs.
- (6) This amount represents a patent bonus award paid by the Company to Mr. Fadell.
- (7) This amount represents (i) the Company's contributions to Mr. Fadell's account under its 401(k) plan in the amount of \$13,500; (ii) a tax gross-up in the amount of \$379 for an iPhone given by the Company to each of its employees, including the named executive officers, other than Mr. Jobs; and (iii) a tax gross-up in the amount of \$73 for an iPod given to him by the Company.

Compensation of Named Executive Officers

The Summary Compensation Table above quantifies the value of the different forms of compensation earned by or awarded to the named executive officers in fiscal year 2007. The primary elements of each named executive officer's total compensation reported in the table are base salary, an annual bonus, and long-term equity incentives consisting of restricted stock units and, in the case of Mr. Fadell, a patent award and stock options received prior to his appointment as an executive of the Company. Named executive officers also earned the other benefits listed in Column (i) of the Summary Compensation Table, as further described in footnotes 3, 4, 5 and 7 to the table. As noted above, the Company does not have employment agreements with any of the named executive officers.

The Summary Compensation Table should be read in conjunction with the tables and narrative descriptions that follow. The Grants of Plan-Based Awards table, and the accompanying description of the material terms of the stock options and restricted stock unit awards granted in fiscal year 2007, provides information regarding the long-term equity incentives awarded to named executive officers in fiscal year 2007. The Outstanding Equity Awards at Fiscal Year-End and Option Exercises and Stock Vested tables provide further information on the named executive officers' potential realizable value and actual value realized with respect to their equity awards.

Grants of Plan-Based Awards

The following table presents information regarding the incentive awards granted to the named executive officers for fiscal year 2007.

Name	Grant Date	Estimated Future Payouts Under Non-Equity Incentive Plan Awards			Estimated Future Payouts Under Equity Incentive Plan Awards			All Other Stock Awards: Number of Shares of Stock or Units	All Other Option Awards: Number of Securities Underlying Options	Exercise or Base Price of Option Awards (\$/Sh)	Grant Date Fair Value of Stock and Option Awards (\$)
		Threshold	Target	Maximum	Threshold	Target	Maximum				
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)
Steven P. Jobs											
Timothy D. Cook		0	350,000	700,000							
Peter Oppenheimer		0	300,000	600,000							
Ronald B. Johnson		0	300,000	600,000							
Tony Fadell		0	250,000	500,000							

Description of Plan-Based Awards

Each of the Non-Equity Incentive Plan Awards reported in the Grants of Plan-Based Awards table was granted under the Company's Performance Bonus Plan. The material terms of these incentive awards are described in the section entitled **Compensation Discussion and Analysis** above. As noted earlier, the Company did not grant equity incentive plan awards to any of its named executive officers during fiscal year 2007.

Outstanding Equity Awards at Fiscal Year-End

The following tables present information regarding the outstanding equity awards held by each of the named executive officers as of September 29, 2007, including the vesting dates for the portions of these awards that had not vested as of that date.

Option Awards

Name	Option Grant Date	Number of Securities Underlying Unexercised Options Exercisable (#)	Number of Securities Underlying Unexercised Options Unexercisable (#)	Option Exercise Price (\$)	Option Expiration Date
(a)	(b)	(c)	(d)	(e)	(f)
Steven P. Jobs					
Totals					
Timothy D. Cook					
Totals					
Peter Oppenheimer					
Totals					
Ronald B. Johnson	2/14/1999	1,150,000		23.72	2/14/2009
	5/21/2002	150,000		11.73	5/21/2012
Totals		1,300,000			
Tony Fadell	2/4/2004	19,312	12,875(1)	10.90	2/4/2011
	6/1/2004	115,250	56,250(2)	14.03	6/1/2011
	8/30/2005	24,875	25,000(3)	46.57	8/30/2012
Totals		159,437	94,125		

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- (1) The unvested portion of this option award was scheduled to vest in two (2) substantially equal installments on November 4, 2007 and February 4, 2008.

 - (2) The unvested portion of this option award was scheduled to vest in three (3) substantially equal installments on December 1, 2007, March 1, 2008 and June 1, 2008.

 - (3) The unvested portion of this option award was scheduled to vest in eight (8) substantially equal installments on November 30, 2007 and each successive three (3) month anniversary of November 30, 2007.

Stock Awards

Name	Award Grant Date	Number of Shares or Units of Stock That Have Not Vested (#)	Market Value of Shares or Units of Stock That Have Not Vested (\$)(1)	Equity Incentive Plan Awards:	Equity Incentive Plan Awards:
				Number of Unearned Shares, Units or Other Rights That Have Not Vested (#)	Market or Payout Value of Unearned Shares, Units or Other Rights That Have Not Vested (\$)
(a)	(g)	(h)	(i)	(j)	(k)
Steven P. Jobs					
Totals					
Timothy D. Cook	3/24/2004	300,000(2)	46,041,000		
	12/14/2005	300,000(3)	46,041,000		
Totals		600,000	92,082,000		
Peter Oppenheimer	3/24/2004	250,000(2)	38,367,500		
	12/14/2005	200,000(3)	30,694,000		
Totals		450,000	69,061,500		
Ronald B. Johnson	3/24/2004	250,000(2)	38,367,500		
	12/14/2005	200,000(3)	30,694,000		
Totals		450,000	69,061,500		
Tony Fadell	8/30/2005	10,000(4)	1,534,700		
	2/2/2006	200,000(5)	30,694,000		
Totals		210,000	32,228,700		

- (1) The dollar amounts shown in Column (i) are determined by multiplying (x) the number of shares or units reported in Column (h) by (y) \$153.47 (the closing price of the Company's common stock on September 28, 2007, the last trading day of fiscal year 2007).
- (2) The unvested portion of this restricted stock unit award is scheduled to vest in its entirety on March 24, 2008.
- (3) The unvested portion of this restricted stock unit award is scheduled to vest in its entirety on March 24, 2010.
- (4) The unvested portion of this restricted stock unit award is scheduled to vest in two (2) substantially equal installments on August 30, 2008 and August 30, 2009.
- (5) The unvested portion of this restricted stock unit award is scheduled to vest in two (2) substantially equal installments on March 24, 2008 and March 24, 2010.

Option Exercises and Stock Vested

The following table presents information regarding the exercise of stock options by named executive officers during fiscal year 2007, and on the vesting during fiscal year 2007 of other stock awards previously granted to the named executive officers.

Name	Option Awards		Stock Awards	
	Number of Shares Acquired on Exercise (#)	Value Realized on Exercise (\$)(1)	Number of Shares Acquired on Vesting (#)	Value Realized on Vesting (\$)(1)
(a)	(b)	(c)	(d)	(e)
Steven P. Jobs	120,000(2)	14,644,800		
Timothy D. Cook				
Peter Oppenheimer				
Ronald B. Johnson	600,000	36,614,020		
Tony Fadell	83,313	5,946,344	5,000	681,250

(1) The dollar amounts shown in Column (c) above for option awards are determined by multiplying (i) the number of shares of the Company's common stock to which the exercise of the option related, by (ii) the difference between the per-share closing price of the Company's common stock on the date of exercise and the exercise price of the options. The dollar amounts shown in Column (e) above for stock awards are determined by multiplying the number of shares or units, as applicable, that vested by the per-share closing price of the Company's common stock on the vesting date.

(2) These shares were acquired by Mr. Jobs on August 13, 2007 through an exercise of stock options granted to him under the 1997 Director Stock Option Plan that were to expire on August 14, 2007. Mr. Jobs has not sold any of the shares acquired in that exercise.

Potential Payments Upon Termination or Change in Control

As noted above, the Company does not have employment agreements with any of its named executive officers, nor does the Company maintain any other plans or arrangements that provide for any named executive officer to receive cash severance or other cash payments in connection with a termination of their employment with the Company and/or a change in control of the Company.

Effective for grants made after April 9, 2007, the Company's 2003 Employee Stock Plan (the "2003 Plan") was amended to eliminate accelerated vesting of outstanding awards in connection with a change in control of the Company. With respect to awards granted under the 2003 Plan prior to that date, such awards, to the extent then outstanding and unvested, will generally become fully vested and, in the case of options, exercisable upon a change in control of the Company, unless the Compensation Committee provides for the substitution, assumption, exchange or other continuation of such awards. Any options that become vested in connection with a change in control generally must be exercised prior to the change in control, or they will be canceled in exchange for the right to receive a cash payment in connection with the change in control transaction.

The award agreements evidencing certain grants of restricted stock units to the Company's named executive officers prior to January 1, 2005 generally provide that if, in connection with a change in control of the Company, the executive's employment is terminated by the Company without cause or by the executive for good reason (as those terms are defined in the applicable award agreement), the restricted stock units that are then outstanding and unvested will vest in full.

The following table lists the named executive officers and the estimated amounts they would have become entitled to under the terms of stock option and restricted stock unit awards granted to them under the 2003 Plan prior to April 9, 2007 had a change of control of the Company occurred on September 29, 2007, unless the

Compensation Committee had provided for the substitution, assumption, exchange or other continuation of such awards.

Name	Estimated Total Value of Equity Acceleration
	(\$)
(a)	(b)
Steven P. Jobs	
Timothy D. Cook	92,082,000
Peter Oppenheimer	69,061,500
Ronald B. Johnson	69,061,500
Tony Fadell	44,580,353

Director Compensation

The following table presents information regarding the compensation paid during fiscal year 2007 to Non-Employee Directors. The compensation paid to Mr. Jobs, the CEO, is presented above in the Summary Compensation Table and the related explanatory tables.

Name	Fees Earned or Paid in Cash	Stock Awards	Option Awards	Non-Equity Incentive Plan Compensation	Change in Pension Value and Nonqualified Deferred Compensation Earnings	All Other Compensation	Total
	(\$)	(\$)(1)(2)(3)	(\$)(1)(2)(3)	(\$)	(\$)	(\$)(4)	(\$)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
William V. Campbell	50,000		476,200			4,783	530,983
Millard S. Drexler	50,000		378,400			7,462	435,862
Albert A. Gore, Jr.	50,000		300,300			15,245	365,545
Arthur D. Levinson, Ph.D.	50,000		448,000			7,592	505,592
Eric E. Schmidt, Ph.D.							
Jerome B. York	50,000		476,200			4,724	530,924

(1) The amounts reported in Columns (c) and (d) of the table above reflect the aggregate dollar amounts recognized for stock awards and option awards, respectively, for financial statement reporting purposes with respect to fiscal year 2007 (disregarding any estimate of forfeitures related to service-based vesting conditions). For a discussion of the assumptions and methodologies used to calculate the amounts referred to above, please see the discussion of stock awards and option awards contained in Part II, Item 8, Financial Statements and Supplementary Data of the Annual Report in Notes to Consolidated Financial Statements at Note 7, Stock-Based Compensation.

(2) The following table presents the number of outstanding and unexercised option awards and the number of unvested stock awards held by each of the Non-Employee Directors as of September 29, 2007.

Director	Number of Shares Subject to Outstanding Options as of 9/29/07	Number of Unvested Shares of Restricted Stock as of 9/29/07
William V. Campbell	110,000	
Millard S. Drexler	190,000	
Albert A. Gore, Jr.	70,000	
Arthur D. Levinson, Ph.D.	110,000	
Eric E. Schmidt, Ph.D.		

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Jerome B. York

50,000

- (3) As described below, the Company granted each of its Non-Employee Directors (other than Dr. Schmidt) an option to purchase 10,000 shares of the Company's common stock during fiscal year 2007. These grants were made on the anniversary of the director's initial election or appointment to the Board and had the following fair values on the applicable grant date: Mr. Campbell, \$476,200; Mr. Drexler, \$378,400; Mr. Gore, \$300,300; Dr. Levinson, \$448,000; and Mr. York, \$476,200. See footnote (1) for the assumptions used to value these awards.
- (4) The amount reported in column (g) above consists solely of one or more of a limited number of free computer systems and/or additional equipment pursuant to the Board of Directors Equipment Program in effect at the time. Effective fiscal year 2008, Non-Employee Directors are eligible to receive free of charge one of each new product introduced by the Company and are eligible to purchase additional equipment at a discount.

Report of the Audit Committee

The following is the report of the Audit Committee with respect to the Company's audited financial statements for the fiscal year ended September 29, 2007. The information contained in this report shall not be deemed to be soliciting material or to otherwise be considered filed with the SEC, nor shall such information be incorporated by reference into any future filing under the Securities Act or the Exchange Act except to the extent that the Company specifically incorporates such information by reference in such filing.

The Audit Committee consists of three members: Messrs. Campbell and York and Dr. Levinson. All of the members are independent directors under the NASDAQ and SEC audit committee structure and membership requirements. The Audit Committee has certain duties and powers as described in its written charter adopted by the Board. A copy of the charter can be found on the Company's website at www.apple.com/investor.

The Audit Committee is primarily responsible for assisting the Board in fulfilling its oversight responsibility by reviewing the financial information that will be provided to shareholders and others, appointing the independent auditor, reviewing the services performed by the Company's independent registered public accounting firm and internal audit department, evaluating the Company's accounting policies and its system of internal controls that management and the Board have established, and reviewing significant financial transactions. The Audit Committee does not itself prepare financial statements or perform audits, and its members are not auditors or certifiers of the Company's financial statements.

In fulfilling its oversight responsibility of appointing and reviewing the services performed by the Company's independent registered public accounting firm, the Audit Committee carefully reviews the policies and procedures for the engagement of the independent auditor, including the scope of the audit, audit fees, auditor independence matters and the extent to which the independent auditor may be retained to perform non-audit related services.

The Company maintains an auditor independence policy that bans its auditors from performing non-financial consulting services, such as information technology consulting and internal audit services. This auditor policy mandates that the audit and non-audit services and related budget be approved by the Audit Committee in advance, and that the Audit Committee be provided with quarterly reporting on actual spending. This policy also mandates that no auditor engagements for non-audit services may be entered into without the express approval of the Audit Committee.

The Audit Committee has reviewed and discussed the audited financial statements for the fiscal year ended September 29, 2007 with the Company's management and KPMG LLP, the Company's independent registered public accounting firm. The Audit Committee has also discussed with KPMG LLP the matters required to be discussed by Statement on Auditing Standards No. 61, Communication with Audit Committees.

The Audit Committee has also received and reviewed the written disclosures and the letter from KPMG LLP required by Independence Standards Board Standard No. 1, Independence Discussions with Audit Committees, and has discussed with the auditors the auditors independence.

Based on the reviews and discussions referred to above, the Audit Committee recommended to the Board that the financial statements referred to above be included in the Annual Report.

Members of the Audit Committee

William V. Campbell

Arthur D. Levinson, Ph.D.

Jerome B. York (Chair)

OVERVIEW OF PROPOSALS

This Proxy Statement contains four proposals requiring shareholder action. Proposal No. 1 requests the election of eight directors to the Board. Proposal No. 2 requests the ratification of the appointment of KPMG LLP as the Company's independent registered public accounting firm for fiscal year 2008. Proposals No. 3 and No. 4 are shareholder proposals. Each of the proposals is discussed in more detail in the pages that follow.

PROPOSAL NO. 1

Election of Directors

The Board has nominated directors Campbell, Drexler, Gore, Jobs, Jung, Levinson, Schmidt and York to be elected to serve for a one-year term and until their successors are duly elected and qualified. Holders of proxies solicited by this Proxy Statement will vote the proxies received by them as directed on the proxy card or, if no direction is made, for the election of the Board's eight nominees. If any nominee is unable or declines to serve as a director at the time of the Annual Meeting, the proxy holders will vote for a nominee designated by the present Board to fill the vacancy.

Vote Required

The eight nominees receiving the highest number of affirmative votes of the outstanding shares of the Company's common stock present or represented by proxy and voting at the Annual Meeting, will be elected as directors to serve until the next annual meeting of shareholders and until their successors are duly elected and qualified.

Recommendation of the Board

The Board recommends that shareholders vote FOR the election of Messrs. Campbell, Drexler, Gore, Jobs and York, Ms. Jung and Drs. Levinson and Schmidt.

PROPOSAL NO. 2

Ratification of Appointment of Independent Registered Public Accounting Firm

The Audit Committee has appointed KPMG LLP, the Company's independent registered public accounting firm, to audit the Company's consolidated financial statements for fiscal year 2008. KPMG LLP has served as the Company's independent registered public accounting firm since fiscal year 1997. At the Annual Meeting, the shareholders are being asked to ratify the appointment of KPMG LLP as the Company's independent registered public accounting firm for fiscal year 2008. In the event of a negative vote on such ratification, the Audit Committee will reconsider its selection. Even if this appointment is ratified, the Audit Committee, in its discretion, may direct the appointment of a different independent registered public accounting firm at any time during the year if the Audit Committee determines that such a change would be in the best interest of the Company and its shareholders. Representatives of KPMG LLP will be present at the Annual Meeting and will have the opportunity to respond to appropriate questions and to make a statement if they so desire.

Fees Paid To Auditors

The following table sets forth the fees accrued or paid to the Company's independent registered public accounting firm, KPMG LLP, during fiscal years 2007 and 2006.

Audit and Non-Audit Fees

	2007	2006
Audit Fees(1)	\$ 7,943,900	\$ 7,912,700
Audit-Related Fees(2)	432,000	28,000
Tax Fees(3)	600,400	820,500
All Other Fees		
Total	\$ 8,976,300	\$ 8,761,200

- (1) Audit fees relate to professional services rendered in connection with the audit of the Company's annual financial statements and internal control over financial reporting, quarterly review of financial statements included in the Company's Forms 10-Q, and audit services provided in connection with other statutory and regulatory filings. Fiscal years 2007 and 2006 include fees incurred in connection with the Special Committee of the Board's investigation into stock option practices.
- (2) Audit-related fees comprise fees for professional services that are reasonably related to the performance of audit or review of the Company's financial statements.
- (3) The 2007 and 2006 tax fees include \$581,200 and \$728,600, respectively, for professional services rendered in connection with tax compliance and preparation relating to the Company's expatriate program, tax audits and international tax compliance; and \$19,200 and \$91,900, respectively, for international tax consulting and planning services. The Company does not engage KPMG LLP to perform personal tax services for its executive officers.

Policy on Audit Committee Pre-Approval of Audit and Non-Audit Services Performed by the Independent Registered Public Accounting Firm

Prior to the enactment of the Sarbanes-Oxley Act of 2002 (the *Act*), the Company adopted an auditor independence policy that banned its auditors from performing non-financial consulting services, such as information technology consulting and internal audit services. This auditor independence policy also mandates that the audit and non-audit services and related budget be approved by the Audit Committee in advance, and that the Audit Committee be provided with quarterly reporting on actual spending. In accordance with this policy, all services to be performed by KPMG LLP were pre-approved by the Audit Committee.

Subsequent to the enactment of the Act, the Audit Committee met with KPMG LLP to further understand the provisions of the Act as it relates to auditor independence. KPMG LLP previously rotated the lead audit partner in fiscal year 2005 in compliance with the Act. KPMG LLP also rotated other partners in 2007 and 2006, and will rotate additional partners as appropriate. The Audit Committee will continue to monitor the activities undertaken by KPMG LLP to comply with the Act.

Vote Required

The affirmative vote of (i) a majority of the voting power present or represented by proxy and voting at the Annual Meeting and (ii) a majority of the voting power required to constitute the quorum are required to approve this Proposal.

Recommendation of the Board

The Board recommends that shareholders vote FOR ratification of the appointment of KPMG LLP as the Company's independent registered public accounting firm.

PROPOSAL NO. 3

Shareholder Proposal Regarding Advisory Vote on Compensation

The Company has been advised that the AFL-CIO Reserve Fund, 815 Sixteenth Street, N.W., Washington, D.C. 20006, a beneficial owner of approximately 500 shares of the Company's common stock, intends to submit the following proposal at the Annual Meeting. The proposal is co-sponsored by the Congregation of Divine Providence, Inc., P.O. Box 37345, San Antonio, Texas 78237, a beneficial owner of approximately 800 shares of the Company's common stock; the Congregation of Sisters of St. Agnes, 320 County Road K, Fond du Lac, Wisconsin 54935, a beneficial owner of approximately 130 shares of the Company's common stock; the Dominican Sisters of Springfield Illinois, Sacred Heart Convent, 1237 West Monroe Street, Springfield, Illinois 62704, a beneficial owner of approximately 90 shares of the Company's common stock; Mount St. Scholastica, 801 S. 8th Street, Atchison, Kansas 66002, a beneficial owner of approximately 510 shares of the Company's common stock; the Nathan Cummings Foundation, 475 Tenth Avenue, 14th Floor, New York, New York 10018, a beneficial owner of approximately 3,406 shares of the Company's common stock; and the United States Province of Missionary Oblates of Mary Immaculate, 391 Michigan Avenue, NE, Washington, D.C. 20017, a beneficial owner of approximately 8,350 shares of the Company's common stock.

RESOLVED, that shareholders of Apple Inc. (the *Company*) urge the Board of Directors to adopt a policy that Company shareholders be given the opportunity at each annual meeting of shareholders to vote on an advisory resolution, to be proposed by Company's management, to ratify the compensation of the named executive officers (*NEOs*) set forth in the proxy statement's Summary Compensation Table (the *SCT*) and the accompanying narrative disclosure of material factors provided to understand the SCT. The proposal submitted to shareholders should make clear that the vote is non-binding and would not affect any compensation paid or awarded to any NEO.

SUPPORTING STATEMENT

In our view, senior executive compensation at our Company has not always been structured in ways that best serve shareholders' interests. For example, The Corporate Library, an authority on corporate governance, has given our Company a grade of *D*, citing *High Concern* for compensation practices.

Moreover, the Company has been criticized for its handling of backdated stock options (*The San Francisco Chronicle*, 5/3/2007). Though the Company states that CEO Steve Jobs did not benefit from the backdated options, some experts disagree. For example, Graef Crystal, an expert on executive compensation, and Patrick McGurn, executive vice president of Institutional Shareholder Services, both state that Jobs benefited from the backdated options (*The Washington Post*, 1/11/2007).

We believe that existing U.S. corporate governance arrangements, including SEC rules and stock exchange listing standards, do not provide shareholders with enough mechanisms for providing input to boards on senior executive compensation. In contrast to U.S. practices, in the United Kingdom, public companies allow shareholders to cast an advisory vote on the directors' remuneration report, which discloses executive compensation. Such a vote is not binding but gives shareholders a clear voice that could help shape senior executive compensation.

Currently, U.S. stock exchange listing standards require shareholder approval of equity-based compensation plans; those plans, however, set general parameters and accord the compensation committee substantial discretion in making awards and establishing performance thresholds for a particular year. Shareholders do not have any mechanism for providing ongoing feedback on the application of those general standards to individual pay packages. (See Lucian Bebchuk & Jesse Fried, *Pay Without Performance*, 2004.)

Similarly, performance criteria submitted for shareholder approval to allow a company to deduct compensation in excess of \$1 million are broad and do not constrain compensation committees in setting performance targets for particular senior executives. Withholding votes from compensation committee members

who are standing for re-election is a blunt and insufficient instrument for registering dissatisfaction with the way in which the committee has administered compensation plans and policies in the previous year.

Accordingly, we urge our Company's Board to allow shareholders to express their opinion about senior executive compensation at our Company by establishing an annual referendum process. The results of such a vote would, we think, provide our Company with useful information about whether shareholders view the Company's senior executive compensation practices, as reported each year, to be in shareholders' best interests.

