

O REILLY AUTOMOTIVE INC
Form S-4/A
June 20, 2008
Table of Contents

As filed with the Securities and Exchange Commission on June 20, 2008

Registration No. 333-151578

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

AMENDMENT NO. 1
TO
FORM S-4
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

O Reilly Automotive, Inc.

(Exact name of registrant as specified in its charter)

Edgar Filing: O REILLY AUTOMOTIVE INC - Form S-4/A

Missouri (State or other jurisdiction of incorporation or organization)	5531 (Primary Standard Industrial Classification Code Number) 233 South Patterson Springfield, Missouri 65802 (417) 862-6708	44-0618012 (I.R.S. Employer Identification Number)
--	--	---

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Greg Henslee

Chief Executive Officer and Co-President

O Reilly Automotive, Inc.

233 South Patterson

Springfield, Missouri 65802

(417) 862-6708

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Peter C. Krupp, Esq.	Lawrence Mondry	Richard M. Russo, Esq.
Kimberly A. deBeers, Esq.	Chief Executive Officer and President	Steven K. Talley, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP	CSK Auto Corporation	Gibson, Dunn & Crutcher LLP
333 West Wacker Drive	645 E. Missouri Avenue	1801 California Street
Chicago, Illinois 60606	Suite 400	Suite 4200
(312) 407-0700	Phoenix, Arizona 85012	Denver, Colorado 80202
	(602) 265-9200	(303) 298-5700

Approximate date of commencement of proposed sale of the securities to the public: As soon as practicable after the effective date of this registration statement and the satisfaction (or waiver) of the conditions to the offer described herein.

If the securities being registered on this form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box. "

Edgar Filing: O REILLY AUTOMOTIVE INC - Form S-4/A

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

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

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

Large accelerated filer

Accelerated filer

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

Smaller reporting company

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

Table of Contents

THE INFORMATION IN THIS PROSPECTUS MAY BE CHANGED OR AMENDED. WE MAY NOT COMPLETE THE EXCHANGE OFFER AND ISSUE THESE SECURITIES UNTIL THE REGISTRATION STATEMENT FILED WITH THE SECURITIES AND EXCHANGE COMMISSION IS EFFECTIVE. THIS PROSPECTUS IS NOT AN OFFER TO SELL THESE SECURITIES AND WE ARE NOT SOLICITING OFFERS TO BUY THESE SECURITIES IN ANY JURISDICTION WHERE THE OFFER OR SALE IS NOT PERMITTED.

PRELIMINARY PROSPECTUS, SUBJECT TO COMPLETION, DATED JUNE 20, 2008.

O Reilly Automotive, Inc.

Offer to Exchange

Each Outstanding Share of Common Stock

(Including the Associated Common Stock Purchase Rights)

of

CSK Auto Corporation

for

(I) Between 0.3673 and 0.4285 of a Share of Common Stock of

O Reilly Automotive, Inc. and (II) \$1.00 in Cash, Subject to Possible Reduction

The offer and withdrawal rights will expire at 12:00 midnight, New York City time, on July 10, 2008, unless extended. Shares tendered pursuant to the offer may be withdrawn at any time prior to the expiration of the offer, but not during any subsequent offering period.

This prospectus amends and supercedes information included in the prospectus originally filed with the Securities and Exchange Commission on June 11, 2008.

We are offering to exchange (i) between 0.3673 and 0.4285 of a share of common stock of O Reilly Automotive, Inc. (O Reilly) and (ii) \$1.00 in cash, subject to possible reduction, as described below, for each share of common stock, including the associated common stock purchase rights, of CSK Auto Corporation (CSK) that you validly tender in the offer, through our indirect wholly owned subsidiary, OC Acquisition Company, a Delaware corporation (OC Acquisition), on the terms and conditions contained in this prospectus and in the related letter of transmittal. The number of shares of O Reilly common stock received for each tendered share of CSK common stock, together with the associated rights to purchase CSK common stock issued pursuant to the Rights Agreement, dated February 4, 2008, between CSK and Mellon Investor Services LLC (common stock purchase rights), will be determined based on an exchange ratio equal to \$11.00 divided by the average of the reported closing sale prices of O Reilly common stock for the five (5) consecutive trading days ending on and including the second trading day prior to the consummation of the offer and rounded to four decimal places; provided, however, that if such average closing sale price of O Reilly stock is greater than \$29.95, then the exchange ratio shall equal 0.3673, and if such average closing sale price is less than \$25.67, then the exchange ratio shall equal 0.4285. The \$1.00 in cash received per share of CSK common stock will be subject to reduction for costs in excess of \$3,000,000, if any, incurred by CSK associated with obtaining any necessary waivers or consents under CSK's credit agreements prior to the completion of the offer. CSK has indicated to O Reilly that, as of the date of this prospectus, it does not anticipate obtaining any waivers or consents under its credit agreements prior to the anticipated completion of the offer.

By way of example, if the average of the reported closing sale prices of O Reilly common stock as reported on the NASDAQ Stock Market, Inc. (NASDAQ) for the five (5) consecutive trading days ending on and including June 17, 2008, the last trading day prior to the printing of this prospectus for which this information was practicably available, were to be used to establish the exchange ratio, each share of CSK common stock would be exchanged into 0.4285 shares of O Reilly common stock and \$1.00 in cash, subject to possible reduction, as described herein.

The offer is being made pursuant to an Agreement and Plan of Merger, which is referred to throughout this prospectus as the merger agreement, dated as of April 1, 2008, among O Reilly, OC Acquisition, and CSK, as may be amended in accordance with its terms. The members of the CSK board of directors unanimously approved the merger agreement and the transactions contemplated thereby, including the offer and the merger, in all respects, and determined that the merger agreement and the transactions contemplated thereby, including the offer and the merger, taken together, are at a price and on terms that are advisable and fair to and in the best interests of CSK and its stockholders, and resolved to recommend that CSK stockholders accept the offer and tender their shares pursuant to the offer.

Edgar Filing: O REILLY AUTOMOTIVE INC - Form S-4/A

The offer is conditioned on there being validly tendered and not properly withdrawn prior to the expiration of the offer a number of shares of CSK common stock that, together with shares of CSK common stock then directly or indirectly owned by O Reilly, represents at least a majority of the fully diluted shares of CSK common stock, calculated as described in this prospectus, and satisfaction of the other conditions described in this prospectus under "The Offer - Conditions of the Offer" on page 67.

After completion of the offer, O Reilly will cause OC Acquisition to complete a merger with and into CSK, with CSK continuing as the surviving corporation, in which each outstanding share of CSK common stock (except for shares beneficially owned directly or indirectly by O Reilly for its own account and any shares held in treasury by CSK) will be converted into the right to receive the same consideration paid in exchange for each share of CSK common stock in the offer, subject to appraisal rights to the extent applicable under Delaware law. If after the completion of the offer we beneficially own more than 90% of the outstanding shares of CSK common stock or if we exercise our option to purchase additional shares directly from CSK to reach the 90% threshold, we may effect this merger without the approval of CSK stockholders, as permitted under Delaware law, subject to appraisal rights to the extent applicable under Delaware law. Furthermore, if necessary to preserve the intended treatment of the offer and the merger as a tax-free reorganization for United States federal income tax purposes, O Reilly will cause CSK to merge, immediately after the merger, with and into a direct, wholly-owned, limited liability company subsidiary of O Reilly that is treated as a disregarded entity for United States federal income tax purposes. We refer to this merger throughout this prospectus as the LLC merger.

We are not asking you for a proxy and you are requested not to send us a proxy. Any request for proxies, if required, will be made only pursuant to separate proxy solicitation materials complying with the requirements of Section 14(a) of the Securities Exchange Act of 1934, as amended, which is referred to throughout this prospectus as the Exchange Act.

See Risk Factors beginning on page 21 for a discussion of important factors that you should consider in connection with the offer.

O Reilly's common stock is quoted on the NASDAQ under the symbol ORLY and CSK's common stock is quoted on the New York Stock Exchange (NYSE) under the symbol CAO.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

The date of this prospectus is June 11, 2008, as amended on June 20, 2008.

Table of Contents

TABLE OF CONTENTS

	Page
<u>QUESTIONS AND ANSWERS ABOUT THE OFFER</u>	iii
<u>CAUTIONARY STATEMENT REGARDING FORWARD LOOKING STATEMENTS</u>	viii
<u>SUMMARY</u>	1
<u>SELECTED HISTORICAL FINANCIAL DATA</u>	10
<u>O Reilly's Selected Historical Consolidated Financial Data</u>	10
<u>CSK's Selected Historical Consolidated Financial Data</u>	12
<u>SELECTED UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL DATA</u>	14
<u>UNAUDITED COMPARATIVE PER COMMON SHARE DATA</u>	16
<u>COMPARATIVE PER SHARE MARKET PRICE AND DIVIDEND INFORMATION</u>	18
<u>RECENT CLOSING PRICES</u>	20
<u>RISK FACTORS</u>	21
<u>Risks Related to the Offer and the Merger</u>	21
<u>Risks Related to O Reilly and the Combined Company</u>	23
<u>BACKGROUND AND REASONS FOR THE OFFER AND THE MERGER</u>	27
<u>Background of the Offer and the Merger</u>	27
<u>Additional Factors for Consideration by CSK Stockholders</u>	31
<u>RECOMMENDATION OF CSK'S BOARD OF DIRECTORS</u>	32
<u>THE OFFER</u>	33
<u>Exchange of Shares of CSK Common Stock</u>	33
<u>Timing of the Offer</u>	34
<u>Extension, Termination and Amendment</u>	34
<u>Subsequent Offering Period</u>	35
<u>Conditions of the Offer</u>	35
<u>Important Definitions</u>	38
<u>Procedure for Tendering Shares</u>	38
<u>Guaranteed Delivery</u>	39
<u>Withdrawal Rights</u>	40
<u>Effect of a Tender of Shares</u>	41
<u>Delivery of Shares of O Reilly Common Stock and Cash</u>	42
<u>Cash Instead of Fractional Shares of O Reilly Common Stock</u>	42
<u>Material United States Federal Income Tax Considerations</u>	42
<u>Transferability of Shares of O Reilly Common Stock</u>	46
<u>Approval of the Merger</u>	46
<u>Appraisal Rights</u>	47
<u>CERTAIN LEGAL MATTERS</u>	47
<u>Regulatory Approvals</u>	47
<u>State Takeover Laws</u>	47
<u>CERTAIN EFFECTS OF THE OFFER</u>	48
<u>Effects on the Market; Exchange Act Registration</u>	48
<u>Financing of the Offer and the Merger</u>	49
<u>Conduct of CSK if the Offer is Not Completed</u>	50
<u>Accounting Treatment</u>	50
<u>Fees and Expenses</u>	50
<u>INTERESTS OF CERTAIN PERSONS IN THE OFFER AND THE MERGER</u>	52
<u>Interests of Management and the CSK Board</u>	52
<u>Interests of O Reilly in the Offer</u>	56
<u>THE MERGER AGREEMENT</u>	58
<u>The Offer</u>	58
<u>The Merger</u>	60

Table of Contents

	Page
<u>Representations and Warranties</u>	61
<u>Covenants</u>	62
<u>Conditions of the Offer</u>	67
<u>Conditions of the Merger</u>	67
<u>Termination of the Merger Agreement</u>	68
<u>Extension, Waivers and Amendment</u>	70
<u>INFORMATION WITH RESPECT TO CSK</u>	71
<u>INFORMATION WITH RESPECT TO O REILLY AND OC ACQUISITION</u>	71
<u>DESCRIPTION OF O REILLY CAPITAL STOCK</u>	72
<u>COMPARISON OF RIGHTS OF HOLDERS OF O REILLY COMMON STOCK AND CSK COMMON STOCK</u>	72
<u>ADDITIONAL INFORMATION</u>	81
<u>Legal Matters</u>	81
<u>Experts</u>	81
<u>Where You Can Find Additional Information</u>	81
<u>Miscellaneous</u>	83
<u>UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL DATA</u>	84
<u>Annex A Agreement and Plan of Merger</u>	A-1
<u>Annex B Section 262 of the Delaware General Corporation Law</u>	B-1
<u>Annex C Information Concerning Directors and Executive Officers of O Reilly and OC Acquisition</u>	C-1
<u>Annex D CSK's Annual Report on Form 10-K for the Year Ended February 3, 2008</u>	D-1
<u>Annex E CSK's Amendment to its Annual Report on Form 10-K/A for the Year Ended February 3, 2008</u>	E-1
<u>Annex F CSK's Current Report on Form 8-K filed on May 14, 2008</u>	F-1
<u>Annex G CSK's Quarterly Report on Form 10-Q for the Quarter Ended May 4, 2008</u>	G-1
ADDITIONAL INFORMATION	

As permitted under the rules of the Securities and Exchange Commission (the "SEC"), this prospectus incorporates important business and financial information about O Reilly that is contained in documents filed with the SEC but that are not included in or delivered with this prospectus. You may obtain copies of these documents, without charge, from the website maintained by the SEC at www.sec.gov, as well as other sources. See "Additional Information - Where You Can Find Additional Information" on page 81.

You may also obtain copies of these documents, without charge, upon written or oral request to our information agent, Innisfree M&A Incorporated ("Innisfree") (Banks and Brokerage Firms, please call (212) 750-5833; all others call toll free: (888) 750-5834). To obtain timely delivery of copies of these documents, you should request them no later than five business days prior to the expiration of the offer. **UNLESS THE OFFER IS EXTENDED, THE LATEST YOU SHOULD REQUEST COPIES OF THESE DOCUMENTS IS JULY 2, 2008.**

Except as otherwise specifically noted, O Reilly, we, our, us and similar words in this prospectus refer to O Reilly Automotive, Inc. We refer to CSK Auto Corporation as "CSK" and to OC Acquisition Company as "OC Acquisition."

Table of Contents

QUESTIONS AND ANSWERS ABOUT THE OFFER

General Questions and Answers

The following is important information in a question-and-answer format regarding the offer and this prospectus.

Q: What is O Reilly proposing?

A: O Reilly proposes to acquire all outstanding shares of CSK common stock, together with the associated common stock purchase rights. We have entered into a merger agreement with CSK pursuant to which we are offering, through OC Acquisition, our indirect wholly-owned subsidiary, to exchange a fraction of a share of O Reilly common stock and cash for each outstanding share of CSK common stock. If the offer is completed, subject to approval by the stockholders of CSK, if necessary, OC Acquisition will merge with and into CSK. As a result of the offer and the merger, CSK will become an indirect wholly-owned subsidiary of O Reilly.

For a more complete description of the merger, please see the section entitled "The Merger Agreement" "The Merger" beginning on page 60 of this prospectus.

Q: Why are O Reilly and CSK proposing the offer and the merger?

A: O Reilly and CSK believe that combining the strengths of the two companies is in the best interests of both companies and their respective stockholders. Please see the section entitled "Background and Reasons for the Offer and the Merger" beginning on page 27 of this prospectus for the numerous factors considered by the boards of directors of CSK and O Reilly when contemplating the offer and the merger.

Q: What would I receive in exchange for my shares of CSK common stock?

A: For each share of CSK common stock that is validly tendered and not properly withdrawn, we are offering (i) between 0.3673 and 0.4285 of a share of common stock of O Reilly and (ii) \$1.00 in cash, subject to possible reduction, as described herein. The number of shares of O Reilly common stock received for each tendered share of CSK common stock will be determined based on an exchange ratio equal to \$11.00 divided by the average of the reported closing sale prices of O Reilly common stock for the five (5) consecutive trading days ending on and including the second trading day prior to the consummation of the offer and rounded to four decimal places; provided, however, that if such average closing sale price of O Reilly stock is greater than \$29.95, then the exchange ratio shall equal 0.3673, and if such average closing sale price is less than \$25.67, then the exchange ratio shall equal 0.4285. The \$1.00 in cash received per share of CSK common stock will be subject to reduction for costs in excess of \$3,000,000, if any, incurred by CSK associated with obtaining any necessary waivers or consents under CSK's credit agreements prior to the completion of the offer. CSK has indicated to O Reilly that, as of the date of the prospectus, it does not anticipate obtaining any waivers or consents under its credit agreements prior to the anticipated completion of the offer. After completion of the offer and upon consummation of the merger, each share of CSK common stock that has not been tendered and accepted for exchange in the offer will be converted in the merger into the right to receive the same consideration as offered in exchange for each share of CSK common stock in the offer.

O Reilly will not issue any fractional shares of common stock in connection with the offer or the merger. CSK stockholders will instead receive cash for any fractional shares otherwise issuable to them.

Table of Contents

Q: What are some of the other factors I should consider in deciding whether to tender my shares of CSK common stock?

A: In addition to the factors described elsewhere in this prospectus, you should consider the following:

As an O Reilly shareholder, your interest in the performance and prospects of the CSK business would only be indirect and in proportion to your share ownership in O Reilly. You, therefore, will not realize the same financial benefits of future appreciation in the value of the CSK business, if any, that you might realize if the offer and the merger were not completed and you remained a CSK stockholder; and

The failure of the combined company to meet the challenges involved in integrating the operations of O Reilly and CSK successfully or to otherwise realize any of the anticipated benefits of the offer and the merger could seriously harm the results of operations of the combined company.

We describe various factors CSK stockholders should consider in deciding whether to tender their shares in the offer under **Risk Factors** on page 21 and **Background and Reasons for the Offer and the Merger** **Additional Factors for Consideration by CSK Stockholders** on page 31.

Q: Do I have to pay any fees or commissions?

A: If you are the record owner of your shares and you tender your shares in the offer, you will not incur any brokerage fees. If you own your shares through a broker or other nominee who tenders the shares on your behalf, your broker or other nominee may charge you a fee for doing so. You should consult your broker or nominee to determine whether any charges will apply.

Q: Does CSK support the offer and the merger?

A: Yes. The members of the CSK board of directors, at a meeting duly called and held on March 31, 2008, voted unanimously to approve the merger agreement and the transactions contemplated thereby, including the offer and the merger, and determined that the merger agreement, the offer, and the merger are advisable and fair to, and in the best interest of, CSK's stockholders. The CSK board of directors voted unanimously to recommend that CSK's stockholders accept the offer and tender their shares in the offer. Information about the recommendation of CSK's board of directors is more fully set forth in CSK's Solicitation/Recommendation Statement on Schedule 14D-9, which is being mailed to CSK stockholders together with this prospectus.

Q: What percentage of O Reilly common stock will CSK stockholders own after the offer and the merger?

A: If we obtain all of the outstanding shares of CSK pursuant to the offer and the merger, former stockholders of CSK would own approximately 14.0% of the outstanding shares of common stock of O Reilly, based upon the number of outstanding shares of O Reilly common stock and CSK common stock on June 17, 2008 and based on the closing sale price of O Reilly common stock as reported on the NASDAQ on June 17, 2008, disregarding stock options, and shares of common stock that may be issued by O Reilly or CSK pursuant to an employee stock plan.

Q: What are the most significant conditions to the acceptance of shares of CSK common stock in the offer?

Edgar Filing: O REILLY AUTOMOTIVE INC - Form S-4/A

A: O Reilly's obligation to accept shares of CSK common stock in the offer is subject to several conditions, including:

The valid tender, without proper withdrawal, of a number of shares of CSK common stock that, together with shares of CSK common stock then directly or indirectly owned by O Reilly, represents at least a

Table of Contents

majority of the outstanding shares of CSK common stock, on a fully diluted basis (including all shares issuable upon exercise of all options or other rights to purchase CSK common stock that will be vested by September 28, 2008), which we refer to in this prospectus as the minimum tender condition;

The expiration or termination of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, which occurred on April 17, 2008; and

The registration statement of which this prospectus is a part having been declared effective by the SEC and not subject to any stop order or proceeding seeking a stop order.

These and other conditions to the offer are discussed in this prospectus under **The Offer** **Conditions of the Offer** beginning on page 35.

Q: How long will it take to complete the offer and the merger?

A: We hope to complete the offer by July 10, 2008, the initial scheduled expiration date. However, we may decide, or be required, to extend the offer if certain conditions of the offer have not been satisfied by the initial scheduled expiration date. In addition, we, in our sole discretion, will extend the offer for an aggregate period of not more than ten (10) business days beyond the last expiration date of the offer that would otherwise be permitted if, in our reasonable discretion, such extension is necessary to complete the necessary conditions to complete our financing transactions for the offer so long as such extension does not extend the expiration date of the offer beyond thirty (30) business days following commencement of the offer. We expect to complete the merger shortly after successful completion of the offer or, if CSK stockholder approval is required, shortly after such approval is obtained either at a special meeting of the CSK stockholders called for that purpose or following the receipt of the requisite approval of CSK stockholders acting by written consent. If the conditions to the offer are satisfied, O Reilly will have sufficient votes to adopt the merger agreement without the need for any other CSK stockholders to vote in favor of such adoption. Because completion of the offer and the merger is subject to various conditions, O Reilly and CSK cannot predict the exact timing of completion of the offer or the merger or whether the offer or the merger will be completed at all.

Q: How do I participate in the offer?

A: You are urged to read this entire prospectus carefully and to consider how the offer and the merger affect you. Then, if you wish to tender your shares of CSK common stock, you should do the following:

If you hold your shares in your own name, complete and sign the enclosed letter of transmittal and return it with your share certificates to Mellon Investor Services LLC, exchange agent for the offer, at one of its addresses on the back cover of this prospectus.

If you hold your shares in **street name** through a broker, ask your broker to tender your shares.

For more information about the procedures for tendering your shares, timing of the offer, extensions of the offer period and your rights to withdraw your shares from the offer before the expiration date, please refer to **The Offer** beginning on page 33.

Q: Do I have to vote to approve the offer or the merger?

- A:** Because we are extending the offer directly to CSK stockholders, CSK stockholders are not being asked to vote to approve the offer, but approval of the merger by CSK stockholders may be required following the successful completion of the offer. If approval of the merger is required once the offer is completed, it can be accomplished solely by us because we will own a majority of the shares of CSK common stock at that time. CSK stockholders will receive an information statement relating to our approval of the merger. If we own 90% or more of the outstanding common stock of CSK following completion of the offer or if we exercise our option to purchase additional shares directly from CSK to reach the 90% threshold, the merger can be accomplished without any vote of CSK stockholders under applicable Delaware law.

Table of Contents

Q: If I decide not to tender, how will this affect the offer and my shares of CSK common stock?

A: We will not acquire any shares of CSK common stock in the offer unless the minimum tender condition is satisfied. Your failure to tender your shares of CSK common stock will reduce the likelihood that we will receive tenders of a sufficient number of shares of CSK common stock to be able to complete the offer.

The offer is the first step in our acquisition of CSK and is intended to facilitate the acquisition of all outstanding shares of CSK common stock. After completion of the offer, we will cause OC Acquisition, an indirect wholly-owned subsidiary of O Reilly, to complete a merger with and into CSK with CSK continuing as the surviving corporation, which is referred to throughout this prospectus as the merger. The purpose of the merger will be to acquire all outstanding shares of CSK common stock not exchanged in the offer. In the merger, each outstanding share of CSK common stock (except for shares beneficially owned directly or indirectly by O Reilly for its own account and any shares held in treasury by CSK) will be converted into the same amount of cash and fraction of a share of O Reilly common stock being issued in exchange for each share of CSK common stock accepted in the offer, subject to appraisal rights to the extent applicable under Delaware law. If the merger takes place, except for your right to an appraisal of your shares of CSK common stock to the extent applicable under Delaware law, the only difference to you between tendering your shares of CSK common stock in the offer and not tendering your shares of CSK common stock is that you will receive cash and shares of O Reilly common stock earlier if you tender your shares in the offer. An earlier tender of your shares of CSK common stock may, however, help to ensure the satisfaction of the minimum tender condition and the completion of the offer and merger.

Q: What is the top-up option and when will it be exercised?

A: Under the merger agreement, if the minimum tender condition is satisfied and we consummate the offer, we have the option, which we refer to as the top-up option, to purchase from CSK additional shares of CSK common stock, subject to limitations described herein, equal to the lowest number of shares that, when added to the number of shares already owned by O Reilly, will constitute one share more than 90% of the shares of CSK common stock then outstanding. If we exercise this option, we may issue a promissory note, bearing interest at five percent per annum, in the amount required to pay the aggregate purchase price for the additional shares of CSK common stock at the offer price. In no event will the top-up option be exercisable for a number of shares of CSK common stock (i) that would require CSK to obtain stockholder approval under applicable law or the rules and regulations of the New York Stock Exchange or (ii) in excess of CSK's then authorized and unissued shares of common stock.

Q: What will happen to the 6^{3/4}% exchangeable notes of CSK in the offer?

A: CSK has outstanding 6^{3/4}% Exchangeable Senior Notes due 2025. O Reilly will assume these notes as a successor under the indenture governing these notes through a supplemental indenture.

Q: What will happen to CSK's outstanding options and other stock-based awards in the merger?

A: At the effective time of the merger (or an earlier date O Reilly may select on or following consummation of the offer), unexercised CSK stock options, whether vested or unvested, then outstanding will automatically be converted into vested options to acquire O Reilly common stock. Option holders will not receive the cash portion of the offer consideration and their exchange ratio will be adjusted to account for the cash portion of the offer consideration.

At the effective time of the merger, with the exception of the CSK stock award of 89,899 shares relating to Mr. Lawrence Mondry, all CSK stock awards will be converted into a right to receive the offer consideration multiplied by the number of shares of CSK common stock subject to such stock award. With respect to the award of 89,899 shares of restricted stock, it will be converted into the right to

Edgar Filing: O REILLY AUTOMOTIVE INC - Form S-4/A

receive O Reilly common stock on the same basis as the option holders and such award shall continue to vest in accordance with its terms.

vi

Table of Contents

Q: Will I be taxed on the O Reilly shares I receive?

A: It is a condition to the completion of the offer that O Reilly and CSK receive legal opinions from their respective tax counsel to the effect that the offer, the merger and the LLC merger (if any) together will constitute a reorganization within the meaning of section 368(a) of the Internal Revenue Code, or the Code. A CSK common stockholder who, consistent with such opinions, receives cash (other than cash in lieu of a fractional share of O Reilly common stock) and shares of O Reilly common stock pursuant to a transaction constituting a reorganization within the meaning of section 368(a) of the Code will recognize gain (but will not recognize any loss), and the gain recognized will be equal to the lesser of (i) any cash received (other than cash received in lieu of a fractional share of O Reilly common stock) and (ii) the excess, if any, of (x) the sum of the cash received (other than cash received in lieu of a fractional share of O Reilly common stock) and the fair market value of the O Reilly common stock received over (y) such CSK common stockholder's tax basis in the shares of CSK common stock exchanged therefor. In addition, such CSK common stockholder will recognize gain or loss attributable to cash received in lieu of a fractional share of O Reilly common stock. CSK common stockholders should consult their tax advisors for a full understanding of all of the tax consequences of the offer, the merger and the LLC merger (if any) to them.

Q: Do the statements on the cover page regarding this prospectus being subject to change and the registration statement filed with the SEC not yet being effective mean that the offer has not commenced?

A: No. As permitted under SEC rules, we may commence the offer without the registration statement, of which this prospectus is a part, having been declared effective by the SEC. We cannot, however, complete the offer and accept for exchange any shares of CSK common stock tendered in the offer until the registration statement is declared effective by the SEC and the other conditions to the offer have been satisfied or, where permissible, waived. The offer will commence when we first mail this prospectus and the related letter of transmittal to CSK stockholders.

Q: Is O Reilly's financial condition relevant to my decision to tender my shares in the offer?

A: Yes. Since shares of CSK common stock accepted in the offer will be exchanged in part for shares of O Reilly common stock, you should consider our financial condition before you decide to tender shares in the offer. In considering O Reilly's financial condition, you should review carefully the information in this prospectus and the documents incorporated by reference in this prospectus because they contain detailed business, financial and other information about us.

Q: Are there any risks related to the proposed transaction or any risks related to owning O Reilly common stock that I should consider in deciding whether to participate in the exchange offer?

A: Yes. You should carefully review the section entitled "Risk Factors" beginning on page 21 of this prospectus.

Q: Where can I find more information about O Reilly and CSK?

A: You can find more information about O Reilly and CSK as described under "Where You Can Find Additional Information" on page 81.

Q: Whom should I contact if I have more questions about the offer and the merger?

A:

Edgar Filing: O REILLY AUTOMOTIVE INC - Form S-4/A

You may contact Innisfree M&A Incorporated, the information agent for the offer, toll free at (888) 750-5834. Banks and brokers may call collect at (212) 750-5833.

vii

Table of Contents

CAUTIONARY STATEMENT REGARDING FORWARD LOOKING STATEMENTS

This prospectus, including information included or incorporated by reference in this prospectus, contains forward-looking statements. These forward-looking statements include, but are not limited to, statements discussing among other things, expected growth, store development and expansion strategy, business strategies, future revenues, future performance, the benefits of the merger, including future financial and operating results and performance; statements about O Reilly's and CSK's plans, objectives, expectations and intentions with respect to future operations, products and services; and other statements identified by words such as expects, anticipates, intends, plans, believes, seeks, estimates, may or words of similar meaning.