The Company's Statement in Opposition to Proposal No. 3

The Board of Directors recommends a vote AGAINST Proposal No. 3.

The Board recognizes that executive compensation is a high-profile issue in current corporate governance debates and has considered the proposal and the issues associated with shareholder ratification of executive compensation. The Board does not believe that it is in the best interests of the Company's shareholders to provide for shareholder ratification of executive compensation and recommends a vote against this proposal for the following reasons.

The Compensation Committee of the Board, consisting entirely of independent directors, is responsible for maintaining an executive compensation program designed to attract, motivate and retain the most highly talented and experienced leadership for the Company. This program is discussed in detail in this Proxy Statement in the section entitled **Executive Compensation Compensation Discussion and Analysis**. The program is designed around various components of compensation, including base salaries, incentive bonuses and equity awards, and the Compensation Committee reviews and approves annually the compensation for all executive officers of the Company. In addition, the Compensation Committee engages an outside consulting firm to help it design compensation packages for executive officers in a manner that will provide appropriate incentives to them while remaining competitive with the Company's peers. Executive compensation practices are influenced by a wide range of complex factors, including changes in strategic goals, changing economic and industry conditions, accounting requirements and tax laws, evolving governance trends and the competitive compensation practices of other companies. As a result, it is important that the Compensation Committee retain the flexibility to select incentives, including performance-based alternatives where appropriate, that balance these influences so that the Company can continue to attract and retain executives of outstanding ability and motivate them to achieve superior performance.

The Board believes that an advisory resolution would not change the contents of the Company's disclosures with respect to executive compensation, nor would it have any legal consequence on any compensation arrangement. Rather, adopting this practice could negatively affect shareholder value by creating the impression among the Company's senior executives that their compensation opportunities could be limited or negatively affected by this practice, while opportunities at the Company's competitors would not be similarly constrained. The Board is not aware of any of the Company's peers who have adopted a similar policy, and it is the Board's understanding that this proposal was defeated by the shareholders at almost all of the companies where it was introduced last year.

An advisory vote would not provide the Compensation Committee with any meaningful insight into specific shareholder concerns regarding executive compensation that it could address when considering the Company's remuneration policies. A ratification vote is a blunt and impractical mechanism when more effective means of communicating concerns to the Compensation Committee are available to shareholders. The Company has corporate governance policies designed to ensure that the Board is responsive to shareholder concerns regarding all issues, including executive compensation issues. Under these policies, any shareholder may communicate directly with the Board if the shareholder disagrees with the Company's compensation policies.

The Board exercises great care in determining and disclosing executive compensation. The Board does not believe the advisory vote will enhance governance practices or improve communication with shareholders, nor is

it in the best interest of the Company's shareholders. Instead, it may very well constrain the Compensation Committee's efforts to recruit and retain exceptional senior executives who will focus on the Company's long-term performance and results.

Vote Required

The affirmative vote of (i) a majority of the voting power present or represented by proxy and voting at the Annual Meeting and (ii) a majority of the voting power required to constitute the quorum are required to approve this Proposal.

Recommendation of the Board of Directors

The Board recommends a vote AGAINST the Shareholder Proposal Regarding Advisory Vote on Compensation.

PROPOSAL NO. 4

Shareholder Proposal to Amend Corporate Bylaws

Establishing a Board Committee on Sustainability

The Company has been advised that Mr. John C. Harrington, 1001 2nd Street, Suite 325, Napa, California 94559, a beneficial owner of approximately 200 shares of the Company's common stock, intends to submit the following proposal at the Annual Meeting:

RESOLVED, Amend Article IV of the bylaws to add a new section as follows:

4.2 Board Committee on Sustainability:

A) There is established a Board Committee on Sustainability. The committee is authorized to address corporate policies, above and beyond matters of legal compliance, in order to ensure our corporation's sustained viability. The committee shall strive to enhance shareholder value by responding to changing conditions and knowledge of the natural environment, including but not limited to, natural resource limitations, energy use, waste disposal, and climate change.

B) The Board of Directors is authorized in its discretion, consistent with these Bylaws and applicable law to: (1) select the members of the Board Committee on Sustainability, (2) provide said committee with funds for operating expenses, (3) adopt regulations or guidelines to govern said Committee's operations, (4) empower said Committee to solicit public input and to issue periodic reports to shareholders and the public, at reasonable expense and excluding confidential information, on the Committee's activities, findings and recommendations, and (5) adopt any other measures within the Board's discretion consistent with these Bylaws and applicable law.

C) Nothing herein shall restrict the power of the Board of Directors to manage the business and affairs of the company. The Board Committee on Sustainability shall not incur any costs to the company except as authorized by the Board of Directors.

SUPPORTING STATEMENT

The committee would be authorized to initiate, review, and make policy recommendations regarding the company's preparation to adapt to changes in marketplace and environmental conditions that may affect the sustainability of our business. Issues related to sustainability might include, but are not limited to: global climate change, political instability, emerging concerns regarding toxicity of materials, resource shortages, and biodiversity loss.

Adoption of this resolution would help establish our company's position as an industry leader in this area of increasing concern to investors and policy makers.

The Company's Statement in Opposition to Proposal No. 4

The Board of Directors recommends a vote AGAINST Proposal No. 4.

The Board appreciates the importance of environmental sustainability and recognizes the Company's responsibility to minimize the environmental impact of the Company's operations and products. However, the Board does not believe a dedicated board committee is an effective way for the Company's practices and goals to continually evolve and improve in response to changing conditions. Instead, the establishment and operation of an additional and redundant committee would distract the Board from its other responsibilities to the Company and its shareholders while adding little value to the Company's existing commitment to environmental sustainability, as evidenced by the Company's established policies, practices and procedures described below.

The Board already authorizes and directs Company management to make environmental considerations an integral part of the Company's business practices. Four areas of particular attention are product and packaging design, responsible manufacturing, energy efficiency and recycling. The Company's commitment to protecting the environment, health and safety of the Company's employees, customers and the global communities where the Company operates is expressed not only in the Company's code of ethics (available at www.apple.com/investor) but also in the Company's Environmental Health and Safety Policy Statement and the Supplier Code of Conduct, both of which are available at the Company's environment website at www.apple.com/environment/.

Every year, the Company has set and met important goals to phase out environmentally relevant substances, create recycling programs worldwide and improve energy efficiency. The following examples represent some of the important milestones achieved by the Company in its quest for environmental responsibility:

The Company's products are compliant with the European Directive on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment, also known as the RoHS directive. Examples of materials restricted by RoHS include lead, mercury, cadmium, hexavalent chromium, and PBB and PBDE flame retardants. As a result of the Company's proactive approach to hazardous substances, the Company met many of the RoHS restrictions long before the July 2006 deadline.

In 2007, the Company's global electronic recycling weight increased 110% over the previous year, or the equivalent of 9.5%, by weight, of its sales made seven years ago. The Company has committed to a 10% annual growth rate for its worldwide recycling weight. At this growth rate, by 2010 the Company will be recycling over 30%, by weight, of sales made seven years prior. The Company carefully selects its recycling vendors worldwide and annually audits their environmental performance to ensure that they comply with all applicable laws. Additionally, the Company's directly contracted recyclers are required to identify all down-stream processes for commodities to help ensure that all recycling is done in a way that is protective of the environment.

The Company was the first computer manufacturer to entirely replace CRT displays with LCDs. Since 2001, the Company's stand-alone displays have consisted only of material-efficient LCDs.

Between the first generation and current generation of the iMac, sleep-mode energy usage has decreased 92% thanks to improvements in CPU power management and increased hardware efficiency.

The Company's manufacturing site is certified to the ISO 14001 standard, which helps companies manage environmental impacts in an integrated, systematic way.

The current generation iPod nano packaging is 36% lighter and uses 52% less volume than the first generation iPod nano. Additional milestones demonstrating the Company's thirty-year track record of delivering environmental excellence at all phases of the product life cycle can be seen at <http://www.apple.com/environment/>.

In addition to the Company's Product Environmental Specifications and Materials Safety Data Sheets, which educate customers about specific environmental issues as they relate to the Company's products and provide important information about the substances contained in certain Company products, the Company has

enhanced the communication of its environmental measures to the Company's stakeholders. In a letter, entitled "A Greener Apple" (available at www.apple.com/hotnews/agreenerapple/), Steve Jobs describes an industry leading program for the removal of toxic chemicals from the Company's new products and the recycling of the Company's old products. For example, the Company plans to eliminate the use of polyvinyl chloride (PVC), brominated flame retardants (BFRs), and arsenic in the displays of its products by the end of 2008. The Company intends to provide such updates of the Company's efforts and accomplishments at least annually.

The existing governance framework has produced a strong commitment to environmental issues and progress that is evident in the Company's practices and policies. The Board believes that Company management continues to be in the best position to assess and evaluate the operation of the Company's businesses with respect to environmental sustainability issues. Management consults with the Board when necessary to keep the Board informed of environmental developments to enable the Board to exercise its oversight responsibilities and to receive direction. The Board does not believe a board committee on environmental sustainability is in the best interests of the Company's shareholders when a need for the additional time and expense required for the establishment and operation of such a board has not been demonstrated. Accordingly, the Board recommends a vote against the resolution.

Vote Required

The affirmative vote of (i) a majority of the voting power present or represented by proxy and voting at the Annual Meeting and (ii) a majority of the voting power required to constitute the quorum are required to approve this Proposal.

Recommendation of the Board of Directors

The Board recommends a vote AGAINST the Shareholder Proposal to Amend Corporate Bylaws Establishing a Board Committee on Sustainability.

OTHER MATTERS

The Company knows of no other matters to be submitted to the shareholders at the Annual Meeting. If any other matters properly come before the shareholders at the Annual Meeting, it is the intention of the persons named on the enclosed proxy card to vote the shares represented thereby on such matters in accordance with their best judgment.

SHAREHOLDER PROPOSALS

Shareholder proposals to be considered for inclusion in the proxy statement and form of proxy relating to the next Annual Meeting must be received no later than September 24, 2008. If the Company changes the date of its Annual Meeting by more than 30 days from the date of the previous year's Annual Meeting, then the deadline is a reasonable time before the Company begins to print and send its proxy materials. In addition, the Company's bylaws provide for the timing and content of notice that shareholders must provide to the Company's Corporate Secretary at 1 Infinite Loop, Cupertino, California 95014, for the nomination of directors or other proposals to be properly presented at a shareholder meeting. Pursuant to these provisions, notice of a nomination or proposal must be received by the Company not later than 60 days prior to the meeting; provided, however, that in the event that less than 70 days' notice or prior public disclosure of the date of the meeting is given to shareholders, notice must be received not later than the close of business on the 10th day following the day on which such notice of the date of the meeting was mailed or such public disclosure was made. If the Company is not notified of a shareholder proposal by December 8, 2008 (or if the date of the Annual Meeting has changed more than 30 days from the prior year, then notice must be received a reasonable time before the Company sends its proxy materials for the current year to shareholders), then the management personnel who have been appointed as proxies by the Board will have the discretion to vote for or against such shareholder proposal, even though such proposal is not discussed in the proxy statement.

SHAREHOLDERS SHARING AN ADDRESS

The Company has adopted a procedure called householding, which has been approved by the SEC. Under this procedure, the Company is delivering one copy of this Proxy Statement and the Annual Report to multiple shareholders who share the same mailing address unless the Company has received contrary instructions from an affected shareholder. This procedure reduces the Company's printing costs, mailing costs and fees. Shareholders who participate in householding will continue to receive separate proxy cards. The Company will promptly deliver upon written or oral request a separate copy of this Proxy Statement and the Annual Report to any shareholder at a shared address to which a single copy of either of those documents was delivered. To receive a separate copy of this Proxy Statement or the Annual Report, shareholders may write or call the Company to request a separate copy of these materials from:

Investor Relations

1 Infinite Loop MS 301-4IR

Cupertino, California 95014

(408) 974-3123

Shareholders who would like to revoke householding consent and receive a separate copy of the Company's annual reports or proxy statements in the future should contact Broadridge either by calling toll free at (800) 542-1061 or by writing to Broadridge, Household Department, 51 Mercedes Way, Edgewood, New York 11717. Within 30 days of receipt of revocation of a shareholder's consent, the shareholder will be removed from the householding program.

A number of brokerage firms have instituted householding. Shareholders who hold shares in street name may contact their bank, broker or other holder of record to request information about householding.

THE BOARD OF DIRECTORS

Dated: January 22, 2008

Directions to the Annual Shareholder Meeting

FROM SAN JOSE:

Take 280 northbound
Take the De Anza Blvd. exit
Make a left onto De Anza Blvd. (at signal)
Make a left onto Mariani Avenue
Enter Infinite Loop Parking Lot at the end of Mariani Avenue.
Proceed to Building 4 (to Apple Town Hall)

Attendance at the Annual Meeting is limited to shareholders. Admission to the meeting will be on a first-come, first-served basis. In the interest of saving time and money, Apple Inc. has opted to provide the enclosed Annual Report on Form 10-K for the fiscal year ended September 29, 2007 in lieu of producing a glossy annual report.

FROM SAN FRANCISCO:

Take 280 southbound
Take the De Anza Blvd. exit
Make a right onto De Anza Blvd. (at signal)
Make a left onto Mariani Avenue
Enter Infinite Loop Parking Lot at the end of Mariani Avenue.
Proceed to Building 4 (to Apple Town Hall)

APPLE INC.

t-bottom">0 = the conversion rate in effect immediately prior to 5:00 p.m., New York City time, on the effective date of the spin-off CR₁ = the conversion rate in effect immediately after the effective date of the spin-off FMV₀ = the average of the last reported sale prices of the capital stock or similar equity interest distributed to holders of our common stock applicable to one share of our common stock over the first 10 consecutive trading-day period from, and including, the effective date of the spin-off MP₀ = the average of the last reported sale prices of our common stock over the first 10 consecutive trading-day period from, and including, the effective date of the spin-off

The adjustment to the conversion rate under the preceding paragraph will occur on the tenth trading day from, and including, the effective date of the spin-off and shall be applied on a retroactive basis from, and including, the effective date of the spin-off; provided that in respect of any conversion occurring prior to the effective date of the spin-off with respect to which the related observation period would conclude during the 10 trading days from, and including, the effective date of any spin-off, references with respect to the spin-off to the 10 consecutive trading-day period shall be deemed replaced with such lesser number of trading days as have elapsed between the effective date of such spin-off and the last day of the related observation period in determining the applicable conversion rate; provided further that in respect of any conversion occurring prior to the effective date of the spin-off with respect to which the related observation period would conclude during the three trading days from, and including, the effective date of such spin-off, references to the 10 consecutive trading-day period shall be deemed replaced with a three consecutive trading-day period with such adjustment to the conversion rate being applied on a retroactive basis from, and including, the effective date of the spin-off.

- (4A) If any regular, quarterly cash dividend or distribution made to holders of all or substantially all of our common stock is in excess of \$0.10 per share (the initial dividend threshold), the conversion rate will be adjusted based on the following formulas:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

CR₀ = the conversion rate in effect immediately prior to the ex-dividend date for such dividend or distribution

CR₁ = the conversion rate in effect immediately after the ex-dividend date for such dividend or distribution

SP₀ = the last reported sale price of our common stock on the trading day immediately preceding the ex-dividend date for such dividend or distribution

C = the amount in cash per share we distribute to holders of our common stock in excess of the initial dividend threshold

The initial dividend threshold is subject to adjustment in a manner inversely proportional to adjustments to the conversion rate, provided that no adjustment will be made to the dividend threshold amount for any adjustment made to the conversion rate under this clause (4A).

- (4B) If we pay any cash dividend or distribution that is not a regular, quarterly cash dividend or distribution to holders of all or substantially all of our common stock, the conversion rate will be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

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CR_0 = the conversion rate in effect immediately prior to the ex-dividend date for such dividend or distribution

CR_1 = the conversion rate in effect immediately after the ex-dividend date for such dividend or distribution

SP_0 = the last reported sale price of our common stock on the trading day immediately preceding the ex-dividend date for such dividend or distribution

C = the amount in cash per share we distribute to holders of our common stock

(5) If we or any of our subsidiaries make a payment in respect of a tender offer or exchange offer for our common stock, to the extent that the cash and value of any other consideration included in the payment per share of common stock exceeds the last reported sale price of our common stock on the trading day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer, the conversion rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + (SP_1 \times OS_1)}{OS_0 \times SP_1}$$

where,

CR_0 = the conversion rate in effect immediately prior to the effective date of the adjustment

CR_1 = the conversion rate in effect immediately after the effective date of the adjustment

AC = the aggregate value of all cash and any other consideration (as determined by our board of directors) paid or payable for shares accepted for purchase or exchange in such tender or exchange offer

OS_0 = the number of shares of our common stock outstanding immediately prior to the date such tender or exchange offer expires

OS_1 = the number of shares of our common stock outstanding immediately after the date such tender or exchange offer expires (after giving effect to the reduction of shares accepted for purchase or exchange in such tender or exchange offer)

SP_1 = the average of the last reported sale prices of our common stock over the 10 consecutive trading-day period commencing on the trading day next succeeding the date such tender or exchange offer expires

The adjustment to the conversion rate under the preceding paragraph will occur on the tenth trading day from, and including, the trading day next succeeding the date such tender or exchange offer expires and shall be applied on a retroactive basis from, and including, the trading day next succeeding the date such tender or exchange offer expires; provided that in respect of any conversion occurring prior to the date such tender or exchange offer expires with respect to which the related observation period would conclude during the 10 trading days from, and including, the trading day next succeeding the date such tender or exchange offer expires, references with respect to the tender or exchange offer to the 10 consecutive trading-day period shall be deemed replaced with such lesser number of trading days as have elapsed between the trading day next succeeding the date such tender or exchange offer expires and the last day of the related observation period in determining the applicable conversion rate; provided further that in respect of any conversion occurring prior to the date such tender or exchange offer expires with respect to which the

related observation period would conclude during the three trading days from, and including, the trading day next succeeding the date such tender or exchange offer expires, references to the 10 consecutive trading-day period shall be deemed replaced with a three consecutive trading-day period with such adjustment to the conversion rate being applied on a retroactive basis from, and including, the trading day next succeeding the date such tender or exchange offer expires.

Except as stated herein, we will not adjust the conversion rate for the issuance of shares of our common stock or any securities convertible into or exchangeable for shares of our common stock or the right to purchase shares of our common stock or such convertible or exchangeable securities.

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As used in this section, *ex-dividend date* means the first date on which the shares of our common stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance or distribution in question.

We are permitted to increase the conversion rate of the notes by any amount for a period of at least 20 days if our board of directors determines that such increase would be in our best interest. We may also (but are not required to) increase the conversion rate to avoid or diminish income tax to holders of our common stock or rights to purchase shares of our common stock in connection with a dividend or distribution of shares (or rights to acquire shares) or similar event.

A holder may, in some circumstances, including the distribution of cash dividends to holders of our shares of common stock, be deemed to have received a distribution or dividend subject to U.S. federal income tax as a result of an adjustment or the nonoccurrence of an adjustment to the conversion rate. If we pay withholding taxes on your behalf as a result of an adjustment to the conversion rate of the notes, we may, at our option and pursuant to certain provisions of the indenture, set-off such payments against payments of cash and common stock on the notes. For a discussion of the U.S. federal income tax treatment of an adjustment to the conversion rate, see *Certain United States Federal Income Tax Considerations*.

To the extent that we have a rights plan in effect upon conversion of the notes into common stock, holders that convert their notes will receive, in addition to our common stock, the rights under the rights plan, unless prior to any conversion, the rights have separated from our common stock, in which case, and only in such case, the conversion rate will be adjusted at the time of separation as if we distributed to all holders of our common stock, shares of our capital stock, evidences of indebtedness or assets as described in clause (3) above, subject to readjustment in the event of the expiration, termination or redemption of such rights.

Notwithstanding any of the foregoing, the applicable conversion rate will not be adjusted

upon the issuance of any shares of our common stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on our securities and the investment of additional optional amounts in shares of our common stock under any plan;

upon the issuance of any shares of our common stock or options or rights to purchase those shares pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by us or any of our subsidiaries;

upon the issuance of any shares of our common stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in the preceding bullet and outstanding as of the date the notes were first issued;

for a change in the par value of our common stock; or

for accrued and unpaid interest and additional interest, if any.

Adjustments to the applicable conversion rate will be calculated to the nearest 1/10,000th of a share. We will not be required to make an adjustment in the conversion rate unless the adjustment would require a change of at least 1% in the conversion rate. However, we will carry forward any adjustments that are less than 1% of the conversion rate that we elect not to make and take them into account upon the earlier of (1) any conversion of notes or (2) such time as all adjustments that have not been made prior thereto would have the effect of adjusting the conversion rate by at least 1%. Except as described below in this section, in *Recapitalizations, Reclassifications and Changes of Our Common*

Stock and in Adjustment to Shares Delivered Upon Conversion Upon Certain Fundamental Changes, we will not adjust the conversion rate.

Recapitalizations, Reclassifications and Changes of Our Common Stock

In the case of (A) any recapitalization, reclassification or change of our common stock (other than changes resulting from a subdivision or combination) as a result of which our common stock would be converted into, or exchanged for, stock, other securities, other property or assets, or (B) any statutory share exchange, consolidation or merger involving us pursuant to which our common stock will be converted into

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cash, securities or other property or any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of us and our subsidiaries, taken as a whole, to any person other than one or more of our subsidiaries, then, at the effective time of the transaction, the right to convert a note will be changed into, with respect to each \$1,000 in principal amount of notes, a right to convert it into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of shares of common stock equal to the conversion rate prior to such transaction would have owned or been entitled to receive (the reference property) upon such transaction. If the transaction causes our common stock to be converted into the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), the reference property into which the notes will be convertible will be deemed to be the weighted average of the types and amounts of consideration received by the holders of our common stock that affirmatively make such an election. However, at and after the effective time of the transaction, holders of notes will continue to receive all or a portion of the consideration payable upon conversion of such notes in cash as described above under Payment Upon Conversion, and the daily conversion value will be calculated based on the value of the reference property.

Adjustments of Prices

Whenever any provision of the indenture requires us to calculate last reported sale prices or daily VWAP over a span of multiple days, we will make appropriate adjustments to account for any adjustment to the conversion rate that becomes effective at any time during the period from which such prices are to be calculated. Such adjustments will be effective as of the effective date of the adjustment to the conversion rate.

Adjustment to Shares Delivered Upon Conversion Upon Certain Fundamental Changes

If you elect to convert your notes as described above under Conversion Upon Specified Corporate Transactions Certain corporate events in connection with a fundamental change (as defined below under Fundamental Change Permits Holders to Require Us to Purchase Notes) that occurs on or prior to maturity of the notes, the conversion rate applicable to the notes so converted will be increased by an additional number of shares of common stock (the additional shares) as described below. Any conversion will be deemed to have occurred in connection with such fundamental change only if such notes are surrendered for conversion at a time when the notes are convertible as a result of the expected or actual occurrence of such fundamental change as described above under Conversion Upon Specified Corporate Transactions Certain corporate events and notwithstanding the fact that a note may then be convertible because another condition to conversion has been satisfied. We will settle conversions of notes as described below under Settlement of Conversions in a Fundamental Change.