These forward-looking statements are based on estimates, projections, beliefs and assumptions and are not guarantees of future events and results. Such statements are subject to risks, uncertainties and assumptions, including, but not limited to, competition, product demand, the market for auto parts, the economy in general, inflation, consumer debt levels, governmental approvals, our ability to hire and retain qualified employees, risks associated with the integration of acquired businesses, weather, terrorist activities, war and the threat of war. Actual results may materially differ from anticipated results described or implied in these forward-looking statements.

The following factors, among others, could cause actual results to differ materially from the anticipated results or other expectations expressed in the forward-looking statements:

the risk that the proposed transaction will not close because of a failure to satisfy one or more of the closing conditions;

the risk that O Reilly's business will have been adversely impacted during the pendency of the proposed transaction;

the risk that the integration of CSK's operations may not be successful or may be materially delayed or may be more costly or difficult than expected;

the risk that the expected cost savings and other synergies from the transaction may not be fully realized, realized at all or take longer to realize than anticipated;

the risk that management's estimates of the fair value of certain of CSK's assets may not be equal to the carrying value of those assets and/or management's estimates of certain of CSK's liabilities may be less than the actual amount of such liabilities, in each case, now or in future time periods;

the completion of the offer and the merger may be materially delayed or prohibited;

general economic conditions may be less favorable than we currently anticipate;

contingencies may arise of which we were not aware or of which we underestimated the significance;

the amount, both in absolute dollars and as a percentage of net sales, of the combined companies' expenditures for selling, general and administrative and capital acquisitions and improvements may be materially greater or less than those expected; and

Edgar Filing: O REILLY AUTOMOTIVE INC - Form S-4/A

the amount of expenses and other liabilities incurred or accrued between the date of the signing of the merger agreement and date of the closing of the offer and the merger may be greater than expected.

You are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date of this prospectus or the date of any document incorporated by reference in this prospectus. All subsequent written and oral forward-looking statements concerning the offer and the merger or other matters addressed in this prospectus and attributable to O Reilly or CSK or any person acting on their behalf are expressly qualified in their entirety by the cautionary statements contained or referred to in this section. Except to the extent required by applicable law or regulation, O Reilly undertakes no obligation to update these

Table of Contents

forward-looking statements to reflect events or circumstances after the date of this prospectus or to reflect the occurrence of unanticipated events.

The list of factors discussed under **Risk Factors** on page 21 that may affect future performance and the accuracy of forward-looking statements is illustrative, but by no means exhaustive. Accordingly, all forward-looking statements should be evaluated with the understanding of their inherent uncertainty.

Table of Contents

SUMMARY

This brief summary highlights selected information from this prospectus. It does not contain all of the information that is important to CSK stockholders. CSK stockholders are urged to read carefully the entire prospectus and the other documents referred to and incorporated by reference in this prospectus to fully understand the offer and the merger. In particular, stockholders of CSK should read the documents attached to this prospectus, including the merger agreement, which is attached as Annex A. For a guide as to where you can obtain more information on O Reilly, see Additional Information Where You Can Find Additional Information on page 81.

The Offer

We are proposing to acquire all of the outstanding shares of CSK common stock in exchange for shares of O Reilly common stock and cash.

Stock Component. The stock component consists of between 0.3673 and 0.4285 of a fully paid and nonassessable share of common stock, par value of \$0.01, of O Reilly as determined based on an exchange ratio equal to (i) \$11.00 divided by (ii) the average of the reported closing sale prices of O Reilly common stock for the five (5) consecutive trading days ending on and including the second trading day prior to the consummation of the exchange offer and rounded to four decimal places; provided, however, that if such average closing sale price of O Reilly stock is greater than \$29.95, then the exchange ratio shall equal 0.3673, and if such average closing sale price is less than \$25.67, then the exchange ratio shall equal 0.4285.

Cash Component. The cash component consists of \$1.00 in cash minus the adjustment amount, if any, which we refer to as the per share cash consideration. The adjustment amount is the amount equal to the quotient obtained by dividing (i) the sum of any amount paid by CSK or its subsidiaries to the lenders under its credit agreements in connection with obtaining any bank consent, waiver or amendment under the credit agreements after April 1, 2008 minus \$3,000,000 by (ii) the sum of the (a) total number of shares of CSK common stock outstanding immediately prior to the expiration of the offer and (b) total number of shares of CSK common stock determined by O Reilly up to a maximum of the total number of shares of CSK common stock issuable upon the exercise or conversion of all options, warrants, rights and convertible securities (if any) that will be vested by September 28, 2008. The adjustment amount will be rounded down to the nearest 1/10 (one-tenth) of a cent and will in no event be greater than \$1.00 or less than zero. CSK has indicated to O Reilly that, as of the date of this prospectus, it does not anticipate obtaining any bank consent, waiver or amendment under its credit agreements prior to the anticipated completion of the offer.

After completion of the offer, O Reilly will cause OC Acquisition to complete a merger with and into CSK in which each outstanding share of CSK common stock (except for shares beneficially owned directly or indirectly by O Reilly for its own account and any shares held in treasury by CSK) will be converted into the right to receive the same consideration paid in exchange for each share of CSK common stock in the offer, subject to appraisal rights to the extent applicable under Delaware law. If, after the completion of the offer, either as a result of the offer alone or in conjunction with the exercise of our top-up option to purchase shares directly from CSK, we beneficially own more than 90% of the outstanding shares of CSK common stock, we may effect the merger without the approval of CSK stockholders, as permitted under Delaware law. If, on the other hand, after the completion of the offer, we beneficially own more than 50%, but less than 90%, of the outstanding shares of CSK common stock, a meeting of CSK stockholders and the affirmative vote of at least a majority of the shares of CSK common stock outstanding on the record date for such meeting will be needed to complete the merger. Since O Reilly will own a majority of the shares of CSK common stock outstanding on the record date for any such meeting, approval of the merger by CSK stockholders will be assured.

Table of Contents

The number of shares of O Reilly common stock issued to CSK stockholders in the offer and the merger will constitute approximately 14.0% of the outstanding common stock of the combined company after the merger, based upon the number of outstanding shares of O Reilly common stock and CSK common stock on June 17, 2008 and based on the average of the reported closing sale prices of O Reilly common stock as reported on the NASDAQ for the five (5) consecutive trading days ending on and including June 17, 2008, disregarding stock options, and shares of common stock that may be issued by O Reilly or CSK pursuant to an employee stock plan.

Exchange of Shares of CSK Common Stock (Page 33)

Upon the terms and subject to the conditions of the offer, promptly after the expiration of the offer, we will accept shares of CSK common stock that are validly tendered and not properly withdrawn in exchange for shares of O Reilly common stock and cash. Each share of CSK common stock validly tendered and not properly withdrawn prior to the expiration of the offer will be exchanged for between 0.3673 and 0.4285 of a share of O Reilly common stock and \$1.00 in cash, subject to possible reduction, as described herein.

Timing of the Offer (Page 34)

We commenced the offer on June 11, 2008, the date of distribution of the initial prospectus. The offer is scheduled to expire at 12:00 midnight, New York City time, on July 10, 2008, unless we extend the period of the offer. All references to the expiration of the offer mean the time of expiration, as extended.

Conditions of the Offer (Page 35)

The offer is subject to a number of conditions, and O Reilly will not be required to accept any tendered shares of CSK common stock for exchange if any of these conditions are not satisfied or, where permissible, waived as of the expiration of the offer. These conditions provide, among other things, that:

there must be validly tendered and not properly withdrawn prior to the expiration of the offer a number of shares of CSK common stock that, together with shares of CSK common stock then directly or indirectly owned by O Reilly, represents at least a majority of the fully diluted shares of CSK common stock, calculated as described in this prospectus, which we refer to as the minimum tender condition;

the termination of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, which we refer to as the HSR Act, which occurred on April 17, 2008;

the registration statement on Form S-4 of which this prospectus is a part must have been declared effective by the SEC;

the shares of O Reilly common stock issuable in the offer and the merger shall have been authorized for listing on NASDAQ;

CSK and O Reilly shall have received certain tax opinions;

there shall have been no event having a material adverse effect on CSK and no material breaches by CSK of the merger agreement, in each case that have not been cured;

there shall be no legal impediments to the completion of the offer or the merger;

Edgar Filing: O REILLY AUTOMOTIVE INC - Form S-4/A

CSK's board of directors shall not have withdrawn its recommendation of the offer; and

the merger agreement shall not have been terminated in accordance with its terms.

O'Reilly has agreed with CSK in the merger agreement that it will not consummate the offer unless the conditions set forth in the third, fourth, and fifth bullet points in the immediately preceding paragraph are

Table of Contents

satisfied or waived by CSK. In addition, unless waived by CSK, O Reilly has also agreed with CSK in the merger agreement that it will not consummate the offer if there shall have been any event having a material adverse effect on O Reilly or any material breaches by O Reilly of the merger agreement, in each case that have not been cured.

Extension, Termination and Amendment (Page 34)

In the event that the conditions to the offer have not been satisfied or waived upon the expiration of the offer (as the same may be extended), we are required to extend the offer for periods of up to twenty (20) business days until the earlier of such time that all of the conditions to the offer have been satisfied or waived or the merger agreement has been terminated in accordance with its terms. In addition, we, in our sole discretion, will extend the offer for an aggregate period of not more than ten (10) business days beyond the last expiration date of the offer that would otherwise be permitted if, in our reasonable discretion, such extension is necessary to complete the necessary conditions to complete our financing transactions for the offer so long as such extension does not extend the expiration date of the offer beyond thirty (30) business days following commencement of the offer. During any extension, all shares of CSK common stock previously tendered and not validly withdrawn will remain deposited with the exchange agent, subject to your right to withdraw your shares of CSK common stock. If we exercise our right to use a subsequent offering period as described below, we will first consummate the exchange with respect to the shares validly tendered and not properly withdrawn in the initial offer period.

In the event the merger agreement is terminated in accordance with its terms prior to the acceptance of any shares of CSK common stock for exchange pursuant to the offer, we will promptly terminate the offer without accepting any shares that were previously tendered.

Subsequent Offering Period (Page 35)

We may elect to provide subsequent offering periods of up to twenty (20) business days after the acceptance of shares of CSK common stock in the offer in accordance with Rule 14d-11 under the Exchange Act if, on the expiration date of the offer, all of the conditions to the offer have been satisfied or waived, but the total number of shares of CSK common stock that have been validly tendered and not withdrawn pursuant to the offer, together with shares of CSK common stock then directly or indirectly owned by O Reilly, is less than 90% of the total number of shares of CSK common stock then outstanding. If we exercise our right to use a subsequent offering period, we will first consummate the exchange with respect to the shares validly tendered and not properly withdrawn in the initial offer period. You will not have the right to withdraw any shares of CSK common stock that you tender in the subsequent offering period. If we elect to provide a subsequent offering period, we will make a public announcement to that effect no later than 9:00 a.m. New York City time on the next business day after the previously scheduled expiration.

Procedure for Tendering Shares (Page 38)

For you to validly tender shares of CSK common stock pursuant to the offer, the enclosed letter of transmittal, properly completed and duly executed, or a manually executed facsimile of that document, along with any required signature guarantees, or an agent's message in connection with a book-entry transfer, and any other required documents, must be transmitted to and received by the exchange agent at one of its addresses set forth on the back cover of this prospectus, and certificates for tendered shares of CSK common stock must be received by the exchange agent at one of its addresses or those shares of CSK common stock must be tendered pursuant to the procedures for book-entry tender set forth below, and a confirmation of receipt of the tender received, which confirmation we refer to below as a book-entry confirmation, in each case before the expiration date.

Table of Contents

Guaranteed Delivery (Page 39)

If you wish to tender shares of CSK common stock pursuant to the offer and your certificates are not immediately available or you cannot deliver the certificates and all other required documents to the exchange agent prior to the expiration date or cannot complete the procedure for book-entry transfer on a timely basis, your shares of CSK common stock may nevertheless be tendered, if you comply with the guaranteed delivery procedures as set forth in *The Offer* *Guaranteed Delivery* on page 39.

Withdrawal Rights (Page 40)

You may withdraw any shares of CSK common stock that you previously tendered into the offer at any time before the expiration of the offer by following the procedures described under *The Offer* *Withdrawal Rights* on page 40.

Delivery of Shares of O Reilly Common Stock and Cash (Page 42)

Subject to the satisfaction (or, where permissible, waiver) of the conditions to the offer as of the expiration of the offer, we will accept for exchange shares of CSK common stock validly tendered and not properly withdrawn promptly after the expiration of the offer and will exchange shares of O Reilly common stock, \$1.00 minus the adjustment amount, if any, and cash in lieu of fractional shares for the tendered shares of CSK common stock. In all cases, the exchange of shares of CSK common stock tendered and accepted for exchange pursuant to the offer will be made only if the exchange agent timely receives:

certificates for those shares of CSK common stock, or a timely confirmation of a book-entry transfer of those shares of CSK common stock in the exchange agent's account at DTC, and a properly completed and duly executed letter of transmittal, or a duly executed copy, and any other required documents; or

a timely confirmation of a book-entry transfer of those shares of CSK common stock in the exchange agent's account at DTC, together with an agent's message as described under *The Offer* *Procedure for Tendering Shares* on page 38.

Cash Instead of Fractional Shares of O Reilly Common Stock (Page 42)

We will not issue any fractional shares of O Reilly common stock pursuant to the offer or the merger. Rather, O Reilly will arrange for the exchange agent to make a cash payment in lieu of the fractional shares.

The Merger (Page 60)

The merger agreement provides that following completion of the offer OC Acquisition will be merged with and into CSK, with CSK continuing as the surviving corporation. In the event that O Reilly beneficially owns more than 90% of the outstanding shares of CSK common stock upon completion of the offer, the merger agreement provides that the parties will take all necessary and appropriate action to cause the merger to become effective as soon as practicable following completion of the offer, without a meeting of CSK stockholders, by effecting a short form merger under Delaware law. If the minimum tender condition is met, we have the option, subject to certain limitations described herein, which we refer to as the top-up option, to purchase from CSK additional shares of common stock that, when added to the number of shares already owned by O Reilly, will constitute one share more than 90% of the shares of CSK common stock then outstanding. If after the completion of the offer O Reilly beneficially owns more than 50%, but less than 90%, of the outstanding shares of CSK common stock and O Reilly's exercise of the top-up option will not result in it owning one share more than 90% of the outstanding shares of CSK common stock, a meeting of CSK stockholders and the affirmative vote of at least a majority of the shares of CSK common stock outstanding on the record date for such meeting will be needed to complete the merger. Since O Reilly will own a majority of the shares of CSK common stock

Table of Contents

outstanding on the record date for any such meeting, approval of the merger by CSK stockholders will be assured. If necessary to preserve the intended treatment of the offer and the merger as a tax-free reorganization for United States federal income tax purposes, O Reilly will cause the LLC merger to occur immediately after the merger.