The number of additional shares by which the conversion rate will be increased will be determined by reference to the table below, based on the date on which the fundamental change occurs or becomes effective (the effective date) and the price (the stock price) paid per share of our common stock in the fundamental change. If the fundamental change is a transaction described in clause (1) or (2) of the definition thereof, and holders of our common stock receive only cash in that fundamental change, the stock price shall be the cash amount paid per share. Otherwise, the stock price shall be the average of the last reported sale prices of our common stock over the 10 consecutive trading-day period ending on the trading day immediately preceding the effective date of the fundamental change.

The stock prices set forth in the column headings of the table below will be adjusted as of any date on which the conversion rate of the notes is otherwise adjusted. The adjusted stock prices will equal the stock prices applicable immediately prior to such adjustment, multiplied by a fraction, the numerator of which is the conversion rate immediately prior to the adjustment giving rise to the stock price adjustment and the denominator of which is the conversion rate as so adjusted. The number of additional shares will be adjusted in the same manner as the conversion rate as set forth above under Conversion Rate Adjustments.

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The following table sets forth the hypothetical stock price and the number of additional shares to be received per \$1,000 principal amount of notes:

	\$45.00	\$52.50	\$60.00	\$67.50	\$75.00	\$82.50	\$90.00	\$97.50	\$105.00	\$112.50	\$120.00
054	4.1120	2.6430	1.7375	1.1604	0.7823	0.5289	0.3559	0.2360	0.1520	0.0928	0.0512
054	3.6886	2.2006	1.3363	0.8219	0.5088	0.3143	0.1912	0.1119	0.0602	0.0267	0.0060
054	2.9012	1.4270	0.6916	0.3318	0.1572	0.0717	0.0285	0.0060	0.0000	0.0000	0.0000
054	0.6006	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

The exact stock prices and effective dates may not be set forth in the table above, in which case

If the stock price is between two stock price amounts in the table or the effective date is between two effective dates in the table, the number of additional shares by which the conversion rate will be increased will be determined by a straight-line interpolation between the number of additional shares set forth for the higher and lower stock price amounts and the two dates, as applicable, based on a 365-day year.

If the stock price is greater than \$135.00 per share (subject to adjustment), no additional shares will be added to the conversion rate.

If the stock price is less than \$37.00 per share (subject to adjustment), no additional shares will be added to the conversion rate.

Notwithstanding the foregoing, in no event will the total number of shares of common stock issuable upon conversion of the notes exceed 27.0270 per \$1,000 principal amount of notes, subject to adjustments in the same manner as the conversion rate as set forth above under Conversion Rate Adjustments.

In addition, if a holder of notes elects to convert its notes prior to the effective date of any fundamental change, and the fundamental change does not occur, such holder will not be entitled to an increased conversion rate in connection with such conversion.

Our obligation to satisfy the additional shares requirement could be considered a penalty, in which case the enforceability thereof would be subject to general principles of reasonableness and equitable remedies.

Our obligation to increase the conversion rate as described above could discourage a potential acquirer of us. The provisions with respect to the adjustment to the conversion rate upon a fundamental change, however, are not the result of management's knowledge of any specific effort to obtain control of us by any means or part of a plan by management to adopt a series of anti-takeover provisions.

Settlement of Conversions in a Fundamental Change

As described above under Recapitalizations, Reclassifications and Changes of Our Common Stock, upon effectiveness of any fundamental change described under clause (2) of the definition of fundamental change as set forth below under Fundamental Change Permits Holders to Require Us to Purchase Notes, the notes will be convertible only into cash and reference property (or, at our election, in lieu of such reference property, cash or a combination of cash and reference property), if applicable. If, as described above in Adjustment to Shares Delivered Upon Conversion Upon Certain Fundamental Changes, we are required to increase the conversion rate for notes converted in connection with such fundamental change by the additional shares as a result of the fundamental change,

notes so surrendered for conversion will be settled as follows:

If the last day of the applicable observation period related to notes surrendered for conversion is prior to the third trading day immediately preceding the effective date of the fundamental change, we will settle such conversion as described above under **Payment Upon Conversion** by delivering the amount of cash and shares of our common stock (or, at our election, in lieu of such shares of our common stock, cash or any combination of cash and shares of our common stock), if any, based on the conversion rate then in effect without regard to the number of additional shares to be added to the conversion rate as described above, on the third trading day immediately following the last day of the

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applicable observation period. In addition, as soon as practicable following the effective date of the fundamental change, we will deliver the increase in such amount of cash and reference property (or, at our election, in lieu of such reference property, cash or a combination of cash and reference property) deliverable in lieu of shares of our common stock, if any, as if the conversion rate had been increased by such number of additional shares during the related observation period and based upon the related daily VWAP prices during such observation period. If such increased settlement amount results in an increase in the amount of cash to be paid to holders, we will pay such increase in cash, and if such increased settlement amount results in an increase to the number of shares of our common stock, we will deliver such increase by delivering reference property (or, at our election, cash or a combination of cash and reference property) based on such increased number of shares.

If the last day of the applicable observation period related to notes surrendered for conversion is on or after the third trading day immediately preceding the effective date of the fundamental change, we will settle such conversion as described above under **Payment Upon Conversion** based on the conversion rate as increased by the additional shares described above on the later to occur of (1) the effective date of the transaction and (2) the third trading day immediately following the last day of the applicable observation period.

Fundamental Change Permits Holders to Require Us to Purchase Notes

If a fundamental change (as defined below in this section) occurs at any time, each holder will have the right, at that holder's option, to require us to purchase for cash any or all of that holder's notes, or any portion of the principal amount thereof, that is equal to \$1,000 or an integral multiple of \$1,000. The price we are required to pay is equal to 100% of the principal amount of the notes to be purchased plus accrued and unpaid interest, including additional interest, if any, to but excluding the fundamental change purchase date (unless the fundamental change purchase date is between a regular record date and the interest payment date to which it relates, in which case we will pay accrued and unpaid interest to the holder of record on such regular record date). The fundamental change purchase date will be a date specified by us that is no later than the 35th calendar day following the date of our fundamental change notice as described below. Any notes purchased by us will be paid for in cash.

A fundamental change will be deemed to have occurred at the time after the notes are originally issued that any of the following occurs:

- (1) a person or group within the meaning of Section 13(d) of the Exchange Act other than us, our subsidiaries or our or their employee benefit plans files a Schedule 13D or Schedule TO (or any successor schedule, form or report) pursuant to the Exchange Act disclosing that such person has become the direct or indirect beneficial owner, as defined in Rule 13d-3 under the Exchange Act, of our common equity representing more than 50% of the voting power of all shares of our common equity entitled to vote generally in the election of directors, unless such beneficial ownership arises as a result of a revocable proxy delivered in response to a public proxy or consent solicitation made pursuant to the applicable rules and regulations under the Exchange Act; and provided, that no person or group shall be deemed to be the beneficial owner of any securities tendered pursuant to a tender or exchange offer made by or on behalf of such person or group until such tendered securities are accepted for purchase or exchange under such offer; or
- (2) consummation of (A) any recapitalization, reclassification or change of our common stock (other than changes resulting from a subdivision or combination) as a result of which our common stock would be converted into, or exchanged for, stock, other securities, other property or assets or (B) any statutory share exchange, consolidation or merger involving us pursuant to which our common stock will be converted into cash, securities or other property or any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of us and our subsidiaries, taken as a whole, to any person other than one or more of our

subsidiaries, other than any transaction

involving a consolidation or merger that does not result in a reclassification, conversion, exchange or cancellation of our outstanding common stock;

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where the holders of more than 50% of all classes of our common equity immediately prior to such transaction that is a statutory share exchange, consolidation or merger own, directly or indirectly, more than 50% of all classes of common equity of the continuing or surviving entity or transferee or the parent entity thereof immediately after such transaction; or

that is effected solely to change our jurisdiction of incorporation and results in a reclassification, conversion or exchange of outstanding shares of our common stock solely into shares of common stock of the surviving entity; or

(3) our common stock (or other capital stock or American Depositary Receipts into which the notes are then convertible pursuant to the terms of the indenture) ceases to be listed on a United States national or regional securities exchange.

A fundamental change as a result of clause (2) above will not be deemed to have occurred, however, if 90% or more of the consideration received or to be received by our common stockholders (excluding cash payments for fractional shares and cash payments made pursuant to dissenters' appraisal rights) in connection with the transaction or transactions constituting the fundamental change consists of shares of capital stock or American Depositary Receipts traded on a United States national or regional securities exchange or which will be so traded when issued or exchanged in connection with the transaction that would otherwise be a fundamental change (these securities being referred to as "publicly traded securities") and as a result of this transaction or transactions the notes become convertible into such publicly traded securities, excluding cash payments for fractional shares.

On or before the 20th day after the occurrence of a fundamental change, we will provide to all holders of the notes and the trustee and paying agent a notice of the occurrence of the fundamental change and of the resulting purchase right. Such notice shall state, among other things

the events causing a fundamental change;

the date of the fundamental change;

the last date on which a holder may exercise the repurchase right;

the fundamental change purchase price;

the fundamental change purchase date;

the name and address of the paying agent and the conversion agent, if applicable;

if applicable, the applicable conversion rate and any adjustments to the applicable conversion rate;

if applicable, that the notes with respect to which a fundamental change purchase notice has been delivered by a holder may be converted only if the holder withdraws the fundamental change purchase notice in accordance with the terms of the indenture; and

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

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.

To exercise the purchase right, a holder must deliver, on or before the business day immediately preceding the fundamental change purchase date, subject to extension to comply with applicable law, the notes to be purchased, duly endorsed for transfer, together with a written purchase notice and the form entitled "Form of Fundamental Change Purchase Notice" on the reverse side of the notes duly completed, to the paying agent. The purchase notice must state

if certificated, the certificate numbers of the holder's notes to be delivered for purchase;

the portion of the principal amount of the holder's notes to be purchased, which must be \$1,000 or an integral multiple thereof; and

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that the holder's notes are to be purchased by us pursuant to the applicable provisions of the notes and the indenture.

A holder may withdraw any purchase notice (in whole or in part) by a written notice of withdrawal delivered to the paying agent prior to the close of business on the business day prior to the fundamental change purchase date. The notice of withdrawal shall state

the principal amount of the withdrawn notes;

if certificated notes have been issued, the certificate numbers of the withdrawn notes, or if not certificated, the notice must comply with appropriate DTC procedures; and

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

We will be required to purchase the notes on the fundamental change purchase date, subject to extension to comply with applicable law. A holder of notes that has exercised the purchase right will receive payment of the fundamental change purchase price promptly following the later of the fundamental change purchase date or the time of book-entry transfer or the delivery of the notes. If the paying agent holds money or securities sufficient to pay the fundamental change purchase price of the notes on the second business day following the fundamental change purchase date, then

the notes tendered for purchase and not withdrawn will cease to be outstanding and interest, including additional interest, if any, will cease to accrue on such notes on the fundamental change purchase date (whether or not book-entry transfer of the notes is made or whether or not the note is delivered to the paying agent); and

all other rights of the holders with respect to the notes tendered for purchase and not withdrawn will terminate on the fundamental change purchase date (other than the right to receive the fundamental change purchase price and previously accrued and unpaid interest (including any additional interest) upon delivery or transfer of the notes).

In connection with any purchase offer pursuant to a fundamental change purchase notice, we will, if required:

comply with the provisions of the tender offer rules under the Exchange Act that may then be applicable; and

file a Schedule TO or any other required schedule under the Exchange Act.

The purchase rights of the holders could discourage a potential acquirer of us. The fundamental change purchase feature, however, is not the result of management's knowledge of any specific effort to obtain control of us by any means or part of a plan by management to adopt a series of anti-takeover provisions.

The term fundamental change is limited to specified transactions and may not include other events that might adversely affect our financial condition. In addition, the requirement that we offer to purchase the notes upon a fundamental change may not protect holders in the event of a highly leveraged transaction, reorganization, merger or similar transaction involving us.

The definition of fundamental change includes a phrase relating to the conveyance, transfer, sale, lease or disposition of all or substantially all of our consolidated assets. There is no precise, established definition of the phrase substantially all under applicable law. Accordingly, the ability of a holder of the notes to require us to purchase its notes as a result of the conveyance, transfer, sale, lease or other disposition of less than all of our assets may be

uncertain.

If a fundamental change were to occur, we may not have enough funds to pay the fundamental change purchase price or be able to arrange for financing to pay the purchase price in connection with a tender of notes for purchase. Our ability to repurchase the notes for cash may be limited by restrictions on our ability to obtain funds for such repurchase through dividends from our subsidiaries, the terms of our then existing borrowing arrangements or otherwise. See Risk Factors Risks Related to the Notes and Our Common Stock We may not have the ability to repurchase the notes in cash upon the occurrence of a fundamental

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change, or to pay cash upon the conversion of notes, as required by the indenture governing the notes. If we fail to purchase the notes when required following a fundamental change, we will be in default under the indenture. In addition, we have, and may in the future incur, other indebtedness with similar change in control provisions permitting our holders to accelerate or to require us to purchase our indebtedness upon the occurrence of similar events or on some specific dates. We will not be required to make an offer to purchase the notes upon a fundamental change if a third party makes the offer in the manner, at the times, and otherwise in compliance with the requirements set forth in the indenture applicable to an offer by us to purchase the notes upon a fundamental change and such third party purchases all notes validly tendered and not withdrawn upon such offer.

Consolidation, Merger and Sale of Assets

The indenture provides that the Company shall not consolidate with or merge with or into, or convey, transfer or lease all or substantially all of its properties and assets to, another person, unless (i) the resulting, surviving or transferee person (if not the Company) is a person organized and existing under the laws of the United States of America, any State thereof or the District of Columbia, and such entity (if not the Company) expressly assumes by supplemental indenture all the obligations of the Company under the notes and the indenture; and (ii) immediately after giving effect to such transaction, no default has occurred and is continuing under the indenture. Upon any such consolidation, merger or transfer, the resulting, surviving or transferee person shall succeed to, and may exercise every right and power of, the Company under the indenture.

Although these types of transactions are permitted under the indenture, certain of the foregoing transactions could constitute a fundamental change (as defined above) permitting each holder to require us to purchase the notes of such holder as described above.

Reports

The indenture governing the notes will provide that any documents or reports that we are required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act will be filed with the trustee within 30 days after the same are required to be filed with the SEC.

Events of Default

Each of the following is an event of default under the indenture:

- (1) default in any payment of interest, including any additional interest, on any note when due and payable and the default continues for a period of 30 days;
- (2) default in the payment of principal of any note when due and payable at its stated maturity, upon required repurchase, upon declaration or otherwise;
- (3) failure by the Company to comply with its obligation to convert the notes in accordance with the indenture upon exercise of a holder's conversion right and the default continues for a period of 3 business days after there has been given, by registered or certified mail, to the Company by the trustee or by such holder, a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a notice of default under the indenture;
- (4) failure by the Company to give a fundamental change notice or notice of a specified corporate transaction as described under Conversion Upon Specified Corporate Transactions, in each case when due;

(5) failure on the part of the Company or Newmont USA Limited duly to observe or perform any other of the covenants or agreements on the part of the Company or Newmont USA Limited, as the case may be, in respect of the notes contained in the indenture and continuance of such default or breach for a period of 90 days after there has been given, by registered or certified mail, to the Company and Newmont USA Limited by the trustee or to the Company, Newmont USA Limited and the trustee by the

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holders of at least 25% in principal amount of the notes, a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a notice of default under the indenture;

(6) default by the Company or Newmont USA Limited with respect to any Material Indebtedness (as defined below), whether such Material Indebtedness now exists or shall hereafter be created (i) resulting in such indebtedness becoming or being declared due and payable prior to the date on which it would otherwise become due and payable or (ii) constituting a failure to pay the principal of any such indebtedness when due and payable at its stated maturity, upon required repurchase, upon declaration or otherwise; provided, that any event of default under either of the foregoing clauses (i) and (ii) shall be deemed cured and not to be continuing upon the payment of such indebtedness or the rescission or annulment of any acceleration of such indebtedness;

(7) a court having jurisdiction enters a decree or order for relief in respect of the Company or Newmont USA Limited in an involuntary case under any applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee or sequestrator (or similar official) of the Company or Newmont USA Limited or for all or substantially all of its property or ordering the winding up or liquidation of its affairs, and such decree or order remains unstayed and in effect for a period of 90 consecutive days;

(8) the Company or Newmont USA Limited commences a voluntary case under any applicable federal or state bankruptcy, insolvency or other similar law, or consents to the entry of an order for relief in an involuntary case under any such law, or consents to the appointment or taking possession by a receiver, liquidator, assignee, custodian, trustee or sequestrator (or similar official) of the Company or Newmont USA Limited, respectively, or for all or substantially all of its property, or makes any general assignment for the benefit of creditors; or

(9) except as permitted by the indenture, (i) the subsidiary guarantee of Newmont USA Limited with respect to the notes shall be held in any judicial proceeding to be unenforceable or invalid or shall cease for any reason to be in full force and effect, or (ii) Newmont USA Limited shall deny or disaffirm its obligation under its subsidiary guarantee with respect to the notes.

Material Indebtedness is indebtedness (other than indebtedness under the notes) of any one or both of the Company and Newmont USA Limited in an aggregate principal amount exceeding \$75,000,000.

If an event of default occurs and is continuing, the trustee by notice to the Company, or the holders of at least 25% in principal amount of the outstanding notes by notice to the Company and the trustee, may, and the trustee at the request of such holders shall, declare 100% of the principal of and accrued and unpaid interest, including any additional interest, on all the notes to be due and payable. In case of the events of default described in clauses (7) and (8) above, 100% of the principal of and accrued and unpaid interest on the notes will automatically become due and payable. Upon such a declaration, such principal and accrued and unpaid interest, including any additional interest, will be due and payable immediately.

Notwithstanding the foregoing, the indenture will provide that, to the extent elected by us, the sole remedy for an event of default relating to the failure to comply with the reporting obligations in the indenture, which are described above under Reports and for any failure to comply with the requirements of Section 314(a)(1) of the Trust Indenture Act will for the first 120 days after the occurrence of such an event of default consist exclusively of the right to receive additional interest on the notes at an annual rate equal to 0.25% of the principal amount of the notes. If we so elect, such additional interest will accrue on all outstanding notes from and including the date on which the event of default relating to the failure to comply with the reporting obligations in the indenture or the failure to comply with the requirements of Section 314(a)(1) of the Trust Indenture Act first occurs to but not including the 120th day thereafter (or such earlier date on which such event of default is cured or waived by the holders of a majority in principal amount of the outstanding notes). On such 120th day (or earlier, if the event of default relating to the

reporting obligations under the indenture or the failure to comply with the requirements of Section 314(a)(1) of the Trust Indenture Act is cured or waived by the holders of a majority in principal amount of the outstanding

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notes prior to such 120th day), such additional interest will cease to accrue and, if the event of default relating to reporting obligations or the failure to comply with Section 314(a)(1) of the Trust Indenture Act has not been cured or waived prior to such 120th day, the notes will be subject to acceleration as provided above. The provisions of the indenture described in this paragraph will not affect the rights of holders of notes in the event of the occurrence of any other event of default. In the event we do not elect to pay the additional interest upon an event of default in accordance with this paragraph, the notes will be subject to acceleration as provided above.

In order to elect to pay the additional interest on the notes as the sole remedy during the first 120 days after the occurrence of an event of default relating to the failure to comply with the reporting obligations in the indenture or the failure to comply with Section 314(a)(1) of the Trust Indenture Act in accordance with the immediately preceding paragraph, we must notify all holders of notes and the trustee and paying agent of such election on or before the close of business on the date on which such event of default first occurs.

The holders of a majority in principal amount of the outstanding notes may waive all past defaults (except with respect to nonpayment of principal or interest, including any additional interest) and rescind any acceleration with respect to the notes and its consequences if (1) rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (2) all existing events of default, other than the nonpayment of the principal of and interest, including additional interest, on the notes that have become due solely by such declaration of acceleration, have been cured or waived.

Subject to the provisions of the indenture relating to the duties of the trustee, if an event of default occurs and is continuing, the trustee will be under no obligation to exercise any of the rights or powers under the indenture at the request or direction of any of the holders of notes unless such holders have offered to the trustee indemnity or security reasonably satisfactory to it against any loss, liability or expense. Except to enforce the right to receive payment of principal or interest, including any additional interest, when due, no holder may pursue any remedy with respect to the indenture or the notes unless:

- (1) such holder has previously given the trustee notice that an event of default is continuing;
- (2) holders of at least 25% in principal amount of the outstanding notes have requested the trustee to pursue the remedy;
- (3) such holders have offered the trustee security or indemnity reasonably satisfactory to it against any loss, liability or expense;
- (4) the trustee has not complied with such request within 60 days after the receipt of the request and the offer of security or indemnity; and
- (5) the holders of a majority in principal amount of the outstanding notes have not given the trustee a direction that, in the opinion of the trustee, is inconsistent with such request within such 60-day period.

Subject to certain restrictions, the holders of a majority in principal amount of the outstanding notes are given the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee or of exercising any trust or power conferred on the trustee.

The indenture provides that in the event an event of default has occurred and is continuing, the trustee will be required in the exercise of its powers to use the degree of care that a prudent person would use in the conduct of its own affairs. The trustee, however, may refuse to follow any direction that conflicts with law or the indenture or that the trustee determines is unduly prejudicial to the rights of any other holder or that would involve the trustee in personal liability.

Prior to taking any action under the indenture, the trustee will be entitled to indemnification satisfactory to it in its sole discretion against all losses and expenses caused by taking or not taking such action.

The indenture provides that if a default occurs and is continuing and is known to the trustee, the trustee must mail to each holder of notes notice of the default within 90 days after it occurs. Except in the case of a default in the payment of principal of or interest on any note, the trustee may withhold notice if and so long as a committee of trust officers of the trustee in good faith determines that withholding notice is in the

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interests of the holders of notes. In addition, the Company is required to deliver to the trustee, within 120 days after the end of each fiscal year, a certificate indicating whether the signers thereof know of any default that occurred during the previous year with respect to the notes. The Company also is required to deliver to the trustee, within 30 days after the occurrence thereof, written notice of any events that would constitute certain defaults, their status and what action the Company is taking or proposes to take in respect thereof.

Modification and Amendment

Subject to certain exceptions, the indenture or the notes may be amended, with the consent of the holders of at least a majority in principal amount of the notes then outstanding (including without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, notes) and, subject to certain exceptions, any past default or compliance with any provisions may be waived with the consent of the holders of a majority in principal amount of the notes then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, notes). However, without the consent of each holder of an outstanding note affected, no amendment may, among other things:

- (1) reduce the amount of notes whose holders must consent to an amendment;
- (2) reduce the rate of or extend the stated time for payment of interest, including additional interest, on any note;
- (3) reduce the principal of or extend the stated maturity of any note;
- (4) make any change that adversely affects the conversion rights of any notes;
- (5) reduce the fundamental change purchase price of any note or amend or modify in any manner adverse to the holders of notes the Company's obligation to make such payment, whether through an amendment or waiver of provisions in the covenants, definitions or otherwise;
- (6) make any note payable in money other than that stated in the note or, other than in accordance with the provisions of the indenture, eliminate any existing subsidiary guarantee of the notes;
- (7) impair the right of any holder of a note to receive payment of principal and interest, including additional interest, on such holder's notes on or after the due dates therefore or to institute suit for the enforcement of any payment on or with respect to such holder's notes; or
- (8) make any change in the amendment provisions which require the consent of each holder of notes or in the waiver provisions with respect to the notes.

Without the consent of any holder, the Company and the trustee may amend the indenture and the notes to:

- (1) cure any ambiguity, omission, defect or inconsistency;
- (2) evidence the succession of another entity to the Company and provide for the assumption by a successor corporation, partnership, trust or limited liability company of the obligations of the Company under the indenture;
- (3) provide for uncertificated notes in addition to or in place of certificated notes (provided that the uncertificated notes are issued in registered form for purposes of Section 163(f) of the Internal Revenue Code of 1986, as amended (the Code), or in a manner such that the uncertificated notes are described in Section 163(f)(2)(B) of the Code);

(4) add guarantees with respect to the notes;

(5) secure the notes;

(6) add to the covenants of the Company for the benefit of the holders of notes or surrender any right or power conferred upon the Company with respect to the notes;

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- (7) evidence and provide for the acceptance of appointment of a successor trustee pursuant to the indenture;
- (8) comply with the provisions of any clearing agency, clearing corporation or clearing system, the trustee or the registrar with respect to the provisions of the indenture or the notes relating to transfers and exchanges of notes;
- (9) provide for the conversion of notes in accordance with the terms of the indenture;
- (10) make any change with respect to the notes that does not materially adversely affect the rights of any holder of notes;
- (11) comply with any requirement of the Commission in connection with the qualification of the indenture under the Trust Indenture Act; or
- (12) conform the provisions of the indenture to the Description of Notes section in this prospectus supplement.

The consent of the holders is not necessary under the indenture to approve the particular form of any proposed amendment. It is sufficient if such consent approves the substance of the proposed amendment. After an amendment under the indenture becomes effective, the Company is required to mail to the holders a notice briefly describing such amendment. However, the failure to give such notice to all the holders of notes, or any defect in the notice, will not impair or affect the validity of the amendment.

Discharge

We may satisfy and discharge our obligations under the indenture by (i) delivering to the security registrar for cancellation all outstanding notes or by depositing with the trustee or delivering to the holders of the notes, as applicable, after the notes have become due and payable, whether at stated maturity, or any purchase date, or upon conversion or otherwise, cash and shares of common stock (or, at our election, in lieu of such shares of our common stock, cash or any combination of cash and shares of our common stock), if applicable, sufficient to pay all of the outstanding notes, and (ii) paying all other sums payable under the indenture by us. Such discharge is subject to terms contained in the indenture.

Calculations in Respect of Notes

Except as otherwise provided above, we will be responsible for making all calculations called for under the notes or the indenture. These calculations include, but are not limited to, determinations of the last reported sale prices of our common stock, accrued interest payable on the notes and the conversion rate of the notes. We will make all these calculations in good faith and, absent manifest error, our calculations will be final and binding on the holders of the notes. We will provide a schedule of our calculations to each of the trustee and the conversion agent, and each of the trustee and the conversion agent is entitled to rely conclusively upon the accuracy of our calculations without independent verification. The trustee will forward our calculations to any holder of the notes upon the request of that holder.

Trustee

The Bank of New York Mellon Trust Company, N.A. will be the trustee, security registrar, paying agent and conversion agent for the notes. The Bank of New York Mellon Trust Company, N.A., in each of its capacities, including without limitation as trustee, security registrar, paying agent and conversion agent, assumes no responsibility for the accuracy or completeness of the information concerning us or our affiliates or any other party contained in this document or the related documents or for any failure by us or any other party to disclose events that

may have occurred and may affect the significance or accuracy of such information.

We may maintain banking relationships in the ordinary course of business with the trustee and its affiliates.

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Governing Law

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

Book-entry, Settlement and Clearance

The Global Notes

The notes will be initially issued in the form of one or more registered notes in global form, without interest coupons (the global notes). Upon issuance, each of the global notes will be deposited with the trustee as custodian for DTC and registered in the name of Cede & Co., as nominee of DTC.

Ownership of beneficial interests in a global note will be limited to persons who have accounts with DTC (DTC participants) or persons who hold interests through DTC participants (indirect participants). We expect that under procedures established by DTC:

upon deposit of a global note with DTC s custodian, DTC will credit portions of the principal amount of the global note to the accounts of the DTC participants designated by the underwriters; and

ownership of beneficial interests in a global note will be shown on, and transfer of ownership of those interests will be effected only through, records maintained by DTC (with respect to beneficial interests of DTC participants) and the records of DTC participants (with respect to the beneficial interests of indirect participants).

Beneficial interests in global notes may not be exchanged for notes in physical, certificated form except in the limited circumstances described below.

Book-Entry Procedures for the Global Notes

All interests in the global notes will be subject to the operations and procedures of DTC. We provide the following summary of those operations and procedures solely for the convenience of the holders of the notes. The operations and procedures of DTC are controlled by that settlement system and may be changed at any time. Neither we nor the underwriters are responsible for those operations or procedures.

DTC has advised us that it is

- a limited purpose trust company organized under the laws of the State of New York;
- a banking organization within the meaning of the New York State Banking Law;
- a member of the Federal Reserve System;
- a clearing corporation within the meaning of the Uniform Commercial Code; and
- a clearing agency registered under 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. DTC

participants include securities brokers and dealers, including the underwriters; banks and trust companies; clearing corporations and other organizations. Indirect access to DTC's system is also available to others such as banks, brokers, dealers and trust companies; these indirect participants clear through or maintain a custodial relationship with a DTC participant, either directly or indirectly. Investors who are not DTC participants may beneficially own securities held by or on behalf of DTC only through DTC participants or indirect participants.

So long as DTC's nominee is the registered owner of a global note, that nominee will be considered the sole owner or holder of the notes represented by that global note for all purposes under the indenture.

Except as provided below, owners of beneficial interests in a global note

will not be entitled to have notes represented by the global note registered in their names;

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will not receive or be entitled to receive physical, certificated notes; and

will not be considered the owners or holders of the notes under the indenture for any purpose, including with respect to the giving of any direction, instruction or approval to the trustee under the indenture.

As a result, each investor who owns a beneficial interest in a global note must rely on the procedures of DTC to exercise any rights of a holder of notes under the indenture (and, if the investor is not a DTC participant, on the procedures of the DTC participant through which the investor owns its interest).

The laws of some states require that certain persons take physical delivery of securities in definitive form. As a result, the ability to transfer beneficial interests in the global notes to such persons may be limited.

Payments of principal and interest (including additional interest) with respect to the notes represented by a global note will be made by the trustee to DTC's nominee as the registered holder of the global note. Neither we nor the trustee will have any responsibility or liability for the payment of amounts to owners of beneficial interests in a global note, for any aspect of the records relating to or payments made on account of those interests by DTC, or for maintaining, supervising or reviewing any records of DTC relating to those interests.

Because DTC can only act on behalf of DTC participants, who in turn act on behalf of indirect participants, the ability of a person having a beneficial interest in the principal amount represented by a global note to pledge such interest 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 evidencing its interest.

Neither we, nor the trustee, registrar, paying agent nor conversion agent have or will have any responsibility for the performance by DTC or any DTC participants or indirect participants of their respective 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 the notes, including the presentation of the notes for exchange, only at the direction of one or more DTC participants to whose account interests in the global notes are credited, and only in respect of the principal amount of the notes represented by the global notes as to which the DTC participant or DTC participants has or have given such direction.

Payments by DTC participants and indirect participants to the owners of beneficial interests in a global note will be governed by standing instructions and customary industry practice and will be the responsibility of those DTC participants or indirect participants and DTC.

Transfers between DTC participants will be effected under DTC's procedures and will be settled in same-day funds.

Certificated Notes

Notes in physical, certificated form will be issued and delivered to each person that DTC identifies as a beneficial owner of an interest in a global note only if

DTC notifies us at any time that it is unwilling or unable to continue as depository for the global notes and a successor depository is not appointed within 90 days;

DTC ceases to be registered as a clearing agency under the Exchange Act and a successor depository is not appointed within 90 days;

we, at our option, notify the trustee that we elect to cause the issuance of certificated notes, subject to DTC's procedures; or

certain other events provided in the indenture should occur.

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DESCRIPTION OF COMMON STOCK

Please read the information discussed under the heading "Description of Capital Stock" beginning on page 5 of the accompanying prospectus. As of December 31, 2008, we had 750,000,000 shares of authorized common stock, par value \$1.60 per share, of which (1) 443,062,428 shares were outstanding, including shares evidenced by Australian CHESS depository interests which represent beneficial ownership of shares of our common stock on a ten-for-one basis, and (2) 11,522,061 shares were issuable upon conversion of the exchangeable shares of Newmont Mining Corporation of Canada Limited ("Newmont Canada"), have economic rights equivalent to those of our common stock and are exchangeable on a one-for-one basis with shares of our common stock.

Upon completion of the Common Stock Offering, 473,062,428 shares of our common stock will be outstanding, based on the approximate number of shares of common stock issued and outstanding as of December 31, 2008 (assuming no exercise of the underwriters' option to purchase additional shares of common stock). See "Risk Factors - Risks Related to the Notes and Our Common Stock" There may be future sales or other dilution of our equity, which may adversely affect the market price of our common stock.

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CERTAIN UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS

The following is a summary of certain material U.S. federal income tax considerations relating to the purchase, ownership, and disposition of the notes and the shares of common stock into which the notes may be converted. This summary is based upon provisions of the U.S. Internal Revenue Code of 1986, as amended (the Code), applicable U.S. Treasury Regulations, administrative rulings, and judicial decisions in effect as of the date hereof, any of which may subsequently be changed, possibly retroactively, which may result in U.S. federal income tax consequences different from those discussed below. Except where noted, this summary deals only with a note or share of common stock held as a capital asset (generally, property held for investment) by a beneficial owner who purchased a note on original issuance at its issue price (the first price at which a substantial portion of the notes is sold to persons other than bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers). This summary does not address all aspects of U.S. federal income taxation and does not deal with all tax consequences that may be relevant to holders in light of their personal circumstances or particular situations, such as:

tax consequences to holders who may be subject to special tax treatment, including dealers in securities or currencies, financial institutions, regulated investment companies, real estate investment trusts, tax-exempt entities, insurance companies, or traders in securities that elect to use a mark-to-market method of accounting for their securities;

tax consequences to persons holding notes or common stock as a part of a hedging, integrated, conversion or constructive sale transaction or a straddle;

tax consequences to U.S. holders (as defined below) of notes or shares of common stock whose functional currency is not the U.S. dollar;

tax consequences to investors in pass-through entities;

alternative minimum tax consequences, if any;

any state, local or foreign tax consequences; and

estate or gift taxes consequences, if any.

If a partnership holds notes or shares of common stock, the tax treatment of a partner will generally depend upon the status of the partner and the activities of the partnership. If you are a partner in a partnership holding notes or shares of common stock, you should consult your tax advisors.

If a note is purchased for an amount that is less than the issue price of the notes, the beneficial owner generally will be subject to special rules under the Code referred to as the market discount rules. If a note is purchased for an amount that is greater than the issue price of the notes, the beneficial owner may be able to make an election to apply special rules referred to under the Code as the amortizable bond premium rules. In general, the market discount and amortizable bond premium rules can affect the timing, amount, and character of a beneficial owner's income with respect to the notes. These rules are not addressed in this summary. If you may purchase a note for an amount that is greater or less than the issue price of the notes, you should consult your tax advisors.

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If you are considering the purchase of notes, you should consult your tax advisors concerning the U.S. federal income tax consequences to you in light of your own specific situation, as well as consequences arising under the laws of any state, local, foreign, or other taxing jurisdiction, or under any applicable tax treaty.

As used herein, the term "U.S. holder" means a beneficial owner of notes or shares of common stock received upon conversion of the notes that is, for U.S. federal income tax purposes:

an individual citizen or resident of the United States;

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a corporation (or any other entity or arrangement treated as a corporation for U.S. federal income tax purposes) created or organized in 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 U.S. federal income taxation regardless of its source; or

a trust, if it (i) is subject to the primary supervision of a court within the United States and one or more U.S. persons have the authority to control all substantial decisions of the trust, or (ii) has a valid election in effect under applicable U.S. Treasury Regulations to be treated as a U.S. person.

A non-U.S. holder is a beneficial owner (other than a partnership, or entity or arrangement treated as a partnership, for U.S. federal income tax purposes) of notes or shares of common stock received upon conversion of the notes that is not a U.S. holder. Special rules may apply to certain non-U.S. holders such as controlled foreign corporations, passive foreign investment companies, corporations that accumulate earnings to avoid federal income tax or, in certain circumstances, individuals who are U.S. expatriates. Consequently, non-U.S. holders should consult their tax advisors to determine the U.S. federal, state, local, foreign and other tax consequences that may be relevant to them.

Consequences to U.S. Holders

Payment of Interest

It is anticipated, and this discussion assumes, that the notes will be issued for an amount equal to their principal amount. In such a case, interest on a note will generally be taxable to a U.S. holder as ordinary income at the time it is paid or accrued in accordance with the U.S. holder's usual method of accounting for tax purposes.

Additional Shares

In certain circumstances, we may be required to increase the applicable conversion rate by a number of additional shares for any conversion of notes in connection with certain fundamental changes. See *Description of Notes Conversion Rights Adjustment to Shares Delivered Upon Conversion Upon Certain Fundamental Changes*. This obligation to increase the applicable conversion rate in certain circumstances may implicate the U.S. Treasury Regulations relating to contingent payment debt instruments. Although the matter is not free from doubt, we intend to take the position (and this discussion assumes) that the possible increase in the applicable conversion rate for any conversion of notes in connection with such fundamental changes does not cause the notes to be treated as contingent payment debt instruments because such a possibility is a remote or incidental contingency within the meaning of applicable U.S. Treasury Regulations.

Our position that the notes are not contingent payment debt instruments is binding on U.S. holders unless they disclose their contrary positions to the U.S. Internal Revenue Service (IRS) in the manner required by applicable U.S. Treasury Regulations. Our position that the notes are not contingent payment debt instruments is not binding on the IRS. If the IRS were successfully to challenge our position and the notes were treated as contingent payment debt instruments, U.S. holders may be required, among other things, to accrue interest income at a rate higher than the stated interest rate on the notes, treat as ordinary income, rather than capital gain, any gain recognized on a sale, exchange or redemption of a note, and treat the entire amount of realized gain upon a conversion of notes as taxable.

Sale, Exchange, Redemption, or Other Taxable Disposition of Notes (Other Than a Conversion)

Except as provided below under *Consequences to U.S. Holders Conversion of Notes*, a U.S. holder will generally recognize gain or loss upon the sale, exchange, redemption or other taxable disposition of a note equal to the

difference between the amount realized (less accrued interest, which will be taxable as such) upon the sale, exchange, redemption, or other taxable disposition and such U.S. holder's adjusted tax basis in the note. A U.S. holder's tax basis in a note will generally be equal to the amount that the U.S. holder paid for the note. Any gain or loss recognized on a taxable disposition of the note will be capital gain or loss. If, at the time of the sale, exchange, redemption or other taxable disposition of the note, a U.S. holder is treated as

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holding the note for more than one year, such gain or loss will be a long-term capital gain or loss. Otherwise, such gain or loss will be a short-term capital gain or loss. In the case of certain non-corporate U.S. holders (including individuals), long-term capital gain generally will be subject to a maximum U.S. federal income tax rate of 15%, which maximum tax rate currently is scheduled to increase to 20% for dispositions occurring during the taxable years beginning on or after January 1, 2011. A U.S. holder's ability to deduct capital losses may be limited.

Conversion of Notes

If a U.S. holder receives solely cash in exchange for notes upon conversion, the U.S. holder's gain or loss will be determined in the same manner as if the U.S. holder disposed of the notes in a taxable disposition (as described above under *Consequences to U.S. Holders' Sale, Exchange, Redemption or Other Taxable Disposition of Notes (Other Than a Conversion)*).

The tax treatment of a conversion of a note into cash and shares of our common stock is uncertain, and depends in part on whether the notes constitute securities within the meaning of section 354 of the Code. There is no precise definition of securities for this purpose, and it is unclear whether the notes constitute securities. The determination of whether a debt instrument constitutes a security depends upon its overall nature. The most significant factor in this determination, although not decisive, is the instrument's term. A debt instrument with a term of ten years or more generally qualifies as a security, while a term of five years or less may be too short to qualify. Other factors include the degree of the holder's participation and continuing interest in the affairs of the issuer's business and the overall risk of loss on the investment. U.S. holders should consult their tax advisors regarding whether the notes constitute securities for these purposes and the consequences of a conversion of a note into cash and shares of common stock.

If the notes do not constitute securities for such purposes, although there is uncertainty concerning the federal income tax treatment due to the lack of authority, the conversion of a note into cash and shares of our common stock could be treated in part as a redemption and in part as a conversion, as discussed below. There is a risk that the IRS could take the position that the conversion of a note into cash and common stock is a fully taxable exchange, as discussed below. If the notes were to constitute securities within the meaning of section 354 of the Code, the conversion of a note into cash and common stock should be treated as a recapitalization within the meaning section 368(a)(1)(E) of the Code, the consequences of which are discussed below.

Treatment as part conversion and part redemption. If the notes are not treated as securities and if a conversion of notes in exchange for cash and shares of our common stock were characterized in part as a conversion and in part as a redemption for U.S. federal income tax purposes, the cash payment received should be treated as proceeds from the sale of a portion of the note and taxed in the manner described under *Consequences to U.S. Holders' Sale, Exchange, Redemption or Other Taxable Disposition of Notes (Other Than a Conversion)* above (or in the case of cash received in lieu of a fractional share, taxed as a disposition of a fractional share), and the common stock received should be treated as received upon a conversion of the remaining portion of the note, which generally should not be taxable to a U.S. holder except to the extent of any common stock received with respect to accrued interest. In such a case, the U.S. holder's tax basis in the note would generally be allocated pro rata among the portion of the note exchanged for common stock, any fractional share that is deemed sold for cash, and the portion of the note that is treated as sold for cash. To the extent any common stock is deemed allocable to accrued but unpaid interest, the basis in such stock will equal its fair market value at the time of conversion. The holding period for the common stock received in the conversion (other than common stock received with respect to accrued interest) should include the holding period for the note being converted.

Treatment as a fully taxable exchange. If the notes are not treated as securities and if the conversion of a note into cash and shares of our common stock is treated as a fully taxable exchange, a U.S. holder should recognize gain or loss in an amount determined in the same manner as if the U.S. holder disposed of the notes in a taxable disposition

(as described above under Consequences to U.S. Holders Sale, Exchange, Redemption or Other Taxable Disposition of Notes (Other Than a Conversion)).

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Treatment as a recapitalization. If the notes were to be treated as securities within the meaning of section 354 of the Code, a conversion of notes in exchange for cash and shares of our common stock should be characterized as a recapitalization for U.S. federal income tax purposes. In such case, gain, but not loss, would be recognized. The gain would be equal to the excess of the cash received (other than amounts attributable to accrued interest, which will be treated as such, or amounts attributable to any cash received in lieu of a fractional share) plus the fair market value of the common stock received (including any fractional share deemed received) over a U.S. holder's adjusted tax basis in the notes, but in no event should the gain required to be recognized exceed the amount of cash received (excluding cash in lieu of a fractional share). Any gain or loss recognized on conversion generally would be capital gain or loss and would be long-term capital gain or loss if, at the time of conversion, the note has been held for more than one year.

The tax basis of the shares of our common stock received upon a conversion (other than common stock attributable to accrued interest, the tax basis of which would equal the amount of accrued interest with respect to which the common stock was received, but including any fractional shares deemed received) would equal the adjusted tax basis of the note that was converted, reduced by the amount of any cash received (other than cash received in lieu of a fractional share or cash attributable to accrued interest), and increased by the amount of gain, if any, recognized (other than with respect to a fractional share). The amount of gain or loss recognized on the receipt of cash in lieu of a fractional share would be equal to the difference between the amount of cash a U.S. holder receives in respect of the fractional share and the portion of the U.S. holder's adjusted tax basis in the shares received and deemed received that is allocable to the fractional share. A U.S. holder's holding period for shares of common stock would include the period during which the U.S. holder held the notes, except that the holding period of any common stock received with respect to accrued interest would commence on the day after the date of receipt.

If a U.S. holder's receipt of cash and common stock upon a conversion of a note is treated as a recapitalization for U.S. federal income tax purposes, a U.S. holder may be subject to information reporting and document retention requirements under U.S. Treasury Regulation section 1.368-3. U.S. holders should discuss these potential requirements with their tax advisors.

Distributions

Distributions, if any, made on our common stock generally will be included in a U.S. holder's income as ordinary dividend income to the extent of our current and accumulated earnings and profits. However, with respect to dividends received by individuals, for taxable years beginning before January 1, 2011, such dividends are generally taxed at the lower applicable long-term capital gains rates, 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 a U.S. holder's adjusted tax basis in the common stock and thereafter as capital gain from the sale or exchange of such common stock. Dividends received by a corporation may be eligible for a dividends received deduction, subject to applicable limitations.

Constructive Distributions

The conversion rate of the notes will be adjusted in certain circumstances. See the discussion under the heading Description of Notes Conversion Rights Conversion Rate Adjustments and Description of Notes Conversion Rights Adjustment to Shares Delivered Upon Conversion Upon Certain Fundamental Changes. Adjustments (or failures to make adjustments) that have the effect of increasing a U.S. holder's proportionate interest in our assets or earnings may in some circumstances result in a deemed distribution to a U.S. holder for U.S. federal income tax purposes. Adjustments to the conversion rate made pursuant to a bona fide reasonable adjustment formula that has the effect of preventing the dilution of the interest of the holders of the notes, however, will generally not be considered to result in a deemed distribution to a U.S. holder. Certain of the possible conversion rate adjustments provided in the notes

(including, without limitation, adjustments in respect of taxable dividends to holders of our common stock) will not qualify as being pursuant to a bona fide reasonable adjustment formula. If such adjustments are made, a U.S. holder will be deemed to have received a distribution even though the U.S. holder has not received any cash or property as a result of such adjustments. Any deemed distributions will be taxable as a dividend, return of capital, or capital gain in

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accordance with the earnings and profits rules under the Code. It is not clear under existing law whether a constructive dividend deemed paid to a U.S. holder would be eligible for the preferential rates of U.S. federal income tax applicable in respect of certain dividends received. It is also unclear under existing law whether corporate holders would be entitled to claim the dividends received deduction with respect to any such constructive dividends. Because a constructive dividend deemed received by a U.S. holder would not give rise to any cash from which any applicable withholding tax could be satisfied, if we pay backup withholding taxes on behalf of a U.S. holder (because such U.S. holder failed to establish an exemption from backup withholding), we may, at our option and pursuant to certain provisions of the indenture, set-off any such payment against payments of cash and common stock payable on the notes.

Sale, Exchange, Certain Redemptions or Other Taxable Dispositions of Common Stock

Upon the sale, exchange, certain redemptions or other taxable dispositions of our common stock, a U.S. holder 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 such taxable disposition and (ii) the U.S. holder's adjusted tax basis in the common stock. Such capital gain or loss will be long-term capital gain or loss if a U.S. holder's holding period in the common stock is more than one year at the time of the taxable disposition. Long-term capital gains recognized by certain non-corporate U.S. holders (including individuals) will generally be subject to a maximum U.S. federal income tax rate of 15%, which maximum is currently scheduled to increase to 20% for dispositions occurring during taxable years beginning on or after January 1, 2011. The deductibility of capital losses is subject to limitations.