No Solicitation of Acquisition Proposals (Page 63)

CSK has agreed, subject to limited exceptions, that neither CSK nor any of its subsidiaries nor any of their respective officers, directors, employees, agents and representatives will initiate or engage in any negotiations concerning an acquisition proposal. However, the merger agreement provides that, prior to the consummation of the offer, CSK may, in response to an unsolicited bona fide third-party acquisition proposal that CSK's board determines in good faith (after consultation with CSK's outside legal counsel and financial advisors) constitutes or may reasonably be expected to lead to a superior proposal:

furnish to such third party nonpublic information relating to CSK or any of its subsidiaries pursuant to a confidentiality and standstill agreement with terms no less favorable to CSK than those contained in the confidentiality and standstill agreements between CSK and O Reilly; and

participate in discussions or negotiations with such third party regarding such acquisition proposal.

CSK has also agreed to advise O Reilly orally and in writing within forty-eight (48) hours of the receipt of any inquiries, proposals or offers regarding any acquisition proposal; any request for non-public information relating to CSK or its subsidiaries (other than requests for information not reasonably expected to be related to an acquisition proposal); and any inquiry or request for discussion or negotiation regarding an acquisition proposal.

Termination of the Merger Agreement (Page 68)

The merger agreement provides that it can be terminated by CSK or O Reilly under a number of different scenarios, including:

by the mutual written consent of the parties;

by either party, subject to various conditions, if:

the offer is not consummated by September 28, 2008; or

on or after September 28, 2008, any court or governmental entity issues a nonappealable final order restraining, enjoining or otherwise prohibiting the transactions set forth in the merger agreement;

by O Reilly, subject to various conditions, if:

CSK breaches any of its representations, warranties, covenants or agreements set forth in the merger agreement, which breach would result in a failure of a condition to the offer or the merger and cannot be cured by September 28, 2008;

the CSK board of directors, or any of its committees, withdraws, modifies or qualifies in a manner adverse to O Reilly its approval or recommendation in favor of the merger agreement or the merger; or

a material adverse effect has occurred with respect to CSK that is not capable of being cured by September 28, 2008;

by CSK, subject to various conditions, if:

O Reilly or OC Acquisition breaches any of its representations, warranties, covenants or agreements set forth in the merger agreement, which breach would result in a failure of a condition to the offer or the merger and cannot be cured by September 28, 2008;

Table of Contents

the CSK board of directors accepts a superior proposal in compliance with the merger agreement and CSK enters into an agreement regarding such superior proposal and pays the termination fee;

a material adverse effect has occurred with respect to O Reilly that is not capable of being cured by September 28, 2008; or

the average of the reported closing sale prices of O Reilly common stock for the five (5) consecutive trading days ending on and including the second trading day prior to the consummation of the offer and rounded to four decimal places is less than or equal to \$21.00, provided that no right of termination will attach if O Reilly elects to increase the number of shares of O Reilly common stock or cash included in the offer price such that the value of the offer price per share of CSK common stock is at least equal to \$10.00.

Termination Fee (Page 69)

Termination of the merger by either O Reilly or CSK under specified circumstances could result in CSK being required to pay O Reilly a termination fee equal to \$22 million. In the event that the merger agreement is terminated by O Reilly because CSK files for bankruptcy or because of certain adverse events related to CSK's failure to meet its existing debt obligations, CSK is obligated to pay O Reilly for its actual documented reasonable out-of-pocket expenses in connection with the negotiation, execution and delivery of the merger agreement, compliance by O Reilly with the merger agreement and actions taken in furtherance of the consummation of the transactions contemplated in the merger agreement.

CSK Board of Directors (Page 59)

The merger agreement provides that, upon acceptance for exchange of shares of CSK common stock in the offer, we will be entitled to designate a number of directors of CSK, rounded up to the next whole number, equal to the product of the total number of directors on CSK's board of directors and the percentage of aggregate number of shares of CSK common stock beneficially owned by us. This would enable us to control the CSK board of directors after completion of the offer.

Material United States Federal Income Tax Considerations (Page 42)

It is a condition to the completion of the offer that O Reilly and CSK receive written opinions from their respective tax counsel to the effect that the offer, the merger and the LLC merger (if any) together will constitute a reorganization within the meaning of section 368(a) of the Code. A CSK stockholder who, consistent with such opinions, receives cash (other than cash in lieu of a fractional share of O Reilly common stock) and shares of O Reilly common stock pursuant to a transaction constituting a reorganization within the meaning of section 368(a) of the Code will recognize gain (but will not recognize any loss), and the gain recognized will be equal to the lesser of (i) any cash received (other than cash received in lieu of a fractional share of O Reilly common stock) and (ii) the excess, if any, of (x) the sum of the cash received (other than cash received in lieu of a fractional share of O Reilly common stock) and the fair market value of the O Reilly common stock received over (y) the CSK stockholder's tax basis in the shares of CSK common stock exchanged therefor. In addition, the CSK stockholder will recognize gain or loss attributable to cash received in lieu of a fractional share of O Reilly common stock. CSK stockholders should consult their tax advisors for a full understanding of all of the tax consequences of the offer, the merger and the LLC merger (if any) to them.

Appraisal Rights (Page 47)

Under Delaware law, you will not have any appraisal rights in connection with the offer. However, the merger is expected to entitle you to appraisal rights under Section 262 of the Delaware General Corporation Law, which we refer to as the DGCL. A copy of the appraisal rights provisions of the DGCL is attached as Annex B to this prospectus.

Table of Contents

Regulatory Approvals (Page 47)

We and CSK have agreed pursuant to the merger agreement to use all reasonable best efforts to take whatever actions are required to obtain necessary regulatory approvals with respect to the offer and the merger. Other than clearance under the antitrust laws applicable to the offer and the merger, which are described below, the SEC declaring the effectiveness of the registration statement of which this prospectus is a part, and the filing of a certificate of merger under the DGCL with respect to the merger, we do not believe that any additional governmental filings are required with respect to the offer and the merger.

Under the HSR Act, and the related rules, the merger may not be completed until we and CSK notify and furnish information to the Federal Trade Commission and the Antitrust Division of the United States Department of Justice and specified waiting period requirements have been satisfied. The applicable waiting period under the HSR Act was terminated on April 17, 2008.

Financing of the Offer and the Merger (Page 49)

The offer is not conditioned upon the receipt of financing. O Reilly estimates that the total amount of funds necessary to consummate the transactions contemplated by the offer and the merger will be approximately \$1.2 billion, a substantial portion of which will be used to (i) refinance certain existing indebtedness of O Reilly and CSK, (ii) pay customary fees and expenses relating to the offer, the merger and the financing, (iii) pay approximately \$42.2 million to holders of CSK common stock for the cash portion of the offer consideration and (iv) provide for ongoing working capital requirements of the combined corporation. O Reilly has received a commitment letter from Bank of America, N.A., Banc of America Securities LLC, Lehman Commercial Paper Inc., Lehman Brothers Commercial Bank and Lehman Brothers Inc. to provide an asset-based senior secured credit facility to provide \$1.075 billion through a revolving credit facility and \$125.0 million through a first-in-last-out revolving credit facility. See *Certain Effects of the Offer Financing of the Offer and the Merger* starting on page 49 for more information.

Accounting Treatment (Page 50)

In accordance with Statement of Financial Accounting Standards (SFAS) No. 141, *Business Combinations*, O Reilly will account for the transactions as a purchase business combination. Upon consummation of the transactions, O Reilly will record the acquisition at cost with cost consisting of the fair value of O Reilly common stock and stock options issued, the cash consideration issued and transaction costs. The total cost will be allocated based on the fair value of tangible and intangible assets acquired and liabilities assumed. The excess of cost over the fair value of net assets acquired will be recorded as goodwill.

Interests of Certain Persons in the Offer and the Merger (Page 52)

Certain CSK directors, officers and stockholders have interests in the offer and the merger that are different from, or are in addition to, those of other stockholders. These interests include:

the accelerated vesting of stock options and other unvested stock-based awards previously issued to certain CSK directors and officers;

current and future employment arrangements;

severance benefits; and

the indemnification of directors and officers of CSK against certain liabilities.

The boards of directors of CSK and O Reilly were aware of these interests and considered them, among other matters, when they approved the offer, the merger and the merger agreement.

Table of Contents

As of the date of this prospectus, O Reilly beneficially owns of record 2,153,928 shares of CSK common stock, constituting approximately 4.9% of the fully diluted shares of CSK common stock. Such shares will be counted for purposes of determining whether the minimum tender condition in the offer has been satisfied and, after completion of the offer, O Reilly will vote such shares in favor of the merger.

Comparison of Rights of Holders of O Reilly Common Stock and CSK Common Stock (Page 72)

CSK is a Delaware corporation, while O Reilly is a Missouri corporation. If we complete the offer, holders of CSK common stock will become O Reilly shareholders, and their rights as shareholders will be governed by Missouri law as well as O Reilly's articles of incorporation and bylaws. There are differences between Delaware law, the certificate of incorporation and bylaws of CSK, on the one hand, and Missouri law, the articles of incorporation and bylaws of O Reilly, on the other hand.

The Companies

O Reilly Automotive, Inc.

233 South Patterson

Springfield, Missouri 65802

Telephone: (417) 862-6708

www.oreillyauto.com

O Reilly Automotive, Inc., founded in 1957 and incorporated under the laws of Missouri, is one of the largest specialty retailers of automotive aftermarket parts, tools, supplies, equipment and accessories in the United States. O Reilly sells its products to do-it-yourself customers and professional installers. As of March 31, 2008, we operated 1,867 stores in Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Virginia, Wisconsin and Wyoming.

O Reilly's common stock is currently quoted on the NASDAQ (symbol: ORLY).

CSK Auto Corporation

645 E. Missouri Ave., Suite 400

Phoenix, Arizona 85012

Telephone: (602) 265-9200

www.cskauto.com

CSK Auto Corporation, founded in 1993 and incorporated under the laws of Delaware, is the largest specialty retailer of automotive parts and accessories in the Western United States and one of the largest such retailers of products in the country. As of May 4, 2008, through its wholly owned subsidiary, CSK Auto, Inc., CSK operated 1,345 stores in the United States, principally concentrated in the western United States. CSK's stores are known by the following four brand names: (i) Checker Auto Parts, founded in 1969, with 487 stores in the Southwestern, Rocky Mountain and Northern Plains states and Hawaii; (ii) Schuck's Auto Supply, founded in 1917, with 222 stores in the Pacific Northwest states and Alaska; (iii) Kragen Auto Parts, founded in 1947, with 504 stores primarily in California; and (iv) Murray's Discount Auto Stores, founded in 1972, with 136 stores in the Midwest.

CSK's common stock is currently quoted on the NYSE (symbol: CAO).

Comparative Per Share Market Price and Dividend Information (Page 18)

Edgar Filing: O REILLY AUTOMOTIVE INC - Form S-4/A

On March 31, 2008, the last trading day before O Reilly and CSK announced the offer, O Reilly common stock closed at \$28.52 per share and CSK common stock closed at \$9.31 per share. On June 17, 2008, the last

Table of Contents

trading day prior to the printing of this prospectus for which this information was practicably available, O Reilly common stock closed at \$25.55 per share and CSK common stock closed at \$11.50 per share.

Neither O Reilly nor CSK has paid any dividends in the prior two fiscal years and O Reilly does not anticipate paying any cash dividends on its common stock in the foreseeable future.

Questions About the Offer and Subsequent Merger

If you have any questions about the offer or the merger or if you need additional copies of this prospectus, you should contact our information agent:

INNISFREE M&A INCORPORATED

501 Madison Avenue, 20th Floor

New York, NY 10022

Stockholders Call Toll-Free: (888) 750-5834

Banks and Brokers Call Collect: (212) 750-5833

Table of Contents**SELECTED HISTORICAL FINANCIAL DATA****O Reilly's Selected Historical Consolidated Financial Data**

The information in the following table is based on O Reilly's historical financial statements that O Reilly has presented in its prior filings with the SEC. You should read the selected historical financial data in the following table in conjunction with the historical financial statements and related notes (including other selected historical financial data contained therein), O Reilly's Management's Discussion and Analysis of Financial Condition and Results of Operations set forth in O Reilly's Annual Report on Form 10-K for the year ended December 31, 2007 and O Reilly's Management's Discussion and Analysis of Financial Condition and Results of Operations set forth in O Reilly's Quarterly Report on Form 10-Q for the quarter ended March 31, 2008, which have been incorporated into this document by reference. See Additional Information Where You Can Find Additional Information on page 81.

The historical consolidated financial data for O Reilly for the fiscal years 2007, 2006, 2005, 2004 and 2003 have been derived from O Reilly's consolidated financial statements, which were audited by Ernst & Young LLP, an independent registered public accounting firm. The accompanying selected interim financial data for O Reilly for the three months ended March 31, 2008 and 2007 have been derived from O Reilly's unaudited interim financial statements. The unaudited interim financial statements include all adjustments, consisting of normal recurring accruals, which O Reilly considers necessary for a fair presentation of the financial position and the results of operations for these periods. Operating results for the three months ended March 31, 2008 are not necessarily indicative of the results that may be expected for the entire year ending December 31, 2008.

Amounts (except per share amounts) are shown in thousands.