Possible Effect of Changes to the Notes

In certain situations, we may provide for the conversion of the notes into shares of an acquirer (as described above under Description of Notes Conversion Rights Recapitalizations, Reclassifications and Changes of Our Common Stock). In addition, subject to certain exceptions, the terms of the notes may be modified or amended (as described above under Description of Notes Modification and Amendment). Depending on the circumstances, such changes to the notes could result in a deemed taxable exchange to a holder and the modified note could be treated as newly issued at that time, potentially resulting in the recognition of taxable gain or loss.

Information Reporting and Backup Withholding

Information reporting requirements generally will apply to payments of interest on the notes and dividends on shares of common stock and to the proceeds of a sale of a note or share of common stock paid to a U.S. holder unless the U.S. holder is an exempt recipient (such as a corporation) and properly establishes its exemption. Backup withholding generally will apply to those payments if the U.S. holder fails to provide its correct taxpayer identification number, or certification of exempt status, or if the U.S. holder is notified by the IRS that it has failed to report in full payments of interest and dividend income. Any amounts withheld under the backup withholding rules generally will be allowed as a refund or a credit against a U.S. holder's U.S. federal income tax liability, if any, provided the required information is furnished to the IRS in a timely manner.

Consequences to Non-U.S. Holders

Payments of Interest

The 30% U.S. federal withholding tax generally will not be applied to any payment of interest to a non-U.S. holder provided that:

the non-U.S. holder does not actually or by attribution own 10% or more of the total combined voting power of all classes of our stock that are entitled to vote within the meaning of section 871(h)(3) of the Code;

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the non-U.S. holder is not a controlled foreign corporation that is related to us within the meaning of section 864(d)(4) of the Code;

the non-U.S. holder is not a bank whose receipt of interest on a note is described in section 881(c)(3)(A) of the Code; and

(a) the non-U.S. holder provides its name and address, and certifies, under penalties of perjury, that it is not a U.S. person (which certification may be made on an IRS Form W 8BEN (or other applicable form)) or (b) the non-U.S. holder holds the notes through certain foreign intermediaries or certain foreign partnerships, and the non-U.S. holder and the foreign intermediary or foreign partnership satisfies the certification requirements of applicable U.S. Treasury Regulations.

Special certification rules apply to non-U.S. holders that are pass-through entities.

If a non-U.S. holder cannot satisfy the requirements described above, payments of interest generally will be subject to the 30% U.S. federal withholding tax, unless the non-U.S. holder provides us with a properly executed (1) IRS Form W-8BEN (or other applicable form) claiming an exemption from or reduction in withholding under the benefit of an applicable income tax treaty or (2) IRS Form W-8ECI (or other applicable form) stating that interest paid on the notes is not subject to withholding tax because it is effectively connected with the non-U.S. holder's conduct of a trade or business in the United States. If a non-U.S. holder is engaged in a trade or business in the United States and interest on the notes is effectively connected with the conduct of that trade or business and, if required by an applicable income tax treaty, is attributable to a U.S. permanent establishment, then (although the non-U.S. holder will be exempt from the 30% withholding tax provided the certification requirements discussed above are satisfied) the non-U.S. holder will be subject to U.S. federal income tax on that interest on a net income basis in the same manner as if the non-U.S. holder were a U.S. holder. In addition, if a non-U.S. holder is a foreign corporation, it may be subject to a branch profits tax equal to 30% (or lesser rate under an applicable income tax treaty) of its earnings and profits for the taxable year, subject to adjustments, that are effectively connected with its conduct of a trade or business in the United States.

Dividends and Constructive Distributions

Subject to the discussion below under the heading Foreign Investment in Real Property Tax Act, any dividends paid to a non-U.S. holder with respect to the shares of common stock (and any deemed dividends resulting from certain adjustments, or failure to make adjustments, to the conversion rate, see Consequences to U.S. Holders Constructive Distributions above) generally will be subject to withholding tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty. However, dividends that are effectively connected with the conduct of a trade or business within the United States and, where a tax treaty applies, are attributable to a U.S. permanent establishment, are not subject to the withholding tax, but instead are subject to U.S. federal income tax on a net income basis at applicable graduated individual or corporate rates. Certain certification requirements and disclosure requirements must be complied with in order for effectively connected income to be exempt from withholding. Any such effectively connected income received by a foreign corporation may, under certain circumstances, be subject to an additional branch profits tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty. Because a constructive dividend deemed received by a non-U.S. holder would not give rise to any cash from which any applicable withholding tax could be satisfied, if we pay withholding taxes on behalf of a non-U.S. holder, we may, at our option and pursuant to certain provisions of the indenture, set-off any such payment against payments of cash and common stock payable on the notes.

A non-U.S. holder of shares of common stock who wishes to claim the benefit of an applicable treaty rate is required to satisfy applicable certification and other requirements. If a non-U.S. holder is eligible for a reduced rate of U.S. withholding tax pursuant to an income tax treaty, it may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund with the IRS.

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Sale, Exchange, Certain Redemptions, Conversion or Other Taxable Dispositions of Notes or Shares of Common Stock

Gain realized by a non-U.S. holder on the sale, exchange, certain redemptions or other taxable disposition of a note or common stock, as well as upon the conversion of a note into cash or into a combination of cash and stock, generally will not be subject to U.S. federal income tax unless:

that gain is effectively connected with the non-U.S. holder's conduct of a trade or business in the United States (and, if required by an applicable income treaty, is attributable to a U.S. permanent establishment);

the non-U.S. holder is an individual who is present in the United States for 183 days or more in the taxable year of that disposition, and certain other conditions are met; or

we are or have been a United States real property holding corporation (a USRPHC) for U.S. federal income tax purposes during the shorter of the non-U.S. holder's holding period or the 5-year period ending on the date of disposition of the notes or common stock, as the case may be.

If a non-U.S. holder is an individual described in the first bullet point above, such holder will be subject to tax on the net gain derived from the sale, exchange, redemption, conversion or other taxable disposition of a note or common stock under regular graduated U.S. federal income tax rates. If a non-U.S. holder is an individual described in the second bullet point above, such holder generally will be subject to a flat 30% tax on the gain recognized on the sale, exchange, redemption, conversion or other taxable disposition of a note or common stock, which gain may be offset by U.S. source capital losses, even though such holder is not considered a resident of the United States. If a non-U.S. holder is a foreign corporation that falls under the first bullet point above, it will be subject to tax on its net gain generally in the same manner as if it were a U.S. person as defined under the Code and, in addition, it may be subject to the branch profits tax equal to 30% of its effectively connected earnings and profits, or at such lower rate as may be specified by an applicable income tax treaty. Any common stock which a non-U.S. holder receives on the conversion of a note which is attributable to accrued interest will be subject to U.S. federal income tax in accordance with the rules for taxation of interest described above under *Consequences to Non-U.S. Holders - Payments of Interest*. If a non-U.S. holder's receipt of cash and common stock upon a conversion of a note is treated as a recapitalization for U.S. federal income tax purposes, a non-U.S. holder may be subject to information reporting and document retention requirements under U.S. Treasury Regulation section 1.368-3. Non-U.S. holders should discuss these potential requirements with their tax advisors. The U.S. federal income tax consequences that may apply to a non-U.S. holder in the event that we were, currently are or become a USRPHC are described below under the heading *Foreign Investment in Real Property Tax Act*.

Foreign Investment in Real Property Tax Act

Under U.S. federal income tax laws enacted as part of the Foreign Investment in Real Property Tax Act (FIRPTA), any person that acquires a United States real property interest (USRPI) (as described below) from a non-U.S. holder, or that makes a distribution to a non-U.S. holder with respect to a USRPI, generally must deduct a U.S. federal withholding tax equal to 10% of the gross proceeds paid to the non-U.S. holder (or possibly, in the case of a distribution, equal to 30% if such person follows certain procedures under U.S. Treasury Regulations under section 1441 of the Code) (referred to as FIRPTA withholding). In addition, a non-U.S. holder that disposes of a USRPI, or that receives a distribution with respect to a USRPI, may be required to pay additional U.S. federal income tax with respect to such disposition or distribution to the extent that any FIRPTA withholding is not sufficient to otherwise fully satisfy such non-U.S. holder's tax liabilities (referred to as the FIRPTA tax). In general, a non-U.S. holder that is subject to FIRPTA withholding or the FIRPTA tax will be required to timely file a U.S. federal income tax return reporting any required amounts as income effectively connected with the conduct of a trade or

business in the U.S. and pay any FIRPTA tax due upon the filing of such return (or, depending upon the circumstances, earlier through estimated payments).

For purposes of FIRPTA withholding and the FIRPTA tax, a USRPI generally includes any interest (other than an interest solely as a creditor) in a U.S. corporation, unless it is established under specified procedures

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that the U.S. corporation was not a USRPHC at any time during the shorter of either (i) the 5-year period ending on the date of the relevant disposition or distribution or (ii) the period during which a non-U.S. holder held an interest in the U.S. corporation. In general, a U.S. corporation is classified as a USRPHC if the fair market value of its interests in U.S. real property equals or exceeds 50% of the sum of the fair market value of its worldwide real property interests plus any other assets used or held for use in its trade or business.

However, even if a U.S. corporation is generally classified as a USRPHC, an exemption to FIRPTA withholding and the FIRPTA tax may be available pursuant to U.S. Treasury Regulations issued under section 897 and section 1445 of the Code. In particular, although existing law is not entirely clear, under U.S. Treasury Regulation sections 1.897-1(c)(2)(iii)(A) and 1.897-9T(b) an interest held by a non-U.S. holder generally will not be treated as a USRPI (and therefore an exemption to FIRPTA withholding and the FIRPTA tax generally will be available) if (i) any class of the U.S. corporation's stock is regularly traded on an established securities market and (ii) such non-U.S. holder has never directly, indirectly, or constructively held (x) in the case of a regularly traded class of interests (referred to as a regularly traded interest), more than 5% of the total fair market value of that class of interests, or (y) in the case of a non-regularly traded class of interests that is convertible into a regularly traded class of interests (referred to as a non-regularly traded convertible interest), an amount of such non-regularly traded class of interests with an aggregate fair market value greater than 5% of the total fair market value of the regularly traded class of interests (such a non-U.S. holder is referred to as a non-significant non-U.S. holder). For purposes of determining whether a non-U.S. holder is a non-significant non-U.S. holder, a number of special rules apply, including certain ownership attribution rules and, in the case of a non-U.S. holder that holds a non-regularly traded convertible interest, a rule that requires the aggregation of any subsequently acquired interests of the same class with any previously acquired interests and the valuation of all such interests as of the date of the most recent subsequent acquisition.

Based on the current and potential future composition of our worldwide assets, we believe that we may currently be a USRPHC and, even if we are not currently a USRPHC, we can give no assurance that we may not become a USRPHC in the future or that we may not have been a USRPHC in the past. In addition, although it is possible that the notes may become regularly traded interests in the future, we generally expect that the notes will initially constitute non-regularly traded convertible interests for purposes of determining whether a non-U.S. holder may qualify as a non-significant non-U.S. holder. As a result, even though existing law is not entirely clear and the application of the rules described above is not entirely free from doubt (such that there are no clear guidelines to follow in determining whether a non-U.S. holder may qualify as a non-significant non-U.S. holder), based on the law and facts and circumstances as they currently exist, even if we otherwise believe we are a USRPHC we intend to take the position that the notes will not constitute USRPIs provided that at the relevant time (i) our common stock is regularly traded on an established securities market and (ii) the applicable non-U.S. holder qualifies as a non-significant non-U.S. holder by reason of never exceeding the ownership threshold generally described above for non-regularly traded convertible interests (as well as by reason of never exceeding the ownership threshold generally described above for regularly traded interests, if we believe the notes may have become regularly traded interests) and makes a timely certification in a manner acceptable to us to such effect using forms effectively provided by us.

Accordingly, provided that the above conditions are satisfied, and absent any guidance from the IRS or any change or clarification of law or interpretation thereof (whether administrative, including unpublished guidance, judicial or legislative), we currently do not intend to withhold amounts in respect of FIRPTA withholding from amounts payable to non-significant non-U.S. holders in connection with our acquisition of the notes (including upon a conversion of the notes) or in connection with any deemed distributions made to such non-U.S. holders in respect of our common stock (as a result of a change in the conversion rate of the notes). In addition, although existing law is not entirely clear, in the event our common stock remains regularly traded on an established securities market and such non-U.S. holder has never directly, indirectly, or constructively held common stock worth more than 5% of the total fair market value of our outstanding common stock, such non-U.S. holder generally should not be subject to FIRPTA withholding or the FIRPTA tax upon the receipt of an actual dividend with respect to common stock or upon a disposition of common

stock.

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However, it is possible the IRS could disagree with our position, in which case we may be liable for our failure to withhold amounts in respect of FIRPTA withholding and non-U.S. holders may be liable for FIRPTA tax, including interest and penalties if they fail to timely file a U.S. federal income tax return and pay such tax when due.

Furthermore, purchasers may generally be required to withhold amounts in respect of FIRPTA withholding upon their acquisition of a note or common stock from a non-U.S. holder, and may not agree with the position that we intend to take regarding the applicability of the potential exceptions to FIRPTA described above. If a non-U.S. holder does not qualify as a non-significant non-U.S. holder by providing timely certification in a manner acceptable to us using forms effectively provided by us, or if we otherwise determine in our sole discretion that a change in applicable facts and circumstances or change in applicable law or guidance or interpretation thereof has occurred, we generally intend to withhold 10% of certain amounts payable to non-U.S. holders in respect of the notes or common stock (or possibly 30% with respect to distributions pursuant to procedures under section 1441 of the Code) in order to satisfy our FIRPTA withholding obligations (including, without limitation, upon a conversion of the notes).

Non-U.S. holders are urged to consult their own tax advisors as to whether the sale, exchange, repurchase, redemption, or conversion of the notes or possibly a sale, exchange, repurchase, or redemption of the common stock, or whether any actual or deemed distributions, may be subject to U.S. federal income tax under FIRPTA, regardless of whether we or any other purchaser withholds in order to satisfy FIRPTA withholding obligations. In addition, prospective purchasers are urged to consult their own tax advisors regarding the tax consequences of acquiring, owning and disposing of a note or common stock, including any potential obligation of a purchaser to withhold certain amounts under FIRPTA upon the acquisition of a note or common stock. If an applicable exemption is available (by reason of a non-U.S. holder qualifying as a non-significant non-U.S. holder or otherwise), any amounts withheld by us or other purchasers generally will be refunded or credited against a non-U.S. holder's U.S. federal income tax liability provided the required forms and information are timely furnished to the IRS.

Information Reporting and Backup Withholding

Generally, we must report annually to the IRS and to non-U.S. holders the amount of interest and dividends paid to non-U.S. holders and the amount of tax, if any, withheld with respect to those payments. Copies of the information returns reporting such interest, dividends and withholding may also be made available to the tax authorities in the country in which a non-U.S. holder resides under the provisions of an applicable income tax treaty.

In general, a non-U.S. holder will not be subject to backup withholding with respect to payments of interest or dividends that we make, provided the statement described above in the last bullet point under *Consequences to Non-U.S. Holders - Payments of Interest* has been received (and we do not have actual knowledge or reason to know that the holder is a U.S. person, as defined under the Code, that is not an exempt recipient). In addition, a non-U.S. holder will be subject to information reporting and, depending on the circumstances, backup withholding with respect to the payment of the proceeds on the disposition of a note or share of common stock within the United States or conducted through certain U.S.-related financial intermediaries, unless the statement described above has been received (and we do not have actual knowledge or reason to know that a holder is a U.S. person, as defined under the Code, that is not an exempt recipient) or the non-U.S. holder otherwise establishes an exemption. Any amounts withheld under the backup withholding rules generally will be allowed as a refund or a credit against a non-U.S. holder's U.S. federal income tax liability, if any, provided the required information is timely furnished to the IRS in a timely manner.

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CERTAIN BENEFIT PLAN INVESTOR CONSIDERATIONS

The following is a summary of certain considerations associated with the purchase, holding and disposition of the notes and the shares of common stock that may be issuable upon conversion of the notes by employee benefit plans that are subject to Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA), individual retirement accounts and other arrangements that are subject to the prohibited transactions rules under Section 4975 of the Code or provisions under any federal, state, local, non-U.S. or other laws or regulations that are similar to such provisions of ERISA or the Code (collectively, similar laws), and entities whose underlying assets are considered to include plan assets (within the meaning of ERISA and any similar laws) of such plans, accounts and arrangements (each, a plan).

General Fiduciary Matters

ERISA and the Code impose certain duties on persons who are fiduciaries of a plan subject to Title I of ERISA or a plan subject to the prohibited transactions rules under Section 4975 of the Code (an ERISA plan) and prohibit certain transactions involving the assets of an ERISA plan and its fiduciaries or other interested parties. Under ERISA, any person who exercises any discretionary authority or control over the administration of an ERISA plan or the management or disposition of the assets of an ERISA plan, or who renders investment advice for a fee or other compensation to an ERISA plan, is generally considered to be a fiduciary of the ERISA plan.

In considering an investment in the notes and the shares of common stock that may be issuable upon conversion of the notes of the assets of any plan, a fiduciary should determine whether the investment is in accordance with the documents and instruments governing the plan and the applicable provisions of ERISA, the Code or any similar laws relating to a fiduciary's duties to the plan including, without limitation, the prudence, diversification, delegation of control and prohibited transaction provisions of ERISA, the Code and any other applicable similar laws, as well as whether the investment will result in unrelated business taxable income. ERISA plan fiduciaries must make their own determinations regarding the investment, taking into consideration all of the specific facts and circumstances of the plan and an investment in the notes and the shares of common stock that may be issuable upon conversion of the notes.

Prohibited Transaction Issues

Section 406 of ERISA and Section 4975 of the Code prohibit ERISA plans from engaging in specified transactions involving plan assets with persons or entities who are parties in interest, within the meaning of ERISA, or disqualified persons, within the meaning of Section 4975 of the Code, unless an exemption is available. A party in interest or disqualified person, including a fiduciary, of an ERISA plan who engages in a non-exempt prohibited transaction may be subject to excise taxes and other penalties and liabilities under ERISA and the Code.

Whether or not our underlying assets are deemed to include plan assets, the acquisition and/or holding of notes and the shares of common stock that may be issuable upon conversion of the notes by an ERISA plan with respect to which we or the underwriters or any respective affiliates are considered a party in interest or a disqualified person may constitute or result in a direct or indirect prohibited transaction under Section 406 of ERISA and/or Section 4975 of the Code, unless the investment is acquired and is held in accordance with an applicable statutory, class or individual prohibited transaction exemption. In this regard, the U.S. Department of Labor has issued prohibited transaction class exemptions (PTCEs) that may apply to the acquisition and holding of the notes and the shares of common stock that may be issuable upon conversion of the notes. These class exemptions include, without limitation, PTCE 84-14, for specified transactions determined by independent qualified professional asset managers, PTCE 90-1, for specified

transactions involving insurance company pooled separate accounts, PTCE 91-38, for specified transactions involving bank collective investment funds, PTCE 95-60, for specified transactions involving life insurance company general accounts and PTCE 96-23, for specified transactions determined by in-house asset managers, although there can be no assurance that all of the conditions of any such exemptions will be satisfied.

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In addition, Section 408(b)(17) of ERISA and Section 4975(d)(20) of the Code provide an exemption for the purchase and holding of the notes and the shares of common stock that may be issuable upon conversion of the notes by an ERISA plan with respect to which we or the underwriters, or certain affiliates, are a party in interest or a disqualified person, provided that neither the party in interest or disqualified person, nor certain of its affiliates, have or exercise any discretionary authority or control or render any investment advice with respect to the assets of any ERISA plan involved in the transaction, and provided further that the ERISA plan pays no more and receives no less than adequate consideration in connection with the transaction.

Because of the foregoing, the notes and the shares of common stock that may be issuable upon conversion of the notes may not be purchased or held by any person investing plan assets of any plan, unless the purchase, holding and disposition of the notes and such shares of common stock will not constitute a non-exempt prohibited transaction under ERISA and the Code or violate any applicable similar laws.

Representation and Warranty

Accordingly, by its acceptance of a note or the shares of common stock that may be issuable upon conversion of the note, each purchaser and subsequent transferee will be deemed to have represented and warranted that either (i) no portion of the assets used by such purchaser or transferee to acquire and hold the notes or the shares of common stock that may be issuable upon conversion of the notes constitutes assets of any plan or (ii) the purchase, holding and disposition of the notes and the shares of common stock that may be issuable upon conversion of the notes by such purchaser or transferee will not constitute a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code or a violation of any applicable similar laws.

The foregoing discussion is general in nature and is not intended to be all-inclusive. Due to the complexity of these rules and the penalties and taxes that may be imposed upon persons involved in non-exempt prohibited transactions, it is particularly important that fiduciaries or other persons considering investing in the notes and the shares of common stock that may be issuable upon conversion of the notes on behalf of, or with the assets of, any plan, consult with their counsel regarding the potential applicability of ERISA, Section 4975 of the Code and any similar laws to such transactions and whether an exemption would be available.

Purchasers and transferees of the notes have exclusive responsibility for ensuring that their purchase, holding and disposition of the notes or the shares of common stock that may be issuable upon conversion of the notes do not violate the fiduciary or prohibited transaction rules of ERISA, the Code or any similar laws. The sale of any notes and the shares of common stock that may be issuable upon conversion of the notes to any plan is in no respect a representation by us or any of our affiliates or representatives that such an investment meets all relevant legal requirements with respect to investments by such plans generally or any particular plan, or that such an investment is appropriate for such plans generally or any particular plan.

Table of Contents**UNDERWRITING**

Citigroup Global Markets Inc. and J.P. Morgan Securities Inc. are acting as joint book running managers of the offering and as representatives of the underwriters named below. Subject to the terms and conditions stated in the underwriting agreement dated the date of this prospectus supplement, each underwriter named below has severally agreed to purchase, and we have agreed to sell to that underwriter, the aggregate principal amount of notes set forth opposite the underwriter's name:

Underwriter	Principal Amount of Notes
Citigroup Global Markets Inc.	\$ 180,000,000
J.P. Morgan Securities Inc.	180,000,000
BMO Capital Markets Corp.	90,000,000
Total	\$ 450,000,000

The underwriters are committed to purchase all of the notes offered by us if they purchase any notes. The underwriting agreement also provides that if an underwriter defaults, the purchase commitments of non-defaulting underwriters may also be increased or the offering may be terminated.

The underwriters propose to offer the notes directly to the public at the initial public offering price set forth on the cover page of this prospectus supplement and to certain dealers at a discount from the initial public offering price of up to 1.50% of the principal amount of the notes. After the initial offering of the notes to the public, the offering price and other selling terms may be changed by the underwriters. Sales of notes made outside of the United States may be made by affiliates of the underwriters.

The underwriters have an option to buy up to an additional \$67,500,000 aggregate principal amount of notes at the initial offering price less the underwriters' discount. Notes issued pursuant to the exercise, if any of these options, must be issued within the 13-day period commencing on and including the date of the original issuance of the notes. The underwriters may exercise the option solely to cover over-allotments. If any notes are purchased with this over-allotment option, the underwriters will purchase notes in approximately the same proportion as shown in the table above. If any additional notes are purchased, the underwriters will offer the additional notes on the same terms as those on which the notes are being offered.