	Three Months Ended March 31,		Fiscal Year Ended December 31,				
	2008	2007	2007	2006	2005	2004	2003
INCOME STATEMENT DATA:							
Sales	\$ 646,220	\$ 613,145	\$ 2,522,319	\$ 2,283,222	\$ 2,045,318	\$ 1,721,241	\$ 1,511,816
Cost of goods sold, including warehouse and distribution expenses	357,726	343,864	1,401,859	1,276,511	1,152,815	978,076	873,481
Gross profit	288,494	269,281	1,120,460	1,006,711	892,503	743,165	638,335
Operating, selling, general and administrative expenses	214,338	192,089	815,309	724,396	639,979	552,707	473,060
Operating income	74,156	77,192	305,151	282,315	252,524	190,458	165,275
Other income (expense), net	(450)	(10)	2,337	(50)	(1,455)	(2,721)	(5,233)
Income before income taxes and cumulative effect of accounting change	73,706	77,182	307,488	282,265	251,069	187,737	160,042
Provision for income taxes	27,375	28,775	113,500	104,180	86,803	70,063	59,955
Income before cumulative effect of accounting change			193,988	178,085	164,266	117,674	100,087
Cumulative effect of accounting change, net of tax(1)						21,892	
Net income	\$ 46,331	\$ 48,407	\$ 193,988	\$ 178,085	\$ 164,266	\$ 139,566	\$ 100,087
BASIC EARNINGS PER COMMON SHARE:							
Income before cumulative effect of accounting change	\$ 0.40	0.42	\$ 1.69	\$ 1.57	\$ 1.47	\$ 1.07	\$ 0.93
Cumulative effect of accounting change(1)						0.20	
Net income per share	0.40	0.42	\$ 1.69	\$ 1.57	\$ 1.47	\$ 1.27	\$ 0.93
Weighted-average common shares outstanding basic	115,386	113,936	114,667	113,253	111,613	110,020	107,816

Table of Contents

	Three Months Ended			Fiscal Year Ended December 31,			
	2008	2007	2007	2006	2005	2004	2003
EARNINGS PER COMMON SHARE- ASSUMING DILUTION:							
Income before cumulative effect of accounting change	\$ 0.40	0.42	\$ 1.67	\$ 1.55	\$ 1.45	\$ 1.05	\$ 0.92
Cumulative effect of accounting change(1)						0.20	
Net income per share	0.40	0.42	\$ 1.67	\$ 1.55	\$ 1.45	\$ 1.25	\$ 0.92
Weighted-average common shares outstanding adjusted	116,291	115,537	116,080	115,119	113,385	111,423	109,060
PRO FORMA INCOME STATEMENT DATA:(2)							
Sales							\$ 1,511,816
Cost of goods sold, including warehouse and distribution expenses							872,658
Gross profit							639,158
Operating, selling, general and administrative expenses							473,060
Operating income							166,098
Other income (expense), net							(5,233)
Income before income taxes							160,865
Provision for income taxes							60,266
Net income							\$ 100,599
Net income per share							\$ 0.93
Net income per share assuming dilution							\$ 0.92
BALANCE SHEET DATA:							
Working capital	\$ 578,291	\$ 573,174	\$ 573,328	\$ 566,892	\$ 424,974	\$ 479,662	\$ 441,617
Total assets	2,397,736	2,093,628	2,279,737	1,977,496	1,718,896	1,432,357	1,157,033
Current portion of long-term debt and short-term debt	25,323	312	25,320	309	75,313	592	925
Long-term debt, less current portion	75,068	100,390	75,149	110,170	25,461	100,322	120,977
Shareholders equity	1,651,013	1,420,485	1,592,477	1,364,096	1,145,769	947,817	784,285

- (1) The cumulative change in accounting method, effective January 1, 2004, changed the method of applying LIFO accounting policy for certain inventory costs. Under the new method, included in the value of inventory are certain procurement, warehousing and distribution center costs. The previous method was to recognize those costs as incurred, reported as a component of costs of goods sold.
- (2) The pro forma income statement reflects the retroactive application of the cumulative effect of the accounting change to historical periods.

Table of Contents**CSK's Selected Historical Consolidated Financial Data**

The information in the following table is based on the historical financial statements of CSK included elsewhere in this prospectus. You should read the selected historical financial data in the following table in conjunction with the historical financial statements and related notes (including other selected historical financial data contained therein), CSK's Management's Discussion and Analysis of Financial Condition and Results of Operations set forth in CSK's Annual Report on Form 10-K for the year ended February 3, 2008, attached as Annex D to this prospectus, and CSK's Management's Discussion and Analysis of Financial Condition and Results of Operations set forth in CSK's Quarterly Report on Form 10-Q for the quarter ended May 4, 2008, attached as Annex G to this prospectus.

The historical consolidated financial data for the fiscal years 2007, 2006, 2005, 2004 and 2003 have been derived from the consolidated financial statements of CSK, which were audited by PricewaterhouseCoopers LLP, an independent registered public accounting firm. The accompanying selected interim financial data for CSK for the thirteen week periods ended May 4, 2008 and May 6, 2007 have been derived from CSK's unaudited interim financial statements. The unaudited interim financial statements include all adjustments, consisting of normal recurring accruals, which CSK considers necessary for a fair presentation of the financial position and the results of operations for these periods. Operating results for the thirteen weeks ended May 4, 2008 are not necessarily indicative of the results that may be expected for the entire year ending February 1, 2009.

Amounts (except per share amounts) are shown in thousands.

	Thirteen Weeks Ended		Fiscal Year(1)				
	May 4, 2008	May 6, 2007	2007	2006	2005	2004	2003
Statement of Operations Data							
Net sales	\$ 461,104	\$ 473,035	\$ 1,851,647	\$ 1,907,776	\$ 1,651,285	\$ 1,604,991	\$ 1,606,731
Cost of sales	243,801	252,437	984,649	1,011,712	864,674	839,564	904,090
Gross profit	217,303	220,598	866,998	896,064	786,611	765,427	702,641
Operating and administrative	205,810	199,234	804,265	788,400	653,471	629,309	624,557
Investigation and restatement costs(2)	983	4,564	12,348	25,739			
Securities class action settlement(3)			11,700				
Insurance recovery(4)	(15,000)						
Store closing costs(5)	785	706	1,983	1,487	2,903	2,229	12,522
Operating profit	24,725	16,094	36,702	80,438	130,237	133,889	65,562
Interest expense	15,445	13,322	54,163	48,767	33,599	33,851	52,754
Loss on debt retirement(6)				19,450	1,600	1,026	49,494
Income (loss) before income taxes and cumulative effect of change in accounting principle	9,280	2,772	(17,461)	12,221	95,038	99,012	(36,686)
Income tax expense (benefit)	3,913	1,102	(6,309)	4,991	37,248	39,450	(14,738)
Income (loss) before cumulative effect of change in accounting principle	5,367	1,670	(11,152)	7,230	57,790	59,562	(21,948)
Cumulative effect of change in accounting principle, net of tax(7)				(966)			
Net income (loss)	\$ 5,367	\$ 1,670	\$ (11,152)	\$ 6,264	\$ 57,790	\$ 59,562	\$ (21,948)
Basic earnings (loss) per share:							
Income (loss) before cumulative effect of change in accounting principle	\$ 0.12	\$ 0.04	\$ (0.25)	\$ 0.16	\$ 1.30	\$ 1.30	\$ (0.48)
Cumulative effect of change in accounting principle(7)				(0.02)			

Edgar Filing: O REILLY AUTOMOTIVE INC - Form S-4/A

Net income (loss) per share	\$	0.12	\$	0.04	\$	(0.25)	\$	0.14	\$	1.30	\$	1.30	\$	(0.48)
-----------------------------	----	------	----	------	----	--------	----	------	----	------	----	------	----	--------

Table of Contents

	Thirteen Weeks Ended		Fiscal Year(1)				
	May 4, 2008	May 6, 2007	2007	2006	2005	2004	2003
Diluted earnings (loss) per share:							
Income (loss) before cumulative effect of change in accounting principle	\$ 0.12	\$ 0.04	\$ (0.25)	\$ 0.16	\$ 1.29	\$ 1.29	\$ (0.48)
Cumulative effect of change in accounting principle(7)				(0.02)			
Net income (loss) per share	\$ 0.12	\$ 0.04	\$ (0.25)	\$ 0.14	\$ 1.29	\$ 1.29	\$ (0.48)
Shares used in computing basic per share amounts							
	44,032	43,951	43,971	43,877	44,465	45,713	45,658
Shares used in computing diluted per share amounts							
	44,101	44,697	43,971	44,129	44,812	46,002	45,658
Balance Sheet Data (end of period)							
Cash and cash equivalents	\$ 19,679	\$ 23,260	\$ 16,520	\$ 20,169	\$ 17,964	\$ 56,229	\$ 36,982
Total assets	1,197,427	1,182,888	1,138,690	1,151,762	1,140,034	957,151	969,588
Total debt (including current maturities)	524,025	538,677	519,188	531,501	577,594	508,877	534,654
Stockholders equity	170,899	174,175	164,538	171,510	156,157	120,139	81,497

- (1) CSK's fiscal year consists of 52 or 53 weeks, ends on the Sunday nearest to January 31 and is named for the calendar year just ended. All fiscal years presented had 52 weeks except fiscal 2006, which had 53 weeks.
- (2) As further discussed in Note 21 Legal Matters in the notes to the audited consolidated financial statements included in Item 8 of its Annual Report on Form 10-K for the year ended February 3, 2008, CSK incurred approximately \$12.3 million and \$25.7 million in legal, accounting consultant and audit fees in fiscal 2007 and fiscal 2006, respectively, for matters related to the fiscal 2006 audit committee-led investigation and the related restatement of CSK's consolidated financial statements in CSK's Annual Report on Form 10-K for the fiscal year ended January 29, 2006 filed May 1, 2007 and completion of CSK's delinquent SEC filings for fiscal 2006.
- (3) Amount relates to the agreement in principle reached to settle a securities class action lawsuit. See Note 21 Legal Matters and Note 22 Subsequent Events in the notes to the audited consolidated financial statements included in Item 8 of CSK's Annual Report on Form 10-K for the year ended February 3, 2008.
- (4) Amount represents an insurance recovery related to the securities class action lawsuit and the recovery of certain legal defense costs previously expensed by CSK. See Note 12 Legal Matters in the notes to the unaudited consolidated financial statements included in Part 1 Item 1 of CSK's Quarterly Report on Form 10-Q for the quarterly period ended May 4, 2008.
- (5) Amounts relate to costs incurred in connection with the closure of existing stores. During fiscal 2003, CSK incurred \$12.2 million associated with the reversal of the reserve established under Emerging Issues Task Force No. 94-3 and the establishment of a new closed store reserve on the basis of CSK's change in exit strategy in accordance with Statement of Financial Accounting Standards No. 146, Accounting for Costs Associated with Exit or Disposal Activities.
- (6) In fiscal 2006, CSK purchased all of its 7% senior subordinated notes, repaid its 3³/₈% exchangeable notes and made a payment on termination of an interest rate swap related to its 7% senior subordinated notes, which resulted in an aggregate loss on debt retirement of \$19.5 million. The \$1.6 million loss on debt retirement in fiscal 2005 resulted from the write-off of certain deferred financing fees associated with CSK's former credit facility, which was repaid. During fiscal 2004, CSK recorded a loss on debt retirement of \$1.0 million as a result of the redemption of the \$15.0 million remaining balance of CSK's 12% senior notes. During fiscal 2003, CSK recorded a loss on debt retirement of \$49.5 million primarily due to the early redemption of 94% of CSK's 12% senior notes.
- (7) In December 2004, the Financial Accounting Standards Board issued SFAS No. 123R, Share-Based Payment. SFAS No. 123R sets accounting requirements for share-based compensation to employees and requires companies to recognize the grant-date fair value of stock options and other equity-based compensation in the income statement. CSK adopted SFAS No. 123R during fiscal 2006 using the modified prospective method. In addition to stock options and restricted stock, CSK granted incentive units in fiscal 2005 under a long-term incentive plan (the LTIP) for its senior executive officers, which are classified as liability awards, and as such, the transition rule under SFAS No. 123R requires that for an outstanding instrument that previously was classified as a liability and measured at intrinsic value, an entity should recognize the liability that would have been recorded under the fair value method at the date of adoption, net of any related tax effect, as the cumulative effect of a change in accounting principle. As of January 30, 2006, CSK recognized a cumulative effect of a change in accounting principle of approximately \$1.0 million, net of \$0.6 million tax benefit, associated with the LTIP.

Table of Contents

SELECTED UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL DATA

The following selected unaudited pro forma financial data is designed to show how the merger of O Reilly and CSK might have affected the historical financial data of O Reilly, giving effect to the merger and related financing as if they had been consummated at an earlier date. The following selected unaudited pro forma financial data gives effect to the merger and related financing as if they had been completed on March 31, 2008, with respect to the pro forma balance sheet data, and as of January 1, 2007, with respect to the pro forma statement of income data. The historical financial data has been adjusted to give effect to pro forma events that are directly attributable to the merger, factually supportable, and expected to have a continuing impact of the combined results.

The following unaudited pro forma condensed, combined financial data should be read in conjunction with the historical consolidated financial statements and notes thereto of O Reilly, which are incorporated into this document by reference and the historical consolidated financial statements and notes thereto of CSK, which are set forth in CSK's Annual Report on Form 10-K for the year ended February 3, 2008, attached as Annex D to this prospectus and CSK's Quarterly Report on Form 10-Q for the quarter ended May 4, 2008, attached as Annex G to this prospectus. See **Additional Information Where You Can Find Additional Information** on page 81. Certain amounts in CSK's historical financial statements have been reclassified to conform to O Reilly's presentation of such items.

The following selected unaudited pro forma condensed combined financial data was prepared using the purchase method of accounting with O Reilly treated as the acquiring entity and reflect adjustments, which are based upon preliminary estimates, to allocate the estimated purchase price to CSK's assets acquired and liabilities assumed. For purposes of estimating the purchase price, it is assumed that the \$1.00 in cash per share to be received by CSK stockholders will not be reduced. The purchase price allocation reflected herein is preliminary insofar as the final allocation will be based upon the actual purchase price and the actual assets acquired and liabilities assumed of CSK as of the date of the completion of the merger. The final allocation of the purchase price is also dependent upon certain required valuations and other analyses that cannot be completed prior to the merger. In certain instances, O Reilly has identified intangible assets of CSK for which there has not been sufficient information available to make a preliminary estimate of fair value as of the date of this prospectus. For example, O Reilly expects to record assets and liabilities for fair value adjustments to CSK lease arrangements once access to all of CSK's lease information and market research is available to O Reilly. The purchase price paid for these intangible assets has been allocated to goodwill until such time as a preliminary estimate is available. Additionally, we have not received sufficient information to make a preliminary estimate of the fair value of CSK's inventory and property and equipment and the purchase price paid for these assets has been reflected in the pro forma data at CSK's historical cost. Accordingly, the actual purchase accounting adjustments will differ from the preliminary pro forma adjustments reflected herein. See **Unaudited Pro Forma Condensed Combined Financial Data** on page 84 for additional details regarding these matters.

The following selected unaudited pro forma financial data are presented for illustrative purposes only and are not necessarily indicative of the financial condition or results of operations that actually would have been realized had the merger and related financing been completed on the dates indicated above. In addition, the following selected unaudited pro forma financial data does not purport to project the future financial condition or results of operations of the combined company. It should also be noted that O Reilly and CSK have different fiscal year ends. Accordingly, the selected unaudited pro forma income statement data for the calendar year ended December 31, 2007 combines O Reilly's historical consolidated income statement data for the year then ended with CSK's historical consolidated income statement data for the fiscal year (fifty-two (52) weeks) ended February 3, 2008. The selected unaudited pro forma income statement data for the three months ended March 31, 2008 combines O Reilly's historical consolidated income statement data for the three calendar months then ended with CSK's historical consolidated income statement data for its first fiscal quarter (thirteen (13) weeks)

Table of Contents

ended May 4, 2008. The selected unaudited pro forma balance sheet data combines O Reilly's historical consolidated balance sheet data as of March 31, 2008 with CSK's historical consolidated balance sheet data as of May 4, 2008.