We and our directors and executive officers have entered into lock up agreements with the underwriters prior to the commencement of this offering pursuant to which we and each of these persons, with limited exceptions, for a period of 90 days after the date of this prospectus supplement, may not, without the prior written consent of each of the representatives, (1) offer, pledge, announce the intention to sell, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any shares of our common stock or any securities convertible into or exercisable or exchangeable for common stock (including, without limitation, common stock which may be deemed to be beneficially owned by such officers and directors in accordance with the rules and regulations of the SEC and securities which may be issued upon exercise of a stock option or warrant) or (2) enter into any swap or other

agreement that transfers, in whole or in part, any of the economic consequences of ownership of the common stock, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of common stock or such other securities, in cash or otherwise or (3) make any demand for or exercise any right with respect to the registration of any shares of common stock or any security convertible into or exercisable or exchangeable for common stock.

Notwithstanding the above, the underwriters have agreed in the underwriting agreement that the lock-up agreement will not apply to us with respect to (1) the issuance of shares under the terms of our existing convertible notes and the notes sold in this offering, (2) our sale of our common stock in the Common Stock Offering, (3) the grant of options or issuance of shares of our common stock to employees or directors by us in the ordinary course of business and (4) the issuance by us of shares of our common stock upon the exercise of options granted under company stock plans. In addition, notwithstanding the lock-up agreements applicable to our directors and executive officers, the underwriters have agreed that such directors and executive officers

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may transfer (a) shares of common stock (or stock options exercisable for common stock) by gift (including charitable donations or gifts) or for estate planning purposes (provided that each donee or distributee agrees to be bound by the lock-up agreement), (b) shares (or stock options exercisable for common stock) to partners of such persons, (c) shares acquired in the open market after the closing of this offering and the Common Stock Offering, and (d) pursuant to a trading plan that complies with the requirements of Rule 10b5-1 under the Exchange Act, provided that in the case of clause (a), (b) or (c) above no filing by any party under the Exchange Act or other public announcement shall be required or made voluntarily in connection with such transfer or distribution (other than a filing on Form 5 made after the expiration of the 90-day period referred to above).

The notes are a new issue of securities, and there is currently no established trading market for the notes. The underwriters have advised us that they intend to make a market in the notes, but they are not obligated to do so. The underwriters may discontinue any market making in the notes at any time in their sole discretion without notice. Accordingly, we cannot assure you that a liquid trading market will develop for the notes, that you will be able to sell your notes at a particular time or that the prices you receive when you sell will be favorable.

We estimate that the total expenses of this offering, including registration, filing and listing fees, printing fees and legal and accounting expenses, but excluding the underwriting discount, will be approximately \$1.0 million.

In connection with this offering, the underwriters may engage in stabilizing transactions, which involves making bids for, purchasing and selling notes in the open market for the purpose of preventing or retarding a decline in the market price of the notes while this offering is in progress. These stabilizing transactions may include making short sales of the notes, which involves the sale by the underwriters of a greater number of notes than they are required to purchase in this offering, and purchasing notes on the open market to cover positions created by short sales. Short sales may be covered shorts, which are short positions in an amount not greater than the underwriters' over allotment option referred to above, or may be naked shorts, which are short positions in excess of that amount. The underwriters may close out any covered short position either by exercising their over allotment option, in whole or in part, or by purchasing notes in the open market. In making this determination, the underwriters will consider, among other things, the price of notes available for purchase in the open market compared to the price at which the underwriters may purchase notes through the over allotment option. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the notes in the open market that could adversely affect investors who purchase in this offering. To the extent that the underwriters create a naked short position, they will purchase notes in the open market to cover the position.

The underwriters have advised us that, pursuant to Regulation M promulgated under the Securities Act, they may also engage in other activities that stabilize, maintain or otherwise affect the price of the notes, including the imposition of penalty bids. This means that if the representatives of the underwriters purchase notes in the open market in stabilizing transactions or to cover short sales, the representatives can require the underwriters that sold those notes as part of this offering to repay the underwriting discount received by them.

These activities may have the effect of raising or maintaining the market price of the notes or preventing or retarding a decline in the market price of the notes, and, as a result, the price of the notes may be higher than the price that otherwise might exist in the open market. If the underwriters commence these activities, they may discontinue them at any time. The underwriters may carry out these transactions in the over the counter market or otherwise.

A prospectus in electronic format may be made available on the web sites maintained by one or more underwriters, or selling group members, if any, participating in the offering. The underwriters may agree to allocate an aggregate principal amount of notes to underwriters and selling group members for sale to their online brokerage account holders. Internet distributions will be allocated by the representatives to underwriters and selling group members that may make Internet distributions on the same basis as other allocations.

Certain of the underwriters and their affiliates have provided in the past to us and our affiliates and may provide from time to time in the future certain commercial banking, financial advisory, investment banking

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and other services for us and such affiliates in the ordinary course of their business, for which they have received and may continue to receive customary fees and commissions. In particular, each of Citicorp USA, Inc., an affiliate of Citigroup Global Markets Inc., JPMorgan Chase Bank, N.A., an affiliate of J.P. Morgan Securities Inc., and Bank of Montreal, Chicago Branch, an affiliate of BMO Capital Markets Corp, is a lender under our revolving credit facility. We have also entered into a commitment letter for the \$1.0 billion Bridge Facility under which JPMorgan Chase Bank, N.A., Citigroup Global Markets Inc. (and certain of its affiliates) and Bank of Montreal are lenders. The commitments of the lenders under the Bridge Facility will automatically be reduced on a dollar for dollar basis by the amount of net cash proceeds received by us in this offering and the concurrent Common Stock Offering. In addition, from time to time, certain of the underwriters and their affiliates may effect transactions for their own account or the account of customers, and hold on behalf of themselves or their customers, long or short positions in our debt or equity securities or loans, and may do so in the future.

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act of 1933, or to contribute to payments the underwriters may be required to make because of any of those liabilities.

Other than in the United States, no action has been taken by us or the underwriters that would permit a public offering of the securities offered by this prospectus in any jurisdiction where action for that purpose is required. The securities offered by this prospectus may not be offered or sold, directly or indirectly, nor may this prospectus or any other offering material or advertisements in connection with the offer and sale of any such securities be distributed or published in any jurisdiction, except under circumstances that will result in compliance with the applicable rules and regulations of that jurisdiction. Persons into whose possession this prospectus comes are advised to inform themselves about and to observe any restrictions relating to the offering and the distribution of this prospectus. This prospectus does not constitute an offer to sell or a solicitation of an offer to buy any securities offered by this prospectus in any jurisdiction in which such an offer or a solicitation is unlawful.

Notice to Prospective Investors in the European Economic Area

In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a Relevant Member State), from and including the date on which the European Union Prospectus Directive (the EU Prospectus Directive) is implemented in that Relevant Member State (the Relevant Implementation Date) an offer of securities described in this prospectus may not be made to the public in that Relevant Member State prior to the publication of a prospectus in relation to the notes which has been approved by the competent authority in that Relevant Member State or, where appropriate, approved in another Relevant Member State and notified to the competent authority in that Relevant Member State, all in accordance with the EU Prospectus Directive, except that it may, with effect from and including the Relevant Implementation Date, make an offer of notes to the public in that Relevant Member State at any time:

to legal entities which are authorized or regulated to operate in the financial markets or, if not so authorized or regulated, whose corporate purpose is solely to invest in securities;

to any legal entity which has two or more of (1) an average of at least 250 employees during the last financial year; (2) a total balance sheet of more than 43,000,000 and (3) an annual net turnover of more than 50,000,000, as shown in its last annual or consolidated accounts;

to fewer than 100 natural or legal persons (other than qualified investors as defined in the EU Prospectus Directive) subject to obtaining the prior consent of the book-running managers for any such offer; or

in any other circumstances which do not require the publication by the Issuer of a prospectus pursuant to Article 3 of the Prospectus Directive.

For the purposes of this provision, the expression an offer of securities to the public in relation to any securities in any Relevant Member State means the communication in any form and by any means of sufficient

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information on the terms of the offer and the securities to be offered so as to enable an investor to decide to purchase or subscribe for the securities, as the same may be varied in that Member State by any measure implementing the EU Prospectus Directive in that Member State and the expression EU Prospectus Directive means Directive 2003/71/EC and includes any relevant implementing measure in each Relevant Member State.

Notice to Prospective Investors in the United Kingdom

This document is only being distributed to and is only directed at (i) persons who are outside the United Kingdom or (ii) to investment professionals falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the Order) or (iii) high net worth entities, and other persons to whom it may lawfully be communicated, falling with Article 49(2)(a) to (d) of the Order (all such persons together being referred to as relevant persons). The securities are only available to, and any invitation, offer or agreement to subscribe, purchase or otherwise acquire such securities will be engaged in only with, relevant persons. Any person who is not a relevant person should not act or rely on this document or any of its contents.

Notice to Prospective Investors in France

Neither this prospectus supplement nor any other offering material relating to the notes described in this prospectus supplement has been submitted to the clearance procedures of the *Autorité des Marchés Financiers* or of the competent authority of another member state of the European Economic Area and notified to the *Autorité des Marchés Financiers*. The notes have not been offered or sold and will not be offered or sold, directly or indirectly, to the public in France. Neither this prospectus supplement nor any other offering material relating to the notes has been or will be:

released, issued, distributed or caused to be released, issued or distributed to the public in France; or

used in connection with any offer for subscription or sale of the notes to the public in France.

Such offers, sales and distributions will be made in France only:

to qualified investors (*investisseurs qualifiés*) and/or to a restricted circle of investors (*cercle restreint d'investisseurs*), in each case investing for their own account, all as defined in, and in accordance with articles L.411-2, D.411-1, D.411-2, D.734-1, D.744-1, D.754-1 and D.764-1 of the French Code *monétaire et financier*;

to investment services providers authorized to engage in portfolio management on behalf of third parties; or

in a transaction that, in accordance with article L.411-2-II-1°-or-2°-or 3° of the French Code *monétaire et financier* and article 211-2 of the General Regulations (*Règlement Général*) of the *Autorité des Marchés Financiers*, does not constitute a public offer (*appel public à l'épargne*).

The notes may be resold directly or indirectly, only in compliance with articles L.411-1, L.411-2, L.412-1 and L.621-8 through L.621-8-3 of the French Code *monétaire et financier*.

Notice to Prospective Investors in Hong Kong

The notes may not be offered or sold in Hong Kong by means of any document other than (i) in circumstances which do not constitute an offer to the public within the meaning of the Companies Ordinance (Cap. 32, Laws of Hong Kong), or (ii) to professional investors within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder, or (iii) in other circumstances which do not result in the document being

a prospectus within the meaning of the Companies Ordinance (Cap. 32, Laws of Hong Kong) and no advertisement, invitation or document relating to the notes may be issued or may be in the possession of any person for the purpose of issue (in each case whether in Hong Kong or elsewhere), which is directed at, or the contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the laws of Hong Kong) other than with respect to notes which are or are intended to be disposed of only to persons outside Hong Kong or only to

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professional investors within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder.

Notice to Prospective Investors in Japan

The notes offered in this prospectus supplement have not been registered under the Securities and Exchange Law of Japan. The notes have not been offered or sold and will not be offered or sold, directly or indirectly, in Japan or to or for the account of any resident of Japan, except (i) pursuant to an exemption from the registration requirements of the Securities and Exchange Law and (ii) in compliance with any other applicable requirements of Japanese law.

Notice to Prospective Investors in Singapore

This prospectus supplement has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this prospectus supplement and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the notes may not be circulated or distributed, nor may the notes be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor under Section 274 of the Securities and Futures Act, Chapter 289 of Singapore (the SFA), (ii) to a relevant person pursuant to Section 275(1), or any person pursuant to Section 275(1A), and in accordance with the conditions specified in Section 275 of the SFA or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA, in each case subject to compliance with conditions set forth in the SFA.

Where the notes are subscribed or purchased under Section 275 of the SFA by a relevant person which is:

a corporation (which is not an accredited investor (as defined in Section 4A of the SFA)) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or

a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary of the trust is an individual who is an accredited investor,

shares, debentures and units of shares and debentures of that corporation or the beneficiaries' rights and interest (howsoever described) in that trust shall not be transferred within six months after that corporation or that trust has acquired the notes pursuant to an offer made under Section 275 of the SFA except:

to an institutional investor (for corporations, under Section 274 of the SFA) or to a relevant person defined in Section 275(2) of the SFA, or to any person pursuant to an offer that is made on terms that such shares, debentures and units of shares and debentures of that corporation or such rights and interest in that trust are acquired at a consideration of not less than S\$200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities or other assets, and further for corporations, in accordance with the conditions specified in Section 275 of the SFA;

where no consideration is or will be given for the transfer; or

where the transfer is by operation of law.

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EXPERTS

Our financial statements and management's assessment of the effectiveness of internal control over financial reporting (which is included in Management's Report on Internal Control over Financial Reporting) incorporated in this document by reference to our Annual Report on Form 10-K for the year ended December 31, 2007 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.

Ian Douglas, Newmont's Group Executive of Reserves and Geostatistics, is the qualified person responsible for the preparation of the scientific and technical information concerning our mineral properties in this prospectus supplement. The reserves disclosed in this prospectus supplement have been prepared in compliance with Industry Guide 7 published by the SEC. We have determined that such reserves would be substantively the same as those prepared using the Guidelines established by the Canadian Institute of Mining, Metallurgy and Petroleum. For a description of the key assumptions, parameters and methods used to estimate mineral reserves on our material properties, as well as a general discussion of the extent to which the estimates may be affected by any known environmental, permitting, legal, title, taxation, socio-political, marketing or other relevant factors, please see our Annual Report on Form 10-K for the year ended December 31, 2007 and our Quarterly Report on Form 10-Q for the quarter ended September 30, 2008, each of which is incorporated by reference in this prospectus supplement.

VALIDITY OF THE SECURITIES

The validity of the notes offered hereby and the shares of our common stock issuable upon conversion of the notes will be passed upon for us by Holme Roberts & Owen LLP, Denver, Colorado, and for the underwriters by Sullivan & Cromwell LLP, New York, New York.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and special reports, proxy statements and other information with the SEC. Our SEC filings are available to the public from our web site at <http://www.newmont.com> or from the SEC's web site at <http://www.sec.gov>. The information on our website is not incorporated by reference into and is not made a part of this prospectus supplement. You may also read and copy any document we file at the SEC's public reference room located at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference rooms.

As required by the Securities Act, we have filed a registration statement on Form S-3 relating to the notes offered by this prospectus supplement and the accompanying prospectus with the SEC. This prospectus supplement and the accompanying prospectus are parts of that registration statement, which includes additional information. Whenever a reference is made in this prospectus supplement or the accompanying prospectus to a contract or other document of ours, please be aware that the reference is only a summary and that you should refer to the exhibits that are a part of or incorporated by reference into the registration statement for a copy of the contract or other document. You may review a copy of the registration statement at the SEC's public reference room in Washington, D.C., as well as through the SEC's website.

We incorporate by reference in this prospectus supplement certain information that we file with the SEC, which means that we disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be a part of this prospectus supplement, and information in documents that we file later with the SEC will automatically update and, where applicable, supersede information contained in

documents filed earlier with the SEC or contained in this prospectus supplement. We incorporate by reference in this prospectus supplement the documents listed below that have been previously filed with the SEC. These documents contain important information about us and our financial condition.

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Newmont SEC Filings (File No. 001-31240)	Period
Annual Report on Form 10-K (including the portions of our proxy statement for our 2008 annual meeting of stockholders incorporated by reference therein)	Year ended December 31, 2007
Quarterly Reports on Form 10-Q	Quarters ended March 31, 2008, June 30, 2008 and September 30, 2008
Current Reports on Form 8-K	Filed January 7, 2008, February 13, 2008, March 4, 2008, April 4, 2008, July 14, 2008, September 23, 2008, October 22, 2008, November 5, 2008, January 27, 2009 and January 28, 2009 (except with respect to matters furnished under Items 2.02 and 7.01 thereof)

The description of our common stock contained in our registration statement on Form 8-A for our common stock filed under the Exchange Act on February 15, 2005, including any amendment or report filed for the purpose of updating that description.

We also incorporate by reference in this prospectus supplement any future filings that we may make with the SEC under Sections 13(a), 13(c), 14, or 15(d) of the Exchange Act until we sell all of the securities that may be offered by this prospectus supplement. However, we are not incorporating by reference any information furnished under Items 2.02 or 7.01 (or corresponding information furnished under Item 9.01 or included as an exhibit) of any Current Report on Form 8-K.

You may request a copy of these filings at no cost to you, by writing or telephoning us as follows:

Newmont Mining Corporation
6363 South Fiddler's Green Circle
Greenwood Village, Colorado 80111
Attn: Office of the Secretary
(303) 863-7414

This prospectus supplement incorporates documents by reference which are not presented in or delivered with this prospectus supplement. You should not assume that the information in this prospectus supplement is accurate as of any date other than the date on the front of those documents. You should rely only on the information contained in this prospectus supplement and in the documents that we have incorporated by reference into this prospectus supplement. We have not authorized anyone to provide you with different information. We are not making an offer of the securities described in this prospectus supplement in any state or jurisdiction where the offer is not permitted.

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**COMMON STOCK
PREFERRED STOCK
DEBT SECURITIES
GUARANTEES OF DEBT SECURITIES
WARRANTS**

We or selling securityholders may from time to time offer to sell common stock, preferred stock, debt securities, guarantees or warrants. Each time we or a selling securityholder sells securities pursuant to this prospectus, we will provide a supplement to this prospectus that contains specific information about the offering and the specific terms of the securities offered. You should read this prospectus and the applicable prospectus supplement carefully before you invest in our securities.

Our common stock is listed on the New York Stock Exchange under the symbol NEM.

Investing in our securities involves a high degree of risk. See the Risk Factors section of our filings with the SEC and the applicable prospectus supplement.

Neither the Securities and Exchange Commission (the SEC) nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

If any agents or underwriters are involved in the sale of any of these securities, the applicable prospectus supplement will provide the names of the agents or underwriters and any applicable fees, commissions or discounts.

The date of this prospectus is October 15, 2007.

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You should rely only on the information contained or incorporated by reference in this prospectus and in any supplement to this prospectus. We have not authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. You should assume that the information appearing in this prospectus and any accompanying prospectus supplement is accurate as of the date on their respective covers. Our business, financial condition, results of operations and prospects may have changed since that date.

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ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement we filed with the SEC using a shelf registration process. We may sell any combination of the securities described in this prospectus from time to time.

The types of securities that we may offer and sell from time to time pursuant to this prospectus are:

debt securities;

common stock;

preferred stock;

guarantees; and

warrants.

Each time we sell securities pursuant to this prospectus, we will describe in a prospectus supplement, which we will deliver with this prospectus, specific information about the offering and the terms of the particular securities offered. In each prospectus supplement we will include the following information, if applicable:

the type and amount of securities that we propose to sell;

the initial public offering price of the securities;

the names of any underwriters or agents through or to which we will sell the securities;

any compensation of those underwriters or agents; and

information about any securities exchanges or automated quotation systems on which the securities will be listed or traded.

In addition, the prospectus supplement may also add, update or change the information contained in this prospectus.

Wherever references are made in this prospectus to information that will be included in a prospectus supplement, to the extent permitted by applicable law, rules or regulations, we may instead include such information or add, update or change the information contained in this prospectus by means of a post-effective amendment to the registration statement of which this prospectus is a part, through filings we make with the SEC that are incorporated by reference into this prospectus or by any other method as may then be permitted under applicable law, rules or regulations.

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FORWARD-LOOKING STATEMENTS

Certain statements contained in this prospectus (including information incorporated by reference in this prospectus) are forward-looking statements within the meaning of Section 27A of the Securities Act and Section 21E of the Securities Exchange Act of 1934, as amended, and are intended to be covered by the safe harbor provided for under these sections. Our forward-looking statements include, without limitation:

statements regarding future earnings;

estimates of future mineral production and sales, for specific operations and on a consolidated or equity basis;

estimates of future costs applicable to sales, other expenses and taxes for specific operations and on a consolidated basis;

estimates of future cash flows;

estimates of future capital expenditures and other cash needs, for specific operations and on a consolidated basis, and expectations as to the funding thereof;

estimates regarding timing of future capital expenditures, construction, production or closure activities;

statements as to the projected development of certain ore deposits, including estimates of development and other capital costs and financing plans for these deposits;

estimates of reserves and statements regarding future exploration results and reserve replacement and the sensitivity of reserves to metal price changes;

statements regarding the availability and costs related to future borrowing, debt repayment and financing;

statements regarding modifications to hedge and derivative positions;

statements regarding future transactions relating to portfolio management or rationalization efforts;

statements regarding the cost impacts of future changes in the legal and regulatory environment in which we operate; and

estimates of future costs and other liabilities for certain environmental matters.

Where we express an expectation or belief as to future events or results, such expectation or belief is expressed in good faith and believed to have a reasonable basis. However, our forward-looking statements are subject to risks, uncertainties, and other factors, which could cause actual results to differ materially from future results expressed, projected or implied by those forward-looking statements. Such risks include, but are not limited to:

the price of gold, copper and other commodities;

currency fluctuations;

geological and metallurgical assumptions;

operating performance of equipment, processes and facilities;

labor relations;

timing of receipt of necessary governmental permits or approvals;

domestic and foreign laws or regulations, particularly relating to the environment and mining;

domestic and international economic and political conditions;

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our ability to obtain or maintain necessary financing; and

other risks and hazards associated with mining operations.

More detailed information regarding these factors is included in the sections titled "Business," "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" in our reports and other documents on file with the SEC. Given these uncertainties, readers are cautioned not to place undue reliance on our forward-looking statements.

All subsequent written and oral forward-looking statements attributable to Newmont or to persons acting on its behalf are expressly qualified in their entirety by these cautionary statements. We disclaim any intention or obligation to update publicly any forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required under applicable securities laws.

THE COMPANY

Newmont Mining Corporation is primarily a gold producer with significant assets or operations in the United States, Australia, Peru, Indonesia, Ghana, Canada, Bolivia, New Zealand and Mexico. As of December 31, 2006, we had proven and probable gold reserves of 93.9 million equity ounces and an aggregate land position of approximately 44,470 square miles (115,200 square kilometers). We are also engaged in the production of copper, principally through our Batu Hijau operation in Indonesia.

Newmont Mining Corporation's original predecessor corporation was incorporated in 1921 under the laws of Delaware. Our principal executive offices are located at 1700 Lincoln Street, Denver, Colorado 80203, and our telephone number is (303) 863-7414. Our website is located at www.newmont.com. Information contained on our website is not a part of this prospectus or any accompanying prospectus supplement.

RISK FACTORS

Before you invest in any of our securities, in addition to the other information in this prospectus and the applicable prospectus supplement, you should carefully consider the risk factors under the heading "Risk Factors" (in our current report on Form 8-K filed with the SEC on July 11, 2007, which is incorporated by reference into this prospectus and the applicable prospectus supplement, as the same may be updated from time to time by our future filings under the Securities Exchange Act.

USE OF PROCEEDS

We intend to use the net proceeds we receive from the sale of securities by us as set forth in the applicable prospectus supplement. Unless otherwise specified in the applicable prospectus supplement, we will not receive any proceeds from the sale of securities by selling securityholders.

Table of Contents**RATIO OF EARNINGS TO FIXED CHARGES**

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

	Six months ended June 30, 2007	2006	Year ended December 31,			
			2005	2004	2003	2002
Ratio of earnings to fixed charges	(1.7)	8.4	7.4	10.4	7.0	1.9

For these ratios, earnings is computed by adding income (loss) from continuing operations before income taxes and fixed charges (excluding capitalized interest) and excluding our share of income/losses in its equity method affiliates. Fixed charges consist of interest expense, including capitalized interest, amortized premiums, discounts and capitalized expenses related to indebtedness and estimated interest included in rental expense.

In July 2007, we raised \$1.15 billion of cash proceeds by issuing convertible notes at par in a private placement. Of the \$1.15 billion convertible notes, \$575 million pay interest at 1.250 percent and are due in 2014 and \$575 million pay interest at 1.625 percent and are due in 2017. The notes are convertible into cash and shares of our common stock (or, at our election, in lieu of such shares of common stock, cash or any combination of cash and shares of our common stock), under certain circumstances.

DIVIDEND POLICY

We declared a dividend of \$0.10 per share of common stock outstanding in each quarter of 2006 and 2005, for a total of \$0.40 during each year. The exchangeable shares issued by Newmont Mining Corporation of Canada Limited are exchangeable at the option of the holders into Newmont common stock. Holders of exchangeable shares are therefore entitled to receive dividends equivalent to those that we declare on our common stock. For more information on the exchangeable shares, see [Description of Capital Stock](#) [Special Voting Stock](#).

We declared:

a regular quarterly dividend totaling \$0.10 per common share through March 31, 2007 paid on March 29, 2007;

a regular quarterly dividend of \$0.10 per share through June 30, 2007 paid on June 29, 2007; and

a regular quarterly dividend of \$0.10 per share through September 30, 2007, payable on September 28, 2007.

Additionally, Newmont Mining Corporation of Canada Limited declared regular quarterly dividends on the exchangeable shares totaling CDN\$0.1185 per share payable on March 29, 2007 to holders of record at the close of business on March 7, 2007, CDN\$0.1123 per share payable on June 29, 2007 to holders of record at the close of business on June 8, 2007 and CDN\$0.1044 per share payable on September 28, 2007 to holders of record at the close of business on September 6, 2007.

The determination of the amount of future dividends will be made by our board of directors from time to time and will depend on our future earnings, capital requirements, financial condition and other relevant factors.

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DESCRIPTION OF CAPITAL STOCK

The rights of our stockholders will be governed by Delaware law, our certificate of incorporation and our by-laws. The following is a summary of the material terms of our capital stock. For additional information regarding our capital stock, please refer to the applicable provisions of Delaware law, our certificate of incorporation and by-laws.

As of October 10, 2007, we had 755,000,000 shares of authorized capital stock. Those shares consisted of:

5,000,000 shares of preferred stock, par value \$5.00 per share, of which one share of special voting stock was outstanding; and

750,000,000 shares of common stock, par value \$1.60 per share, of which (1) 431,706,202 shares were outstanding, including shares evidenced by Australian CHESS depositary interests which represent beneficial ownership of shares of our common stock on a ten-for-one basis and (2) 20,125,306 shares were issuable upon conversion of the exchangeable shares of Newmont Mining Corporation of Canada Limited (Newmont Canada), have economic rights equivalent to those of our common stock and are exchangeable on a one-for-one basis with shares of our common stock.

The holder of the outstanding share of special voting stock exercises the voting and other rights attached to the share as trustee for and on behalf of the registered holders of outstanding shares of the exchangeable shares.

Common Stock

The following is a summary of the terms of our common stock. For additional information regarding our common stock, please refer to our certificate of incorporation, our by-laws and the applicable provisions of Delaware law.

Dividend Rights

Holders of our common stock may receive dividends when, as and if declared by our board of directors out of funds of Newmont legally available for the payment of dividends. Subject to the terms of any outstanding preferred stock, holders of our common stock may not receive dividends until we have satisfied our obligations to any holders of our preferred stock.

As a Delaware corporation, we may pay dividends out of surplus capital or, if there is no surplus capital, out of net profits for the fiscal year in which a dividend is declared and/or the preceding fiscal year. Section 170 of the General Corporation Law of the State of Delaware also provides that dividends may not be paid out of net profits if, after the payment of the dividend, capital is less than the capital represented by the outstanding stock of all classes having a preference upon the distribution of assets.

Currently, we pay dividends on our common stock each quarter. The determination of the amount and timing of future dividends will be made by our board of directors from time to time and will depend on our future earnings, capital requirements, financial conditions and other relevant factors.

Voting and Other Rights

Holders of our common stock are entitled to one vote per share and, in general, a majority of votes cast with respect to a matter will be sufficient to authorize action upon routine matters.

The holder of our special voting share, on behalf of the holders of the exchangeable shares of Newmont Canada, is entitled to vote, as a single class, together with the holders of shares of our common stock on all matters on which our stockholders are entitled to vote. The holders of record of a majority of the outstanding shares of our capital stock entitled to vote at the meeting of our stockholders must be present in person or

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represented by proxy at the meeting in order to constitute a quorum for all matters to come before the meeting. For purposes of determining the presence of a quorum, shares of our capital stock includes shares of our common stock (including shares represented by Australian CHESS depository interests), as well as the maximum number of shares of our common stock that the holder of the special voting share is entitled to vote at the meeting on behalf of the holders of the outstanding exchangeable shares. For additional information regarding our special voting share, please see the discussion in Special voting stock below.

Special meetings of our stockholders may be called by our board of directors or by the chairman of the board or by our president, and will be called by the chairman of the board or by our president or secretary upon a written request stating the purposes of the proposed meeting and signed by a majority of our board of directors or stockholders owning at least 25% of our outstanding capital stock entitled to vote at the meeting.

Written notice of a meeting of our stockholders is given personally or by mail, not less than 10 days nor more than 60 days before the date on which the meeting is held, to each stockholder of record entitled to vote at the meeting. The notice must state the time, place and purposes of the meeting. In the event of a special meeting called upon the written request of our stockholders, the notice will describe any business set forth in the statement of purpose in the written stockholder request, as well as any additional business that our board of directors proposes to be conducted at the meeting. If mailed, the notice will be sent to our stockholders at their respective addresses appearing on our stock records or to such other addresses as they may designate in writing, and will be deemed given when mailed. A waiver of any notice, signed by a stockholder before or after the time for the meeting, will be deemed equivalent to that stockholder having received the notice.

Our board of directors is not classified. Directors are to be elected by a plurality of those shares of our capital stock present and entitled to vote at a meeting of stockholders, and our stockholders do not have the right to cumulate their votes in the election of directors.

Liquidation

In the event of any liquidation, dissolution or winding up of Newmont, holders of our common stock would be entitled to receive proportionately any assets legally available for distribution to our stockholders with respect to shares held by them, subject to any prior rights of the holders of any of our preferred stock then outstanding. Immediately prior to any liquidation, dissolution or winding up of Newmont, all holders of exchangeable shares would become holders of our common stock pursuant to the terms of the exchangeable shares and would therefore be entitled to share ratably in any distribution to other holders of common stock.

Redemption

Our common stock is not redeemable or convertible.

Other Provisions

All of the issued and outstanding shares of our common stock are validly issued, fully paid and nonassessable. Holders of our common stock have no preemptive rights with respect to any of our securities.

Listing

Our common stock trades on the New York Stock Exchange under the symbol NEM. ChaseMellon Stockholder Services, L.L.C. is the registrar, transfer agent, conversion agent and dividend disbursing agent for our common stock.

Our common stock also trades in the form of Australian CHESS depositary interests on the Australian Stock Exchange under the symbol NEM.

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Australian CHESSE Depositary Interests (CDIs)

The CDIs are units of beneficial ownership in shares of our common stock that are held by CHESSE Depositary Nominees Pty Ltd. (ACN 071346506) (CDN), a wholly owned subsidiary of the Australian Stock Exchange Limited (ACN 008624691). The CDIs entitle holders to dividends and other rights economically equivalent to our common stock on a ten-for-one basis, including the right to attend meetings of our stockholders. The CDIs are convertible at the option of the holders into shares of our common stock held by CDN on a ten-for-one basis. CDN, as the stockholder of record, will vote the underlying shares of our common stock in accordance with the directions of the CDI holders.

Preferred Stock General

Our preferred stock is issuable in series. Our board of directors has the power to fix various terms for each series of preferred stock, including the following:

- voting powers,
- designations,
- preferences,
- the relative participating and option or other rights,
- qualifications, and
- limitations and restrictions.

Special Voting Stock

The following is a summary of our special voting stock, which consists of a share of preferred stock with special voting rights. For additional information regarding our special voting stock, please refer to the certificate of designations setting forth the terms of the special voting stock.

Computershare Trust Company of Canada, as trustee under a voting and exchange trust agreement, holds the outstanding share of special voting stock. The holder of the special voting share exercises the voting and other rights attached to the share as trustee for and on behalf of the registered holders of the exchangeable shares of our wholly-owned subsidiary, Newmont Canada. The exchangeable shares have economic rights equivalent to those of our common stock and are exchangeable on a one-for-one basis with shares of our common stock. Upon the unanimous approval of our board of directors, Newmont Canada may from time to time issue additional exchangeable shares. The following is a summary description of the material provisions of the rights, privileges, restrictions and conditions attaching to the special voting share and the related exchangeable shares as they affect us.

Ranking

With respect to distributions of assets upon liquidation, dissolution or winding up of Newmont, the special voting share ranks (1) senior to our common stock, (2) on parity with our other preferred stock and (3) junior to any other class or series of our capital stock.

Dividend Rights

The special voting share is not entitled to receive dividends.

Holders of exchangeable shares are entitled to receive dividends from Newmont Canada which are equivalent to any declared by our board of directors on our common stock. These dividends will be paid out of money, assets or property of Newmont Canada properly applicable to the payment of dividends, or out of

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authorized but unissued shares of Newmont Canada, as applicable. Holders of exchangeable shares are not entitled to any dividends other than or in excess of the foregoing dividends. The record date for the determination of the holders of exchangeable shares entitled to receive payment of, and the payment date for, any dividend declared on the exchangeable shares will be the same dates as the record date and payment date, respectively, for the corresponding dividend declared on shares of our common stock.

Voting Rights

Holders of exchangeable shares are not holders of our common stock and, therefore, do not have the direct right to vote on matters relating to us on which our stockholders are entitled to vote.

The holder of the special voting share has the right to vote together with the holders of our common stock on all matters on which holders of our common stock are entitled to vote. The holder of the special voting share is entitled to cast a number of votes equal to the lesser of (1) the number of exchangeable shares outstanding from time to time (except those exchangeable shares held by us or our affiliates) and (2) 10% of the total number of votes attached to the shares of our common stock then outstanding. The holder of the special voting share will exercise the voting and other rights attached to the share only on the basis of instructions received from holders of exchangeable shares, as trustee for and on behalf of the registered holders of the exchangeable shares.

Certain Restrictions

So long as any of the exchangeable shares not owned by us or our affiliates are outstanding:

- (1) without the approval of the holders of the exchangeable shares and Newmont Canada (unless in each case the economic equivalent is simultaneously issued, distributed or made, as the case may be, to the holders of exchangeable shares), we will not:

issue or distribute shares of our common stock, or securities exchangeable for or convertible into or carrying rights to acquire shares of our common stock, to the holders of all or substantially all of the then outstanding shares of our common stock by way of stock dividend or other distribution, other than an issue of shares of our common stock, or securities exchangeable for or convertible into or carrying rights to acquire shares of our common stock, to holders of shares of our common stock (a) who exercise an option to receive dividends in shares of our common stock or securities exchangeable for or convertible into or carrying rights to acquire shares of our common stock, in lieu of receiving cash dividends, or (b) pursuant to any dividend reinvestment plan or similar arrangement;

issue or distribute rights, options or warrants to the holders of all or substantially all of the then outstanding shares of our common stock entitling them to subscribe for or to purchase shares of our common stock, or securities exchangeable for or convertible into or carrying rights to acquire shares of our common stock;

issue or distribute to the holders of all or substantially all of our then outstanding shares of common stock (a) shares or securities (including evidences of indebtedness) of Newmont of any class (other than shares of our common stock or securities convertible into or exchangeable for or carrying rights to acquire shares of our common stock), or (b) rights, options, warrants or other assets other than those referred to above;

subdivide, redivide or change our then outstanding shares of common stock into a greater number of shares of our common stock;

reduce, combine, consolidate or change our then outstanding shares of common stock into a lesser number of shares of our common stock; or

reclassify or otherwise change shares of our common stock or effect an amalgamation, merger, reorganization or other transaction affecting shares of our common stock.

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- (2) in the event that a tender offer, share exchange offer, issuer bid, takeover bid or similar transaction with respect to shares of our common stock is proposed by us or is proposed to us or our stockholders and is recommended by our board, or is otherwise effected or to be effected with the consent or approval of the our board, and the exchangeable shares are not redeemed by Newmont Canada or purchased by us (or our wholly-owned subsidiary, Newmont Holdings ULC), we will expeditiously and in good faith take all actions and do all things as are reasonably necessary or desirable to enable and permit holders of exchangeable shares (other than us and our affiliates) to participate in the transaction to the same extent and on an economically equivalent basis as the holders of shares of our common stock, without discrimination. Without limiting the generality of the foregoing, we will take all actions and do all things as are reasonably necessary or desirable to ensure that holders of exchangeable shares may participate in each similar transaction without being required to retract exchangeable shares as against Newmont Canada or, if so required, to ensure that any retraction, shall be effective only upon, and shall be conditional upon, the closing of that transaction and only to the extent necessary to participate in the transaction.

Liquidation Rights

In the event of the liquidation, dissolution or winding-up of Newmont, (1) the holder of the special voting share will be entitled to receive an amount equal to \$0.001 and (2) all of the exchangeable shares will automatically be exchanged for shares of our common stock. We will purchase each exchangeable share on the fifth business date prior to the liquidation, dissolution or winding up for a purchase price per share to be satisfied by the delivery of one share of our common stock, together with all declared and unpaid dividends on the exchangeable shares, if any.

In the event of the liquidation, dissolution or winding-up of Newmont Canada, we (or Newmont Holdings ULC) have the right to purchase all, but not less than all, of the outstanding exchangeable shares from the holders thereof upon payment of a liquidation amount. The liquidation amount will be the amount per exchangeable share that a holder of exchangeable shares is entitled to receive pursuant to the provisions attached to the exchangeable shares on the liquidation, dissolution or winding-up of Newmont Canada, to be satisfied by the delivery of one share of our common stock, together with all declared and unpaid dividends on the exchangeable shares, if any.

Redemption and Retraction

The special voting share is not redeemable or convertible, except, if no exchangeable shares, other than exchangeable shares held by us or our affiliates, or securities which could give rise to the issuance of any exchangeable shares to any person, are outstanding, the special voting share will automatically be redeemed for \$0.001.

Holders of exchangeable shares are entitled at any time, upon delivery of a certificate representing their exchangeable shares and a duly executed retraction request, to require Newmont Canada to redeem their exchangeable shares. The retraction price will be the amount per exchangeable share that a holder of exchangeable shares is entitled to receive pursuant to the provisions attached to the exchangeable shares on a retraction of an exchangeable share, to be satisfied by the delivery of one share of our common stock, together with all declared and unpaid dividends on the exchangeable shares, if any. Newmont Canada must deliver all retraction requests to us (or Newmont Holdings ULC), whereupon we (or Newmont Holdings ULC), instead of Newmont Canada, will have the right to purchase for the retraction price the exchangeable shares that are the subject of the request. If we do not exercise this right, Newmont Canada is required to effect the redemption.

On or at any time after the twelfth anniversary of the date on which the exchangeable shares were first issued, subject to acceleration in some circumstances, Newmont Canada is required to redeem all the outstanding exchangeable shares. The redemption price will be the amount per exchangeable share that a holder of

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exchangeable shares is entitled to receive pursuant to the provisions of the exchangeable shares on a redemption of exchangeable shares, to be satisfied by the delivery of one share of our common stock, together with all declared and unpaid dividends, if any. In this event, we (or Newmont Holdings ULC) will have the overriding right to acquire the outstanding exchangeable shares in exchange for the redemption price on the redemption date. If we exercise this right, Newmont Canada's obligation to redeem the exchangeable shares will terminate.

Listing

The exchangeable shares are listed on the Toronto Stock Exchange under the symbol NMC.

Anti-Takeover Provisions

Article Ninth of our certificate of incorporation may make it more difficult for various corporations, entities or persons to acquire control of us or to remove management.

Article Ninth of our certificate of incorporation requires us to get the approval of the holders of 80% of all classes of our capital stock who are entitled to vote in elections of directors, voting together as one class, to enter into the following types of transactions:

a merger or consolidation between us and another corporation that holds 10% or more of our outstanding shares;

the sale or lease of all or a substantial part of our assets to another corporation or entity that holds 10% or more of our outstanding shares; or

any sale or lease to us of assets worth more than \$10 million in exchange for our securities by another corporation or entity that holds 10% or more of our outstanding shares.

However, Article Ninth does not apply to any transaction if:

our board of directors approves the transaction before the other corporation, person or entity becomes a holder of 10% or more of our outstanding shares; or

we or our subsidiaries own a majority of the outstanding voting shares of the other corporation.

Article Ninth can only be altered or repealed with the approval of the holders of 80% of all classes of our capital stock who are entitled to vote in elections of directors, voting together as one class.

DESCRIPTION OF DEBT SECURITIES

The following sets forth certain general terms and provisions of the indentures under which the debt securities would be issued, unless otherwise specified in a prospectus supplement. The particular terms of the debt securities to be sold by us will be set forth in a prospectus supplement relating to such debt securities.

The debt securities will represent our unsecured general obligations, unless otherwise provided in the prospectus supplement. Unless otherwise indicated in the applicable prospectus supplement, the debt securities will be our general unsecured obligations and will rank as described in the applicable prospectus supplement. Unless otherwise specified in the applicable prospectus supplement, the debt securities will be issued under one or both of the indentures dated as of July 17, 2007 between us, Newmont USA Limited and The Bank of New York Trust Company,

N.A., which have been filed as exhibits to the registration statement of which this prospectus is a part, subject to such amendments or supplemental indentures as are adopted from time to time. The following summary of certain provisions of those indentures does not purport to be complete and is subject to, and qualified in its entirety by, reference to all the provisions of that indenture, including the definitions therein of certain terms. Wherever particular sections or defined terms of the indentures are referred to, it is intended that such sections or defined terms shall be incorporated herein by reference.

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General

The indentures do not limit the amount of debt securities that may be issued thereunder. The applicable prospectus supplement with respect to any debt securities will set forth the following terms of the debt securities offered pursuant thereto:

- (1) the title and series of such debt securities, including CUSIP numbers;
- (2) any limit upon the aggregate principal amount of such debt securities of such title or series;
- (3) whether such debt securities will be in global or other form;
- (4) the date(s) and method(s) by which principal and any premium on such debt securities is payable;
- (5) interest rate or rates (or method by which such rate will be determined), if any;
- (6) the dates on which any such interest will be payable and the method of payment;
- (7) whether and under what circumstances any additional amounts are payable with respect to such debt securities;
- (8) the notice, if any, to holders of such debt securities regarding the determination of interest on a floating rate debt security;
- (9) the basis upon which interest on such debt securities shall be calculated, if other than that of a 360-day year of twelve 30-day months;
- (10) the place or places where the principal of and interest or additional amounts, if any, on such debt securities will be payable;
- (11) any redemption or sinking fund provisions;
- (12) the denominations of such debt securities;
- (13) any rights of the holders of such debt securities to convert the debt securities into other securities or property;
- (14) the terms, if any, on which payment of principal or any premium, interest or additional amounts on such debt securities will be payable in a currency other than U.S. dollars;
- (15) the terms, if any, by which the amount of payments of principal or any premium, interest or additional amounts on such debt securities may be determined by reference to an index, formula, financial or economic measure or other methods;
- (16) if other than the principal amount hereof, the portion of the principal amount of such debt securities that will be payable upon declaration of acceleration of the maturity thereof or provable in bankruptcy;
- (17) any events of default or covenants in addition to or in lieu of those described herein and remedies therefor;

- (18) whether such debt securities will be subject to defeasance or covenant defeasance;
- (19) the terms, if any, upon which such debt securities are to be issuable upon the exercise of warrants;
- (20) any trustees other than The Bank of New York Trust Company, N.A., and any authenticating or paying agents, transfer agents or registrars or any other agents with respect to such debt securities;
- (21) the terms, if any, on which such debt securities will be subordinate to other debt of Newmont; and
- (22) any other specific terms of such debt securities and any other deletions from or additions to or modifications of the indenture with respect to such debt securities.

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Debt securities may be presented for exchange, conversion or transfer in the manner, at the places and subject to the restrictions set forth in the debt securities and the prospectus supplement. Such services will be provided without charge, other than any tax or other governmental charge payable in connection therewith, but subject to the limitations provided in the indentures.

The indentures do not contain any covenant or other specific provision affording protection to holders of the debt securities in the event of a highly leveraged transaction or a change in control of Newmont, subject to limited exceptions. Our certificate of incorporation also contains other provisions which may prevent or limit a change of control. See Description of Capital Stock.

Modification and Amendment

Subject to certain exceptions, the applicable indenture may be amended with respect to a series, and the notes of that series may be amended, with the consent of the holders of at least a majority in principal amount of the notes of that series then outstanding (including without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, notes of that series) and, subject to certain exceptions, any past default or compliance with any provisions may be waived with respect to a series of notes with the consent of the holders of a majority in principal amount of the notes of that series then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, notes of that series). However, without the consent of each holder of an outstanding note of a series affected, no amendment with respect to such series may, among other things:

- (1) reduce the amount of notes of such series whose holders must consent to an amendment;
- (2) reduce the rate of or extend the stated time for payment of interest, including additional interest, on any note of such series;
- (3) reduce the principal of or extend the stated maturity of any note of such series;
- (4) make any change that adversely affects the conversion rights of any notes of such series;
- (5) reduce the fundamental change purchase price of any note of such series or amend or modify in any manner adverse to the holders of notes of such series our obligation to make such payment, whether through an amendment or waiver of provisions in the covenants, definitions or otherwise;
- (6) make any note of such series payable in money other than that stated in the note or, other than in accordance with the provisions of the applicable indenture, eliminate any existing subsidiary guarantee of the notes of such series;
- (7) impair the right of any holder of a note of such series to receive payment of principal and interest, including additional interest, on such holder's notes of such series on or after the due dates therefore or to institute suit for the enforcement of any payment on or with respect to such holder's notes of such series; or
- (8) make any change in the amendment provisions which require the consent of each holder of notes of such series or in the waiver provisions with respect to such series.

Without the consent of any holder, we and the trustee may amend either or both of the indentures and the notes of any series to:

- (1) cure any ambiguity, omission, defect or inconsistency;
- (2) evidence the succession of another entity to Newmont and provide for the assumption by a successor corporation, partnership, trust or limited liability company of our obligations under the indenture;

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- (3) provide for uncertificated notes in addition to or in place of certificated notes (provided that the uncertificated notes are issued in registered form for purposes of Section 163(f) of the Internal Revenue Code of 1986, as amended (the Code), or in a manner such that the uncertificated notes are described in Section 163(f)(2)(B) of the Code);
- (4) add guarantees with respect to the notes of any series;
- (5) secure the notes of any series;
- (6) add to the covenants of Newmont for the benefit of the holders of notes of any series or surrender any right or power conferred upon us with respect to any series;
- (7) evidence and provide for the acceptance of appointment of a successor trustee pursuant to the indenture;
- (8) comply with the provisions of any clearing agency, clearing corporation or clearing system, the trustee or the registrar with respect to the provisions of the indenture or the notes relating to transfers and exchanges of notes of any series;
- (9) provide for the conversion of notes of any series in accordance with the terms of the indenture;
- (10) make any change with respect to any series that does not materially adversely affect the rights of any holder of notes of such series;
- (11) comply with any requirement of the Commission in connection with the qualification of the indenture under the Trust Indenture Act; or
- (12) conform the provisions of the indentures to the Description of Debt Securities section in the applicable prospectus supplement.