	Year Ended December 31, 2007	Three Months Ended March 31, 2008
	(in thousands, except per share date)	
Pro Forma Statement of Income Data:		
Net sales	\$ 4,330,360	\$ 1,096,597
Net income	182,842	55,784
Diluted earnings per share from continuing operations	\$ 1.36	\$ 0.41
		At March 31, 2008
		(in thousands)
Pro Forma Balance Sheet Data:		
Working capital		\$ 675,203
Total assets		3,905,315
Long-term debt and capital lease obligations (net of current portion)		613,128
Total stockholders' equity		2,119,045

Table of Contents**UNAUDITED COMPARATIVE PER COMMON SHARE DATA**

The following table summarizes the net income from continuing operations and book value per common share information for O Reilly and CSK on a historical and unaudited pro forma combined basis. The table accounts for the different fiscal years of O Reilly and CSK discussed above in Selected Unaudited Pro Forma Condensed Combined Financial Data.

The pro forma book value combined per common share of O Reilly is computed by dividing total pro forma shareholders' equity by the pro forma number of shares of O Reilly common stock outstanding at the end of the period, in each case, after giving effect to the merger and the related financing. The historical book value per common share of O Reilly and CSK is computed by dividing total shareholders' equity by the number of shares of common stock outstanding at the end of the period.

O Reilly expects to incur merger and integration charges as a result of combining O Reilly and CSK. O Reilly also anticipates that the merger will provide the combined company with financial benefits that include reduced operating expenses and the opportunity to generate more revenue. The pro forma financial data, while helpful in illustrating the financial characteristics of the combined company under one set of assumptions, does not reflect these expenses or benefits and, accordingly, does not attempt to predict or suggest future results. It also does not necessarily reflect what the historical results of the combined company would have been had O Reilly and CSK actually been combined during the periods presented.

The historical per share data of O Reilly has been derived from, and should be read in conjunction with, the historical financial statements of O Reilly incorporated by reference in this prospectus. See *Where You Can Find Additional Information* beginning on page 81. The historical per share data of CSK has been derived from, and should be read in conjunction with, the historical financial statements of CSK included elsewhere in this prospectus. See *Annex D CSK's Annual Report on Form 10-K for the year ended February 3, 2008* beginning on page D-1 and *Annex G CSK's Quarterly Report on Form 10-Q for the quarter ended May 4, 2008* beginning on page G-1. The unaudited pro forma per share data has been derived from, and should be read in conjunction with, the unaudited condensed combined pro forma financial statements included elsewhere in this prospectus. See *Unaudited Pro Forma Condensed Combined Financial Data* beginning on page 84.

The CSK unaudited pro forma combined equivalent share data was calculated by multiplying the corresponding O Reilly unaudited pro forma combined per share data by an estimate of the exchange ratio of 0.4285, which is based upon the average of the reported closing sale prices of O Reilly common stock for the five (5) consecutive trading days ending on and including June 17, 2008. This data shows how each share of CSK common stock would have participated in net income and book value of O Reilly if the companies had been consolidated for accounting and financial reporting purposes for the periods presented. The equivalent earnings per share data does not give effect to the cash portion of the offer consideration. These amounts, however, are not intended to reflect future per share levels of net income and book value of O Reilly.

	As of and For the Three Months Ended March 31, 2008	As of and For the Year Ended December 31, 2007
Historical O Reilly:		
Net income from continuing operations per common share - basic	\$ 0.40	\$ 1.69
Net income from continuing operations per common share - diluted	\$ 0.40	\$ 1.67
Book value per common share	\$ 14.30	\$ 13.82
Dividends declared per common share		

Table of Contents

	As of and For the Three Months Ended May 4, 2008	As of and For the Year Ended February 3, 2008
Historical CSK:		
Net income (loss) per common share basic	\$0.12	\$ (0.25)
Net income (loss) per common share diluted	\$0.12	\$ (0.25)
Book value per common share	\$3.88	\$ 3.74
Dividends declared per common share		
	As of and For the Three Months Ended March 31, 2008	As of and For the Year Ended December 31, 2007
Unaudited pro forma combined per O Reilly share:		
Net income from continuing operations per common share basic	\$ 0.42	\$1.38
Net income from continuing operations per common share diluted	\$ 0.41	\$1.36
Book value per common share	\$15.87	N/A
Dividends declared per common share		
Unaudited pro forma combined per CSK equivalent share:		
Net income per common share basic	\$ 0.18	\$0.59
Net income per common share diluted	\$ 0.18	\$0.58
Book value per common share	\$ 6.80	N/A
Dividends declared per common share		

Table of Contents**COMPARATIVE PER SHARE MARKET PRICE AND DIVIDEND INFORMATION**

O Reilly common stock is listed on the NASDAQ, under the symbol ORLY . CSK common stock is listed on the NYSE under the symbol CAO . The table below sets forth, for the periods indicated and the range of high and low per share sales prices for O Reilly common stock and CSK common stock as reported on the NASDAQ and NYSE, respectively. Neither O Reilly nor CSK has paid any dividends for the calendar quarters indicated. For current price information, you should consult publicly available sources. For more information on O Reilly s payment of dividends, see O Reilly s Dividend Policy below on this page.

O Reilly and CSK have different fiscal years as discussed above in Selected Unaudited Pro Forma Condensed Combined Financial Data.

O Reilly Common Stock

	O Reilly Common Stock	
	High	Low
Fiscal Year 2006 (ended December 31, 2006)		
First quarter	\$ 38.30	\$ 30.87
Second quarter	\$ 36.99	\$ 29.30
Third quarter	\$ 34.24	\$ 27.49
Fourth quarter	\$ 35.10	\$ 30.92
Fiscal Year 2007 (ended December 31, 2007)		
First quarter	\$ 35.72	\$ 31.45
Second quarter	\$ 38.84	\$ 32.58
Third quarter	\$ 38.20	\$ 31.44
Fourth quarter	\$ 34.72	\$ 30.43
Fiscal Year 2008 (ending December 31, 2008)		
First quarter	\$ 32.68	\$ 24.08
Second quarter (through June 17, 2008)	\$ 30.50	\$ 24.59

CSK Common Stock

	CSK Common Stock	
	High	Low
Fiscal Year 2006 (ended February 4, 2007)		
First quarter	\$ 16.84	\$ 12.23
Second quarter	\$ 13.29	\$ 10.71
Third quarter	\$ 15.91	\$ 10.62
Fourth quarter	\$ 17.27	\$ 15.17
Fiscal Year 2007 (ended February 3, 2008)		
First quarter	\$ 17.95	\$ 16.27
Second quarter	\$ 19.14	\$ 12.42
Third quarter	\$ 13.95	\$ 10.03
Fourth quarter	\$ 10.72	\$ 3.96
Fiscal Year 2008 (ending February 1, 2009)		
First quarter	\$ 12.43	\$ 8.93
Second quarter (through June 17, 2008)	\$ 12.07	\$ 11.13

As of June 17, 2008, there were 12,707 holders of record of O Reilly common stock and 47 record holders of CSK common stock.

Table of Contents

The above tables show only historical comparisons. These comparisons may not provide meaningful information to CSK stockholders in determining whether to adopt the merger agreement and the transactions contemplated by the merger agreement, including the merger. CSK stockholders are urged to obtain current market quotations for O Reilly and CSK common stock and to review carefully the other information contained in this prospectus or incorporated by reference into this prospectus in considering whether to adopt the merger agreement. See the section entitled "Additional Information Where You Can Find Additional Information" beginning on page 81 of this prospectus.

O Reilly's Dividend Policy

O Reilly has not declared or paid any cash dividends on its common stock during any period for which financial information is provided in this prospectus. At this time, O Reilly intends to retain future earnings, if any, to fund the development and growth of its business and does not anticipate paying any cash dividends on its common stock in the foreseeable future.

Table of Contents**RECENT CLOSING PRICES**

The following table sets forth the closing prices per share of O Reilly common stock and CSK common stock as reported on the NASDAQ and NYSE on March 31, 2008 the last full trading day prior to the announcement of the entry into the merger agreement, and June 17, 2008, the most recent practicable date prior to the mailing of this prospectus to CSK's stockholders.

Date	O Reilly Common Stock	CSK Common Stock	Implied Value of CSK Common Stock in Offer
March 31, 2008	\$ 28.52	\$ 9.31	\$ 13.22
June 17, 2008	\$ 25.55	\$ 11.50	\$ 11.95

The above table shows only historical and hypothetical comparisons in which the implied value of one share of CSK common stock is calculated by (i) multiplying the closing price for one share of O Reilly common stock by the exchange ratio of 0.4285 and (ii) adding the maximum cash consideration per share of \$1.00. These prices may fluctuate prior to the offer and the merger, and CSK stockholders are urged to obtain current stock price quotations for O Reilly common stock and CSK common stock and to review carefully the other information contained in this prospectus or incorporated by reference into this prospectus in deciding whether to tender their shares. See the section entitled "Additional Information Where You Can Find Additional Information" on page 81.

Table of Contents

RISK FACTORS

The offer and the merger involve a high degree of risk. By participating in the offer, CSK stockholders will be choosing to invest in O Reilly common stock. An investment in O Reilly common stock also involves a high degree of risk. In addition to the other information contained in this prospectus, you should carefully consider the risks involved in the offer and the merger, including the following risk factors, those incorporated by reference into this prospectus and those starting on page 17 of Annex D to this prospectus, in deciding whether to tender your shares of CSK common stock.

Risks Related to the Offer and the Merger

Because the market price of O Reilly's common stock may fluctuate, CSK stockholders may not be sure of the value of the offer consideration they receive.

The holder of each share of CSK common stock will receive in the offer (i) between 0.3673 and 0.4285 of a share of common stock of O Reilly and (ii) \$1.00 in cash, subject to reduction for the adjustment amount, if any. The number of shares of O Reilly common stock received for each validly tendered share of CSK common stock will be determined based on an exchange ratio equal to \$11.00 divided by the average of the reported closing sale prices of O Reilly common stock for the five (5) consecutive trading days ending on and including the second trading day prior to the consummation of the offer and rounded to four decimal places; provided, however, that if such average closing sale price of O Reilly stock is greater than \$29.95, then the exchange ratio shall equal 0.3673, and if such average closing sale price is less than \$25.67, then the exchange ratio shall equal 0.4285. After completion of the offer, each share of CSK common stock will be converted in the merger into the right to receive the same consideration as offered in exchange for each share of CSK common stock in the offer. Because the exchange ratio will not be adjusted to reflect any changes in the average closing sale price of O Reilly common stock greater than \$29.95 or less than \$25.67, the market value of the O Reilly common stock issued in the offer and the merger may be higher or lower than \$11.00.

Accordingly, at the time CSK stockholders tender their shares, they will not necessarily know or be able to calculate the value of the stock consideration they will receive upon the consummation of the offer. Stock price changes may result from a variety of factors, including general market and economic conditions, changes in our business, operations and prospects, governmental actions, legal proceedings and developments, market assessments of the benefits of the merger, the likelihood that the offer will be consummated and the timing of completion, the prospects of post-merger operations and other factors. Many of these factors are beyond our control. CSK is permitted to terminate the merger agreement if O Reilly's average closing sale price at the time the exchange ratio is fixed is less than or equal to \$21.00, unless O Reilly increases the offer consideration to avoid such potential termination.

Failure to complete the transaction with O Reilly could materially and adversely affect CSK's results of operations and CSK's stock price.

If the offer is not consummated or the merger is not completed for any reason:

CSK will remain liable for significant transaction costs relating to the merger;

under some circumstances, CSK may have to pay a termination fee to O Reilly in the amount of \$22 million or O Reilly's transaction expenses; see "The Merger Agreement - Termination Fee" beginning on page 69 of this prospectus;

any operational investments that CSK may delay due to the pending transaction would need to be made, potentially on an accelerated time frame, which could then prove costly and more difficult to implement;

the market price of CSK's common stock may decline to the extent that the current market price reflects a market belief that the offer and the merger will be completed; and

Table of Contents

CSK may have difficulty maintaining certain financial ratios or complying with other financial or restrictive covenants in its debt agreements which could result in an event of default under one of such agreements, which could result in a default or acceleration of all of its other indebtedness, which acceleration, if it occurs, would have a material adverse effect on CSK.

Additionally, the announcement of the pending offer and merger may lead to uncertainty for CSK's employees and its customers and suppliers. This uncertainty may mean:

the attention of CSK's management and employees may be diverted from day-to-day operations; and

CSK's ability to attract new employees and retain existing employees may be harmed by uncertainties associated with the merger. The occurrence of any of these events individually or in combination could materially and adversely affect CSK's results of operations and stock price.

The merger agreement limits CSK's ability to pursue alternative transactions, and in certain instances requires payment of a termination fee, which could deter a third party from proposing an alternative transaction.

The merger agreement has terms and conditions that make it more difficult for CSK to enter into an alternative transaction. These no shop provisions impose restrictions on CSK and, subject to limited exceptions, limit CSK's ability to discuss, facilitate or commit to an alternative transaction. See The Merger Agreement No Solicitation of Acquisition Proposals beginning on page 63 of this prospectus. In addition, under specified circumstances, CSK is required to pay a termination fee of \$22 million if the merger agreement is terminated.

These provisions might discourage a potential competing acquiror that might have an interest in acquiring all or a significant part of CSK from considering or proposing an acquisition even if it were prepared to pay consideration with a higher per share market price than that proposed in the offer, or might result in a potential competing acquiror proposing to pay a lower per share price to acquire CSK than it might otherwise have proposed to pay.

Officers and directors of CSK have potential conflicts of interest in the transaction.

CSK stockholders should be aware of potential conflicts of interest and the benefits available to CSK directors when considering CSK's board of directors' recommendation to participate in the offer and approve the merger. CSK officers and directors have stock options, employment agreements and/or benefit plans that provide them with interests in the transaction that are different from, or in addition to, the interests of CSK stockholders. For example, if the offer is consummated, all outstanding CSK stock options will be converted into vested stock options of O'Reilly, and, with the exception of the CSK stock award of 89,899 shares of CSK common stock relating to Mr. Mondry, all CSK unvested stock awards will vest upon consummation of the offer and, in connection with the merger, will be converted into a right to receive the offer consideration multiplied by the number of shares of CSK common stock subject to such stock award. In addition, O'Reilly has agreed to indemnify former CSK directors and executive officers for actions or events occurring prior to the consummation of the merger. See Interests of Management and the CSK Board on page 52.