The consent of the holders is not necessary under the indentures to approve the particular form of any proposed amendment. It is sufficient if such consent approves the substance of the proposed amendment. After an amendment under either of the indentures becomes effective, we are required to mail to the holders of the series of notes to which the amendment relates a notice briefly describing such amendment. However, the failure to give such notice to all the holders of notes of that series, or any defect in the notice, will not impair or affect the validity of the amendment.

Events of Default

Unless otherwise provided in any prospectus supplement, the following will be events of default under the applicable indenture with respect to each series of debt securities issued thereunder:

- (a) default in any payment of interest, including any additional interest, if any, on any note of such series when due and payable and the default continues for a period of 30 days;
- (b) default in the payment of principal of any note of such series when due and payable at its stated maturity, upon required repurchase, upon declaration or otherwise;
- (c) failure by us to comply with its obligation to convert the notes of such series in accordance with the applicable indenture upon exercise of a holder's conversion right and the default continues for a period of 3 business days after there has been given, by registered or certified mail, to us by the trustee or by such

holder, a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a notice of default under the applicable indenture;

- (d) failure by us to give a fundamental change notice or notice of a specified corporate transaction with respect to such series, in each case when due;

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- (e) failure on the part of us or Newmont USA Limited duly to observe or perform any other of the covenants or agreements on the part of us or Newmont USA Limited, as the case may be, in respect of the notes of such series contained in the applicable indenture and continuance of such default or breach for a period of 90 days after there has been given, by registered or certified mail, to us and Newmont USA Limited by the trustee or to us, Newmont USA Limited and the trustee by the holders of at least 25% in principal amount of the notes of that series, a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a notice of default under the applicable indenture;
- (f) default by us or Newmont USA Limited with respect to any Material Indebtedness (as defined below), whether such Material Indebtedness now exists or shall hereafter be created (i) resulting in such indebtedness becoming or being declared due and payable prior to the date on which it would otherwise become due and payable or (ii) constituting a failure to pay the principal of any such indebtedness when due and payable at its stated maturity, upon required repurchase, upon declaration or otherwise; provided, that any event of default under either of the foregoing clauses (i) and (ii) shall be deemed cured and not to be continuing upon the payment of such indebtedness or the rescission or annulment of any acceleration of such indebtedness;
- (g) a court having jurisdiction enters a decree or order for relief in respect of us or Newmont USA Limited in an involuntary case under any applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee or sequestrator (or similar official) of us or Newmont USA Limited or for all or substantially all of its property or ordering the winding up or liquidation of its affairs, and such decree or order remains unstayed and in effect for a period of 90 consecutive days;
- (h) we or Newmont USA Limited commences a voluntary case under any applicable federal or state bankruptcy, insolvency or other similar law, or consents to the entry of an order for relief in an involuntary case under any such law, or consents to the appointment or taking possession by a receiver, liquidator, assignee, custodian, trustee or sequestrator (or similar official) of us or Newmont USA Limited, respectively, or for all or substantially all of its property, or makes any general assignment for the benefit of creditors; or
- (i) except as permitted by the applicable indenture, (i) the subsidiary guarantee of Newmont USA Limited with respect to notes of such series shall be held in any judicial proceeding to be unenforceable or invalid or shall cease for any reason to be in full force and effect, or (ii) Newmont USA Limited shall deny or disaffirm its obligation under its subsidiary guarantee with respect to the notes of such series.

Material Indebtedness is indebtedness (other than indebtedness under the notes of the applicable series) of any one or both of us and Newmont USA Limited in an aggregate principal amount exceeding \$75,000,000.

If an event of default occurs and is continuing with respect to a series of notes, the trustee by notice to us, or the holders of at least 25% in principal amount of the outstanding notes of that series by notice to us and the trustee, may, and the trustee at the request of such holders shall, declare 100% of the principal of and accrued and unpaid interest, including any additional interest, on all the notes of that series to be due and payable. In case of the events of default described in clauses (g) and (h) above, 100% of the principal of and accrued and unpaid interest on the notes of each series will automatically become due and payable. Upon such a declaration, such principal and accrued and unpaid interest, including any additional interest, will be due and payable immediately.

Notwithstanding the foregoing, the indentures will provide that, to the extent elected by us, the sole remedy for an event of default relating to the failure to comply with the reporting obligations in the indentures and for any failure to comply with the requirements of Section 314(a)(1) of the Trust Indenture Act will for the first 120 days after the occurrence of such an event of default consist exclusively of the right to receive additional interest on the notes of each series with respect to which we elect to pay additional interest at an annual rate equal to 0.25% of the principal

amount of the notes of the applicable series. If we so elect, such additional interest will

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accrue on all outstanding notes of each series with respect to which we elect to pay additional interest from and including the date on which the event of default relating to the failure to comply with the reporting obligations in the indentures or the failure to comply with the requirements of Section 314(a)(1) of the Trust Indenture Act first occurs to but not including the 120th day thereafter (or such earlier date on which such event of default is cured or, with respect to a series, waived by the holders of a majority in principal amount of the outstanding notes of that series). On such 120th day (or earlier, if the event of default relating to the reporting obligations under the indentures or the failure to comply with the requirements of Section 314(a)(1) of the Trust Indenture Act is cured or, with respect to a series, waived by the holders of a majority in principal amount of the outstanding notes of that series prior to such 120th day), such additional interest will cease to accrue and, if the event of default relating to reporting obligations or the failure to comply with Section 314(a)(1) of the Trust Indenture Act has not been cured or, with respect to a series, waived with respect to that series prior to such 120th day, the notes of that series will be subject to acceleration as provided above. The provisions of the indentures described in this paragraph will not affect the rights of holders of notes in the event of the occurrence of any other event of default. In the event we do not elect to pay the additional interest upon an event of default in accordance with this paragraph, the notes will be subject to acceleration as provided above.

In order to elect to pay the additional interest on the notes of a series as the sole remedy during the first 120 days after the occurrence of an event of default relating to the failure to comply with the reporting obligations in the indentures or the failure to comply with Section 314(a)(1) of the Trust Indenture Act in accordance with the immediately preceding paragraph, we must notify all holders of notes of that series and the trustee and paying agent of such election on or before the close of business on the date on which such event of default first occurs. We may make such an election with respect to any series of notes.

The holders of a majority in principal amount of the outstanding notes of a series may waive all past defaults (except with respect to nonpayment of principal or interest, including any additional interest) with respect to that series. The holders of a majority in principal amount of the outstanding notes of a series may also rescind any acceleration with respect to the notes of that series and its consequences if (1) rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (2) all existing events of default, other than the nonpayment of the principal of and interest, including additional interest, on the notes of that series that have become due solely by such declaration of acceleration, have been cured or waived.

Subject to the provisions of the indentures relating to the duties of the trustee, if an event of default occurs and is continuing, the trustee will be under no obligation to exercise any of the rights or powers under the indentures at the request or direction of any of the holders of notes of a series unless such holders have offered to the trustee indemnity or security reasonably satisfactory to it against any loss, liability or expense. Except to enforce the right to receive payment of principal or interest, including any additional interest, when due, no holder may pursue any remedy with respect to the applicable indenture or the notes of a series unless:

- (1) such holder has previously given the trustee notice that an event of default is continuing;
- (2) holders of at least 25% in principal amount of the outstanding notes of that series have requested the trustee to pursue the remedy;
- (3) such holders have offered the trustee security or indemnity reasonably satisfactory to it against any loss, liability or expense;
- (4) the trustee has not complied with such request within 60 days after the receipt of the request and the offer of security or indemnity; and

- (5) the holders of a majority in principal amount of the outstanding notes of that series have not given the trustee a direction that, in the opinion of the trustee, is inconsistent with such request within such 60-day period.

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Subject to certain restrictions, the holders of a majority in principal amount of the outstanding notes of a series are given the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee with respect to that series or of exercising any trust or power conferred on the trustee with respect to that series.

The indentures provide that in the event an event of default has occurred and is continuing, the trustee will be required in the exercise of its powers to use the degree of care that a prudent person would use in the conduct of its own affairs. The trustee, however, may refuse to follow any direction that conflicts with law or the applicable indenture or that the trustee determines is unduly prejudicial to the rights of any other holder or that would involve the trustee in personal liability. Prior to taking any action under either of the indentures, the trustee will be entitled to indemnification satisfactory to it in its sole discretion against all losses and expenses caused by taking or not taking such action.

The indentures provide that if a default occurs and is continuing with respect to a series of notes and is known to the trustee, the trustee must mail to each holder of notes of that series notice of the default within 90 days after it occurs. Except in the case of a default in the payment of principal of or interest on any note of a series, the trustee may withhold notice if and so long as a committee of trust officers of the trustee in good faith determines that withholding notice is in the interests of the holders of notes of that series. In addition, with respect to each series of notes, we are required to deliver to the trustee, within 120 days after the end of each fiscal year, a certificate indicating whether the signers thereof know of any default that occurred during the previous year with respect to such series of notes. We also are required to deliver to the trustee, within 30 days after the occurrence thereof, written notice of any events that would constitute certain defaults, their status and what action we are taking or propose to take in respect thereof.

Consolidation, Merger and Sale of Assets

The indentures provide that we shall not consolidate with or merge with or into, or convey, transfer or lease all or substantially all of its properties and assets to, another person, unless (i) the resulting, surviving or transferee person (if not us) is a person organized and existing under the laws of the United States of America, any State thereof or the District of Columbia, and such entity (if not us) expressly assumes by supplemental indenture all of our obligations under the notes, the applicable indenture and, to the extent then still operative, the registration rights agreement; and (ii) immediately after giving effect to such transaction, no default has occurred and is continuing under the applicable indenture. Upon any such consolidation, merger or transfer, the resulting, surviving or transferee person shall succeed to, and may exercise every right and power of, Newmont under the applicable indenture.

Covenants

Any covenants of Newmont with respect to any series of debt securities will be set forth in the prospectus supplement relating thereto.

Conversion Rights

The terms and conditions, if any, upon which the debt securities are convertible into common stock or preferred stock will be set forth in the applicable prospectus supplement relating thereto. Such terms will include the conversion price (or manner of calculation thereof), the conversion period, provisions as to whether conversion will be at the option of the holders or us, the events requiring an adjustment of the conversion price and provisions affecting conversion in the event of redemption of such debt securities and any restrictions on conversion.

Redemption; Repurchase at the Option of the Holder; Sinking Fund

The terms and conditions, if any, upon which (i) the debt securities are redeemable at our option, (ii) the holder of debt securities may cause us to repurchase such debt securities or (iii) the debt securities are subject to any sinking

fund will be set forth in the applicable prospectus supplement relating thereto.

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Repurchases on the Open Market

We or any of our affiliates may at any time or from time to time repurchase any debt security in the open market or otherwise. Such debt securities may, at the option of Newmont or the relevant affiliate of Newmont, be held, resold or surrendered to the trustee for cancellation.

Discharge, Defeasance and Covenant Defeasance

We may satisfy and discharge our obligations under the applicable indenture as to the notes of a series by (i) delivering to the securities registrar for cancellation all outstanding notes of that series or by depositing with the trustee or delivering to the holders of the notes of that series, as applicable, after the notes of that series have become due and payable, whether at stated maturity, or any purchase date, or upon conversion or otherwise, cash and shares of common stock (or, at our election, in lieu of such shares of our common stock, cash or any combination of cash and shares of our common stock), if applicable, sufficient to pay all of the outstanding notes of that series, and (ii) paying all other sums payable under the applicable indenture by us with respect to that series. Such discharge is subject to terms contained in the indentures.

Applicable Law

The indentures provide that the debt securities and the indentures will be governed by and construed in accordance with the laws of the State of New York.

About the Trustee

Unless otherwise specified in the applicable prospectus supplement, The Bank of New York Trust Company, N.A. is the trustee under the indenture.

Subsidiary Guarantees of Newmont USA Limited

Unless otherwise specified in the applicable prospectus supplement, Newmont USA Limited will unconditionally guarantee our payment obligations under the notes. Newmont USA Limited's subsidiary guarantees will be general unsecured obligations of Newmont USA Limited that will rank senior in right of payment to any of its future indebtedness that is expressly subordinated in right of payment to the subsidiary guarantees, and equally in right of payment with all existing and future unsecured indebtedness and liabilities of Newmont USA Limited that are not so subordinated. Financial information for Newmont USA Limited can be found in the Newmont SEC filings (File No. 001-31240) as listed in [Where You Can Find More Information](#). As of June 30, 2007, Newmont USA Limited had approximately \$2.5 billion of consolidated indebtedness (including guaranteed debt), which consisted of approximately \$1,407 million of guarantees of indebtedness of Newmont, and approximately \$452 million of its own debt, approximately \$235 million of which is secured. The remaining debt of approximately \$675 million is non-recourse debt of subsidiary companies. Newmont USA Limited's subsidiary guarantees of the notes will be effectively subordinated to all secured debt of Newmont USA Limited to the extent of the value of the assets securing such indebtedness, and will be effectively subordinated to all liabilities of Newmont USA Limited's subsidiaries. In the event of bankruptcy, liquidation, reorganization or other winding up of Newmont USA Limited, the assets of Newmont USA Limited that secure secured debt will be available to pay obligations under the subsidiary guarantees only after all indebtedness under such secured debt has been repaid in full from such assets. In addition to the holders of the notes, the holders of Newmont USA Limited's other equally ranking unsecured indebtedness and liabilities will have claims against any assets remaining after the payment of all such secured debt. We advise you that there may not be sufficient assets remaining to pay amounts due under either of Newmont USA Limited's subsidiary guarantees.

The subsidiary guarantee with respect to a note is not convertible and will automatically terminate when that note is converted into common stock.

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Under the terms of Newmont USA Limited's full and unconditional guarantees, holders of the notes will not be required to exercise their remedies against us before they proceed directly against Newmont USA Limited.

Newmont USA Limited will be released and relieved from all its obligations under its subsidiary guarantees in the following circumstances, each of which is permitted by the indentures:

upon the sale or other disposition (including by way of consolidation or merger), in one transaction or a series of related transactions, of a majority of the total voting power of the capital stock or other interests of Newmont USA Limited (other than to us or any of our affiliates);

upon the sale or disposition of all or substantially all the assets of Newmont USA Limited (other than to us or any of our affiliates); or

upon such time as Newmont USA Limited ceases to guaranty any of our indebtedness other than (i) indebtedness not exceeding \$75,000,000 in the aggregate (it being understood that indebtedness of Newmont that is guaranteed by Newmont USA Limited and that also provides that the guarantee of Newmont USA Limited under such indebtedness shall be released and relieved upon such time as Newmont USA Limited ceases to guaranty any of our indebtedness other than indebtedness not exceeding \$75,000,000 or more in the aggregate shall not be considered in calculating the amount of indebtedness under this clause (i)) and (ii) indebtedness under the notes.

The subsidiary guarantee for each series of the notes will contain a provision intended to limit Newmont USA Limited's liability to the maximum amount that it could incur without causing the incurrence of obligations under the subsidiary guarantee to be a fraudulent transfer. This provision may not be effective to protect the subsidiary guarantees from being voided under fraudulent transfer law.

DESCRIPTION OF OTHER SECURITIES

We will set forth in the applicable prospectus supplement a description of any warrants that may be offered pursuant to this prospectus.

PLAN OF DISTRIBUTION

The securities being offered by this prospectus may be sold by us or by a selling securityholder:

through agents;

to or through underwriters;

through broker-dealers (acting as agent or principal);

directly by us or a selling securityholder to purchasers, through a specific bidding or auction process or otherwise;

through a combination of any such methods of sale; or

through any other methods described in a prospectus supplement.

The distribution of securities may be effected from time to time in one or more transactions, including block transactions and transactions on the New York Stock Exchange or any other organized market where the securities may be traded. The securities may be sold at a fixed price or prices, which may be changed, or at market prices prevailing at the time of sale, at prices relating to the prevailing market prices or at negotiated prices. The consideration may be cash or another form negotiated by the parties. Agents, underwriters or broker-dealers may be paid compensation for offering and selling the securities. That compensation may be in the form

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of discounts, concessions or commissions to be received from us or from the purchasers of the securities. Dealers and agents participating in the distribution of the securities may be deemed to be underwriters, and compensation received by them on resale of the securities may be deemed to be underwriting discounts. If such dealers or agents were deemed to be underwriters, they may be subject to statutory liabilities under the Securities Act.

Agents may from time to time solicit offers to purchase the securities. If required, we will name in the applicable prospectus supplement any agent involved in the offer or sale of the securities and set forth any compensation payable to the agent. Unless otherwise indicated in the prospectus supplement, any agent will be acting on a best efforts basis for the period of its appointment. Any agent selling the securities covered by this prospectus may be deemed to be an underwriter, as that term is defined in the Securities Act, of the securities.

If underwriters are used in a sale, securities will be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale, or under delayed delivery contracts or other contractual commitments. Securities may be offered to the public either through underwriting syndicates represented by one or more managing underwriters or directly by one or more firms acting as underwriters. If an underwriter or underwriters are used in the sale of securities, an underwriting agreement will be executed with the underwriter or underwriters at the time an agreement for the sale is reached. The applicable prospectus supplement will set forth the managing underwriter or underwriters, as well as any other underwriter or underwriters, with respect to a particular underwritten offering of securities, and will set forth the terms of the transactions, including compensation of the underwriters and dealers and the public offering price, if applicable. The prospectus and the applicable prospectus supplement will be used by the underwriters to resell the securities.

If a dealer is used in the sale of the securities, we, a selling securityholder, or an underwriter will sell the securities to the dealer, as principal. The dealer may then resell the securities to the public at varying prices to be determined by the dealer at the time of resale. To the extent required, we will set forth in the prospectus supplement the name of the dealer and the terms of the transactions.

We or a selling securityholder may directly solicit offers to purchase the securities and we or a selling securityholder may make sales of securities directly to institutional investors or others. These persons may be deemed to be underwriters within the meaning of the Securities Act of 1933 with respect to any resale of the securities. To the extent required, the prospectus supplement will describe the terms of any such sales, including the terms of any bidding or auction process, if used.

Agents, underwriters and dealers may be entitled under agreements which may be entered into with us to indemnification by us against specified liabilities, including liabilities incurred under the Securities Act of 1933, or to contribution by us to payments they may be required to make in respect of such liabilities. If required, the prospectus supplement will describe the terms and conditions of such indemnification or contribution. Some of the agents, underwriters or dealers, or their affiliates may be customers of, engage in transactions with or perform services for us or our subsidiaries in the ordinary course of business.

Under the securities laws of some states, the securities offered by this prospectus may be sold in those states only through registered or licensed brokers or dealers.

Any person participating in the distribution of common stock registered under the registration statement that includes this prospectus will be subject to applicable provisions of the Exchange Act, and the applicable SEC rules and regulations, including, among others, Regulation M, which may limit the timing of purchases and sales of any of our common stock by any such person. Furthermore, Regulation M may restrict the ability of any person engaged in the distribution of our common stock to engage in market-making activities with respect to our common stock. These

restrictions may affect the marketability of our common stock and the ability of any person or entity to engage in market-making activities with respect to our common stock.

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Certain persons participating in an offering may engage in over-allotment, stabilizing transactions, short-covering transactions and penalty bids in accordance with Regulation M under the Exchange Act that stabilize, maintain or otherwise affect the price of the offered securities. If any such activities will occur, they will be described in the applicable prospectus supplement.

SELLING SECURITYHOLDERS

Information about selling securityholders, where applicable, will be set forth in a prospectus supplement, in a post-effective amendment, or in filings we make with the SEC under the Exchange Act that are incorporated by reference into this prospectus.

VALIDITY OF THE SECURITIES

The validity of the securities offered hereby will be passed upon for us by Holme Roberts & Owen LLP, Denver, Colorado, and for any underwriters or agents by counsel named in the applicable prospectus supplement.

EXPERTS

The financial statements incorporated in the registration statement of which this prospectus is a part by reference to Newmont Mining Corporation's Current Report on Form 8-K dated October 15, 2007, and management's assessment of the effectiveness of internal control over financial reporting (which is included in Management's Report on Internal Control over Financial Reporting) incorporated in the registration statement of which this prospectus is a part by reference to the Annual Report on Form 10-K of Newmont Mining Corporation for the year ended December 31, 2006 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.

Table of Contents**WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly and special reports, proxy statements and other information with the United States Securities and Exchange Commission, or the SEC. Our SEC filings are available to the public from our web site at <http://www.newmont.com> or from the SEC's web site at <http://www.sec.gov>. The information on our website is not incorporated by reference into and is not made a part of this prospectus. You may also read and copy any document we file at the SEC's public reference room located at 100 F Street, NE, Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference rooms.

We incorporate by reference in this prospectus certain information that we file with the SEC, which means that we disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be a part of this prospectus, and information in documents that we file later with the SEC will automatically update and supersede information contained in documents filed earlier with the SEC or contained in this prospectus. We incorporate by reference in this prospectus the documents listed below that have been previously filed with the SEC. These documents contain important information about us and our financial condition. The footnotes to the financial statements within certain of these documents contain financial information for Newmont USA Limited.

Newmont SEC Filings (File No. 001-31240)	Period
Annual Report on Form 10-K (including the portions of our proxy statement for our 2007 annual meeting of stockholders incorporated by reference therein, but excluding the financial statements)	Year ended December 31, 2006
Quarterly Report on Form 10-Q	Quarters ended March 31, 2007 (excluding the financial statements) and June 30, 2007
Current Reports on Form 8-K	Filed February 12, 2007, June 1, 2007, June 8, 2007 (as amended on July 19), July 6, 2007, July 11, 2007, July 12, 2007, July 17, 2007 (as amended on August 3, 2007), July 24, 2007, August 23, 2007, October 10, 2007 and October 15, 2007

We also incorporate by reference in this prospectus any future filings that we may make with the SEC under Sections 13(a), 13(c), 14, or 15(d) of the Securities Exchange Act of 1934, as amended, until we sell all of the securities that may be offered by this prospectus. However, we are not incorporating by reference any information furnished under Items 2.02 or 7.01 (or corresponding information furnished under Item 9.01 or included as an exhibit) of Form 8-K.

You may request a copy of these filings at no cost to you, by writing or telephoning us as follows:

Newmont Mining Corporation
1700 Lincoln Street

Edgar Filing: APPLE INC - Form DEF 14A

Denver, Colorado 80203
Attn: Office of the Secretary
(303) 863-7414

This prospectus incorporates documents by reference which are not presented in or delivered with this prospectus. You should rely only on the information contained in this prospectus and in the documents that we have incorporated by reference into this prospectus. We have not authorized anyone to provide you with different information. We are not making an offer of the securities described in this prospectus in any state where the offer is not permitted. You should not assume that the information in this prospectus is accurate as of any date other than the date on the front of those documents.

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\$450,000,000

Newmont Mining Corporation

3.00% Convertible Senior Notes due 2012

Prospectus Supplement

January 28, 2009

Citi

J.P.Morgan

BMO Capital Markets