CSK stockholders will have a reduced ownership and voting interest after the merger.

After completion of the merger, CSK stockholders will own a significantly smaller percentage of the combined company and its voting stock than they currently own of CSK. Following completion of the merger, CSK stockholders will own approximately 14.0% of the combined company. Consequently, CSK stockholders will not be able to exercise as much influence over the management and policies of the combined company as they currently exercise over CSK.

Table of Contents

If the value of CSK's business, together with any synergies to be achieved from its combination with O Reilly, is less than the value of the stock to be issued in connection with the offer and the merger, the price of O Reilly common stock could decrease.

It is possible that the price of the common stock of the combined company will decrease following consummation of the merger. To the extent that the price of the common stock declines as a result of the belief that the value of the stock to be issued in connection with the merger, plus transaction costs, is greater than the value of CSK's business, together with any synergies to be achieved from its combination with O Reilly, the merger could have a dilutive effect on the value of the common stock held by O Reilly shareholders.

O Reilly and CSK will incur significant costs associated with the offer and the merger.

O Reilly and CSK expect to incur significant costs associated with transaction fees, professional services and other costs related to the offer and the merger and there will be in excess of \$25.0 million in transaction costs related to the offer and the merger. O Reilly and CSK believe the combined entity may incur charges to operations, which are not currently reasonably estimable, in the quarter in which the merger is completed or the following quarters, to reflect costs associated with integrating the two companies. There can be no assurance that the combined company will not incur additional material charges in subsequent quarters to reflect additional costs associated with the merger and the integration of the two companies.

The unaudited pro forma financial information included in this document may not be indicative of what O Reilly's actual financial position or results of operations would have been.

The unaudited pro forma financial information in this document is presented for illustrative purposes only and is not necessarily indicative of what O Reilly's actual financial position or results of operations would have been had the merger been completed on the dates indicated. The unaudited pro forma financial information reflects preliminary adjustments determined by O Reilly management to allocate the purchase price of CSK's net assets. Subsequent to the merger completion date, O Reilly will retain a valuation professional to determine the value of select tangible and intangible assets. Based on this determination and as other information becomes available, there will be further refinements to the purchase price allocation. Accordingly, the final purchase accounting adjustments may differ materially from the pro forma adjustments reflected in this document, and in particular, we would expect some amounts to be allocated to intangible assets that are currently allocated to goodwill as described below. See Unaudited Pro Forma Condensed Combined Financial Data on page 84 for more information.

Risks Related to O Reilly and the Combined Company

The integration of the businesses and operations of O Reilly and CSK involves risks, and the failure to integrate successfully the businesses and operations in the expected time frame may adversely affect the future results of the combined company.

The failure of the combined company to meet the challenges involved in integrating the operations of O Reilly and CSK successfully or to otherwise realize any of the anticipated benefits of the merger could seriously harm the results of operations of the combined company. The ability of the combined company to realize the benefits of the merger will depend in part on the timely integration of organizations, operations, procedures, policies and technologies, as well as the harmonization of differences in the business cultures of the two companies and retention of key personnel. The integration of the companies will be a complex, time-consuming and expensive process that, even with proper planning and implementation, could significantly disrupt the businesses of O Reilly and CSK. The challenges involved in this integration include the following:

implementing our distribution, point of sale and inventory management systems;

combining our respective product offerings;

preserving customer, supplier and other important relationships of both O Reilly and CSK and resolving potential conflicts that may arise;

Table of Contents

minimizing the diversion of management attention from ongoing business concerns;

addressing differences in the business cultures of O Reilly and CSK to maintain employee morale and retain key employees; and

coordinating and combining geographically diverse operations, relationships and facilities, which may be subject to additional constraints imposed by distance and local laws and regulations.

The combined company may not successfully integrate the operations of O Reilly and CSK in a timely manner, or at all, and the combined company may not realize the anticipated benefits or synergies of the merger to the extent, or in the time frame, anticipated. The anticipated benefits and synergies are based on projections and assumptions, not actual experience, and assume a successful integration. In addition to the integration risks discussed above, the combined company's ability to realize these benefits and synergies could be adversely affected by practical or legal constraints on its ability to combine operations. If O Reilly fails to manage the integration of these businesses effectively, its growth strategy and future profitability could be negatively affected, and it may fail to achieve the intended benefits of the merger.

O Reilly's increased debt levels could adversely affect its cash flow and prevent O Reilly from fulfilling its obligations.

Upon consummation of the offer, O Reilly expects to enter into a new credit facility, which will significantly increase its outstanding indebtedness and interest expense. O Reilly's substantial debt could have important consequences, such as:

requiring O Reilly to dedicate a substantial portion of its cash flow from operations and other capital resources to principal and interest, thereby reducing its ability to fund working capital, capital expenditures and other cash requirements;

increasing O Reilly's vulnerability to adverse economic and industry conditions;

limiting O Reilly's flexibility in planning for, or reacting to, changes and opportunities in, its industry, which may place us at a competitive disadvantage; and

limiting O Reilly's ability to incur additional debt on acceptable terms, if at all.

In addition, the terms of the financing obligations include restrictions, such as affirmative and negative covenants, conditions to borrowing, subsidiary guarantees and asset and stock pledges. A failure to comply with these restrictions could result in a default under the financing obligations or could require O Reilly to obtain waivers from its lenders for failure to comply with these restrictions. The occurrence of a default that remains uncured or the inability to secure a necessary consent or waiver could have a material adverse effect on O Reilly's business, financial condition or results of operations.

Risks related to the combined company and unanticipated fluctuations in the combined company's quarterly operating results could affect the combined company's stock price.

Each of O Reilly and CSK believes that quarter-to-quarter comparisons of its financial results are not necessarily meaningful indicators of the future operating results of the combined company and should not be relied on as an indication of future performance. If the combined company's quarterly operating results fail to meet the expectations of analysts, the trading price of O Reilly common stock following the offer and the merger could be negatively affected. O Reilly and CSK cannot be certain that the business strategy of the combined company will be successful or that it will successfully manage these risks. If the combined company fails to adequately address any of these risks or difficulties, its business would likely suffer.

Table of Contents

The automotive aftermarket business is highly competitive, and we may have to risk our capital to remain competitive.

Both the do-it-yourself and professional installer portions of our business are highly competitive, particularly in the more densely populated areas that we serve. Some of our competitors are larger than we are and have greater financial resources. In addition, some of our competitors are smaller than we are overall but have a greater presence than we do in a particular market. We may have to expend more resources and risk additional capital to remain competitive.

The market price of our common stock may be volatile and could expose us to securities class action litigation.

The stock market and the price of our common stock may be subject to wide fluctuations based on general economic and market conditions. The market price for our common stock may also be affected by our ability to meet analysts' expectations. Failure to meet such expectations, even by slight amounts, could have an adverse effect on the market price of our common stock.

In addition, stock market volatility has had a significant effect on the market prices of securities issued by many companies for reasons unrelated to the operating performance of these companies. Downturns in the stock market may cause the price of our common stock to decline. In the past, following periods of volatility in the market price of a company's securities, securities class action litigation has often been instituted against such a company. If similar litigation were instituted against us, it could result in substantial costs and a diversion of our management's attention and resources, which could have an adverse effect on our business.

We cannot assure future growth will be achieved.

We believe that our ability to open additional stores at a high growth rate will be a significant factor in achieving our growth objectives for the future. Our ability to accomplish our growth objectives is dependent, in part, on matters beyond our control, such as weather conditions, zoning and other issues related to new store site development, the availability of qualified management personnel and general business and economic conditions. We cannot be sure that our growth plans for 2008 and beyond will be achieved. Failure to achieve our growth objectives may negatively impact the trading price of our common stock.

We depend on certain key personnel to successfully manage and grow our business.

Our success has been largely dependent on the efforts of certain key personnel, including David O. Reilly, Ted Wise and Greg Henslee. Our business and results of operations could be materially adversely affected by the unexpected loss of the services of one or more of these individuals. Additionally, the successful implementation and management of our growth and expansion strategies will depend on our ability to continue to attract and retain qualified personnel. We cannot be sure that we will be able to continue to attract such qualified personnel, which could cause us to be less efficient, thus reducing our sales and profitability.

Sales of shares of our common stock eligible for future sale, including the common stock issued to CSK stockholders, could adversely affect our share price.

All of the shares of our common stock currently held by our affiliates may be sold in reliance upon the exemptive provisions of Rule 144 of the Securities Act of 1933, as amended, which is referred to throughout this prospectus as the Securities Act, subject to certain volume and other conditions imposed by such rule. Furthermore, all of the shares of our common stock issued to CSK stockholders upon completion of the offer and the merger that are not held by our affiliates may be sold immediately upon receipt. We cannot predict the effect, if any, which future sales of shares of our common stock or the availability of such shares for sale will have on the market price of our common stock prevailing from time to time. Sales of substantial amounts of our common stock, or the perception that such sales might occur, could adversely affect the prevailing market price of our common stock. We believe the current stockholders of CSK include certain arbitrage and investment firms who may be more likely to quickly sell the shares of O. Reilly common stock received in the offer or the merger.

Table of Contents

In order to be successful, the combined company will need to retain and motivate key employees, which may be more difficult in light of uncertainty regarding the merger, and failure to do so could seriously harm the combined company.

In order to be successful, the combined company will need to retain and motivate executives and other key employees. Experienced management and technical personnel are in high demand and competition for their talents is intense. Employee retention may be a particularly challenging issue in connection with the merger. Employees of O Reilly or CSK may experience uncertainty about their future role with the combined company until or after strategies with regard to the combined company are announced or executed. The combined company also must continue to motivate employees and keep them focused on the strategies and goals of the combined company, which may be particularly difficult due to the potential distractions of the merger.

Table of Contents

BACKGROUND AND REASONS FOR THE OFFER AND THE MERGER

Background of the Offer and the Merger

The merger agreement and the terms and conditions of the offer and the merger are the result of arm's length negotiations between representatives of O'Reilly and representatives of CSK. The following chronology summarizes the key meetings and events that led to the signing of the merger agreement among O'Reilly, CSK and OC Acquisition. During this period, Greg Henslee, Chief Executive Officer and Co-President of O'Reilly, and Lawrence Mondry, President and Chief Executive Officer of CSK, held many conversations, both by telephone and in person, about the possible merger of their businesses. Although O'Reilly and CSK have had various conversations relating to a possible business combination since 2006, the chronology below covers only the key events leading up to the merger agreement, and does not purport to catalogue every conversation between representatives of O'Reilly and CSK.

On March 9, 2007, O'Reilly delivered a letter to CSK's board of directors indicating its interest in acquiring CSK and inviting CSK's management to meet with O'Reilly's management to discuss a potential strategic combination between O'Reilly and CSK. At that time, William Shutzer, a member of CSK's board of directors, informed O'Reilly that CSK would contact O'Reilly when it deemed it appropriate to do so. Subsequently, CSK indicated that it was not in a position to hold meaningful discussions with O'Reilly, or any other party, concerning an acquisition transaction until such time as CSK had completed its restatement process and the preparation of current financial statements.

Over the course of the next several months, O'Reilly attempted to initiate discussions with CSK, but no confidential information was exchanged and no substantive progress was made with respect to discussions regarding a strategic business combination.

On October 2, 2007, O'Reilly began to purchase shares of CSK common stock in open market transactions. As of the date of this prospectus, O'Reilly owns 2,153,928 shares of CSK common stock, constituting approximately 4.9% of the total outstanding common stock of CSK.

On October 8, 2007, following a number of discussions with Messrs. Shutzer and Mondry, O'Reilly delivered a letter to CSK's board of directors expressing a non-binding indication of interest, based solely on then publicly available information, in acquiring all outstanding shares of CSK's common stock for \$15 to \$16 per share in cash, plus the assumption of all outstanding debt and other liabilities, and requesting the opportunity to conduct a due diligence review and a meeting to discuss O'Reilly's interest in acquiring CSK. Mr. Mondry agreed to meet with members of O'Reilly's management to discuss O'Reilly's interest in acquiring CSK.

On October 10, 2007, CSK entered into a third amendment to its term loan credit facility.

On October 18, 2007, in anticipation of a meeting between the parties, CSK and O'Reilly entered into a confidentiality agreement. On October 21, 2007, Messrs. Mondry and Shutzer met with Mr. Henslee and Ted Wise, Chief Operating Officer and Co-President of O'Reilly. In this meeting and subsequent conversations, Mr. Henslee reiterated O'Reilly's desire to enter into a mutually beneficial transaction with CSK at a premium relative to CSK's then current trading price. CSK indicated that although it might be willing to consider a transaction with O'Reilly, the price would have to be higher than that suggested by O'Reilly. O'Reilly responded that it would be unable to consider such a higher price without first reviewing certain non-public information concerning CSK's business. Mr. Mondry indicated that he would discuss allowing O'Reilly access to confidential information with CSK's board of directors at their regular scheduled meeting on November 7, 2007. On November 5, 2007, O'Reilly provided an initial due diligence request list to Mr. Mondry.

On November 8, 2007, O'Reilly's board of directors held a board meeting and considered O'Reilly's alternatives with respect to CSK. After extensive discussions, including discussions with O'Reilly's financial and legal advisors, O'Reilly's board of directors unanimously authorized management to pursue a tender offer for all of the outstanding shares of CSK's common stock.

Table of Contents

On November 14, 2007, as a condition to continue further discussions and allowing O Reilly access to certain non-public information of CSK, CSK provided O Reilly with a form of a standstill agreement limiting O Reilly's ability to take certain actions regarding CSK and its common stock once O Reilly received such non-public information. O Reilly decided not to enter into a standstill agreement at such time.

On December 12, 2007, CSK disclosed that CSK Auto, Inc. was seeking to amend the terms of its term loan facility to mitigate the risk that CSK Auto, Inc. would not be able to comply with certain fixed charge coverage and leverage ratio covenants of the term loan facility. CSK entered into the amendment on December 18, 2007.

On December 19, 2007, CSK disclosed in its quarterly report on Form 10-Q for the quarter ended November 4, 2007 that it had engaged J.P. Morgan Securities Inc., or JPMorgan, as its financial advisor in connection with evaluating its strategic alternatives. Subsequently, CSK indicated to O Reilly that JPMorgan would be contacting Lehman Brothers Inc., or Lehman Brothers, O Reilly's financial advisor, concerning O Reilly's participation in CSK's strategic review process and JPMorgan contacted Lehman Brothers encouraging O Reilly to be a participant in CSK's process.

On January 3, 2008, O Reilly resubmitted to CSK the original list of due diligence items delivered on November 5, 2007.

On January 11, 2008, O Reilly submitted to CSK's board of directors an offer to acquire CSK in a stock-for-stock transaction in which approximately 0.2105 to 0.2353 of a share of O Reilly common stock would be exchanged for each outstanding share of CSK's common stock (or approximately \$5.37 to \$6.00 for each share of CSK's common stock), which represented a 13% to 26% premium based on the closing price of CSK's common stock on January 11, 2008.

On January 24, 2008, following a number of discussions between counsel for O Reilly and CSK regarding the terms of a proposed standstill agreement to be entered into in connection with becoming a participant in CSK's strategic alternatives process, Mr. Henslee sent a letter to Mr. Mondry and CSK's board of directors reiterating O Reilly's interest in pursuing either a cash or stock-for-stock acquisition of CSK and expressing its frustration in the process to date.

On January 28, 2008, Mr. Mondry delivered a letter to Mr. Henslee responding to Mr. Henslee's letter of January 24, 2008 again rejecting O Reilly's offer to acquire CSK on the terms previously offered and offering to grant O Reilly a most favored nations clause in its standstill agreement should it choose to enter into one with CSK.

On February 1, 2008, Mr. Henslee delivered a letter to Mr. Mondry and CSK's board of directors, which was also released to the press, proposing to acquire CSK in a cash transaction at a price of \$8.00 for each outstanding share of CSK's common stock, conditioned on satisfactory completion of a due diligence investigation of CSK. CSK indicated to O Reilly that it intended to complete its formal review of strategic alternatives, and O Reilly was encouraged to be a participant in the process.

On February 4, 2008, CSK announced the adoption of a stockholder rights plan.

On February 6, 2008, CSK and O Reilly reached agreement on the terms of a standstill agreement, and O Reilly was granted access to the confidential information provided to the other third parties participating in the strategic review process.

On February 11, 2008, as part of CSK's formal strategic evaluation process, O Reilly submitted an initial indication of interest in acquiring CSK's common stock for \$8.00 per share in cash and the assumption of \$490 million of CSK indebtedness.

Table of Contents

Between February 15, 2008 and March 10, 2008, O Reilly and its advisors performed due diligence on CSK and had multiple in-person and telephonic conference calls with CSK management. JPMorgan instructed O Reilly to submit its best and final offer by March 10, 2008.

On February 21, 2008, a draft merger agreement prepared by Gibson, Dunn & Crutcher LLP, or Gibson Dunn, legal counsel to CSK, was provided by JPMorgan to O Reilly and JPMorgan requested that O Reilly provide written comments to the draft merger agreement during the week of March 3, 2008. On March 3, 2008, O Reilly submitted a preliminary markup to the proposed merger agreement to CSK's advisors.

During the week of March 3, 2008, O Reilly, through Lehman Brothers, contacted JPMorgan to indicate that in order to increase the value of its offer, it would be submitting an all stock offer to acquire CSK as a whole.

On March 10, 2008, O Reilly submitted a revised proposal at an offer price of \$10.50 for each outstanding share of CSK's common stock consisting of shares of O Reilly's common stock (based on the closing price of O Reilly's common stock on March 7, 2008) with a collar adjustment mechanism to preserve \$10.50 of value should O Reilly's stock price increase or decrease by not more than 5%. O Reilly's proposal was not subject to a financing condition, but was subject to limited confirmatory due diligence.

From March 12, 2008 through March 15, 2008, representatives from JPMorgan and CSK met by telephone with representatives of O Reilly and Lehman Brothers to discuss O Reilly's proposed offer price, the status of O Reilly's due diligence review of CSK, and the operation of O Reilly's proposed collar mechanism. During this period, CSK's counsel provided O Reilly with comments on its merger agreement markup. Subsequent to O Reilly's submission of updated terms, CSK asked for best and final proposals by noon EST on March 15, 2008.

On March 15, 2008, O Reilly submitted a revised offer letter to JPMorgan, increasing its offer price to \$11.50 for each outstanding share of CSK's common stock, consisting of \$1.00 in cash and \$10.50 in shares of O Reilly's common stock (based on the closing price of O Reilly's common stock on March 14, 2008) with a collar adjustment mechanism to preserve \$10.50 of value of O Reilly common stock should O Reilly's stock price increase or decrease by not more than 10%. O Reilly further indicated that it would be able to complete its due diligence review of CSK in three to five days, and that it believed that CSK would be able to undertake and complete a due diligence review of O Reilly during that period. In addition, O Reilly indicated that it would require CSK to enter into a one-week exclusivity agreement with O Reilly in order to proceed.

On March 15, 2008 and March 16, 2008, representatives of CSK, JPMorgan, and Gibson Dunn met by telephone with representatives of O Reilly, Lehman Brothers, and Skadden, Arps, Slate, Meagher & Flom LLP, or Skadden, legal counsel to O Reilly, to discuss O Reilly's revised offer. During these calls, it was agreed that the collar adjustment mechanism would be set such that \$10.50 of value in shares of O Reilly common stock would be preserved should O Reilly's stock price increase by not more than 5% or decrease by not more than 12.5%. In addition, CSK agreed to negotiate exclusively with O Reilly through March 23, 2008. O Reilly provided CSK with a revised markup of the merger agreement during this time.

From March 17, 2008 through March 23, 2008, representatives of CSK, JPMorgan, and Gibson Dunn met by telephone with representatives of O Reilly, Lehman Brothers, and Skadden to participate in due diligence review meetings with respect to O Reilly, including attending presentations by members of O Reilly's senior management, including Messrs. Henslee and Wise. In addition, during this time, representatives of Gibson Dunn met by telephone with representatives of Skadden to review and negotiate the proposed merger agreement, including, among other things, the structure of the transaction and the proposed exchange offer, the terms and conditions of the proposed exchange offer, the circumstances for extending the proposed exchange offer, CSK's representations, warranties, and covenants, the definition of material adverse effect and its impact on the rights of the parties in the proposed merger agreement, the ability of CSK to receive, but not to solicit, alternative proposals for the acquisition of CSK, and the termination rights of O Reilly and CSK, including the amount and under what circumstances CSK would pay a termination fee to O Reilly.

Table of Contents

On March 23, 2008, CSK's exclusivity period in favor of O'Reilly expired without O'Reilly having completed its due diligence or O'Reilly and CSK having reached substantive agreement on the terms and conditions of the proposed merger agreement. On March 24, 2008, O'Reilly requested that CSK grant O'Reilly a continuation of the exclusivity period, which request was rejected by CSK.

On March 29, 2008, O'Reilly, through Lehman Brothers, submitted a revised offer to JPMorgan, increasing its offer price to \$11.75 for each share of CSK's common stock, consisting of \$1.00 in cash and \$10.75 in shares of O'Reilly's common stock (based on the closing price of O'Reilly's common stock on March 28, 2008) with a collar adjustment mechanism to preserve \$10.75 of value of O'Reilly common stock should O'Reilly's stock price increase by not more than 5% or decrease by not more than 12.5%. Between March 17, 2008 and March 31, 2008, O'Reilly and CSK each completed due diligence on one another.

Between March 29, 2008 and March 31, 2008, the parties continued to negotiate the merger agreement and the economic terms of the proposed transaction.

On March 31, 2008 continuing through the morning hours of April 1, 2008, representatives of CSK, JPMorgan, and Gibson Dunn met in person in Dallas, Texas with representatives of O'Reilly, Lehman Brothers, and Skadden to continue negotiating the terms of the proposed merger agreement, including, among other things, modifications to provisions relating to the conditions to the consummation of the exchange offer, the definition of material adverse effect and its impact on the rights of the parties in the proposed merger agreement, and the termination rights of O'Reilly and CSK, including the amount and under what circumstances CSK would pay a termination fee to O'Reilly.

O'Reilly was informed that on March 31, 2008, CSK's board of directors met, with all directors and representatives of CSK's legal and financial advisors attending, to discuss the proposed terms of the proposed transaction with O'Reilly.

In the evening on March 31, 2008, O'Reilly held a telephonic meeting of its board of directors, which included members of O'Reilly's senior management and O'Reilly's legal and financial advisors, to receive an update as to the status of the negotiations. Management and its legal advisors and financial advisors discussed the progress made during negotiations. In addition, the board of directors discussed the potential transaction price.

In the late evening on March 31, 2008, O'Reilly increased its offer price to \$12.00 for each outstanding share of CSK's common stock, consisting of \$1.00 in cash and \$11.00 in shares of O'Reilly's common stock (based on the closing price of O'Reilly's common stock on March 31, 2008) with a collar adjustment mechanism to preserve \$11.00 of value of O'Reilly common stock should O'Reilly's stock price increase by not more than 5% or decrease by not more than 10%. At approximately the same time on March 31, 2008, the final provisions of the merger agreement were agreed to, pending final approval of the boards of O'Reilly and CSK, respectively.

O'Reilly was informed that late on March 31, 2008, CSK's board of directors met, with all directors and representatives of CSK's legal and financial advisors attending, and unanimously approved the merger agreement and the transactions contemplated thereby, including the offer and the merger.

The board of directors of O'Reilly, including members of O'Reilly's senior management and O'Reilly's legal and financial advisors, reconvened early in the morning of April 1, 2008 to receive a final update as to the status of the negotiations. Mr. Henslee reported that, subject to the approval of the O'Reilly board of directors, agreement as to the price to be paid for each share of CSK common stock was reached. O'Reilly's board of directors discussed the negotiated provisions of the merger agreement and Lehman Brothers and the O'Reilly board of directors discussed various financial aspects of the transaction. Following further discussion among O'Reilly's board of directors together with O'Reilly's legal and financial advisors, O'Reilly's board of directors approved the merger agreement and the transactions contemplated thereby, including the offer and the merger.

Table of Contents

During the morning of April 1, 2008 and prior to the opening of trading on the New York Stock Exchange, CSK and O Reilly executed the merger agreement and issued a joint press release announcing the execution of the merger agreement.

Additional Factors for Consideration by CSK Stockholders

O Reilly's Reasons for Making the Offer

O Reilly's board of directors believes that the merger with CSK represents an opportunity to enhance value for O Reilly shareholders. The decision of O Reilly's board of directors to enter into the merger agreement was the result of careful consideration by the board of directors of numerous factors. Significant factors considered by the O Reilly board of directors include, among others:

Strategic Growth through Acquisition. O Reilly believes that the most successful retailers of automotive aftermarket parts will be those with greater financial resources, more extensive supplier and distributor networks and a broader geographic base. The merger with CSK furthers O Reilly's strategy of expanding its dual market strategy and operations through combinations with well-established companies.

Geographic Diversity. O Reilly believes that CSK's western presence would provide an expedited entry into desirable markets. O Reilly believes in the cost effectiveness of expansion into CSK's current markets through acquisition as opposed to new store growth.

Operating Results. O Reilly believes that the combination of O Reilly and CSK provides the potential for the combined enterprise to realize enhanced operating results through increased distribution system optimization, increased buying power for inventory and reduced redundancy in expenses of certain communications and administrative activities.

O Reilly's board also evaluated the risks, inherent in any transaction such as the merger, that currently unanticipated difficulties could arise in integrating the operations and that the synergies expected from combining the operations of O Reilly and CSK may not be realized or, if realized, may not be realized within the period expected. O Reilly's board believed that these risks were outweighed by the potential benefits to be realized from the merger.

The foregoing discussion of factors considered by O Reilly's board is not meant to be exhaustive, but includes the material factors considered by the O Reilly board in approving the merger agreement and the transactions contemplated by the merger agreement. The O Reilly board did not find it practicable to, and did not, quantify or otherwise assign relative weights to the specific factors considered in reaching its determination. Rather, the board members made their respective determinations based on the totality of the information presented to them, including the recommendation by O Reilly management, and the judgments of individual members of the board may have been influenced to a greater or lesser degree by different factors.

Other Factors You Should Consider

In deciding whether or not to tender your shares of CSK common stock, you should consider the factors described above under "Background and Reasons for the Offer and the Merger" on page 27 as well as the factors set forth under "Risk Factors" on page 21 and the other factors set forth in this prospectus.

Table of Contents

RECOMMENDATION OF CSK S BOARD OF DIRECTORS

At a meeting held on March 31, 2008, the CSK board of directors voted unanimously to approve the merger agreement and the transactions contemplated thereby, including the offer and the merger, and determined that the merger agreement, the offer, and the merger are advisable and fair to, and in the best interest of, CSK s stockholders. The CSK board of directors voted unanimously to recommend that CSK s stockholders accept the offer and tender their shares of CSK common stock in the offer.

CSK s Reasons for the Recommendation of the Offer

CSK s board of directors believes that the merger with O Reilly is advisable and fair to, and in the best interest of, the CSK stockholders, and in reaching its recommendation that stockholders tender their shares of CSK common stock in the offer, and, if applicable, vote in favor of the merger, the CSK board of directors considered a number of factors, including the following material factors, which the CSK board of directors viewed as supporting its recommendation:

Strategic Alternatives to Sale Transaction. Throughout the process that the CSK board of directors conducted to evaluate strategic alternatives available to CSK, the CSK board of directors considered possible alternatives to the proposed transaction with O Reilly, including continuing to execute on its strategic plan as an independent company, selling assets of CSK, and refinancing CSK s existing indebtedness through various capital raising and investment transactions. The CSK board of directors also considered the strategic fit and the revenue base and financial resources of O Reilly, which it believed to be a significant benefit that could not be obtained by remaining an independent company. The CSK board of directors concluded (after taking into account the current and historical financial condition, results of operations, competitive position, business prospects, opportunities and strategic objectives of each of CSK and O Reilly, including the potential risks involved in achieving those prospects and objectives) that (i) the financial prospects of CSK and O Reilly on a combined basis were more favorable than the financial prospects of CSK on a stand-alone basis, (ii) a combined company should be able to compete very successfully, leading to higher equity value and (iii) on a risk-adjusted basis, the offer price is greater than the long-term value inherent in CSK as a stand-alone entity.

Prospects of the Combined Entity. The CSK board of directors considered that the combined company would be a stronger and more financially flexible company than CSK as a stand-alone entity. The combined company would be well positioned to be a nation-wide leader in the automotive aftermarket industry. The CSK board of directors also considered that the offer presents an opportunity for CSK s stockholders to receive common stock in a healthier, more competitive and more financially stable company, to have greater liquidity for their shares, to benefit from any synergies experienced by O Reilly in the acquisition and integration of CSK, and to participate in any future growth of O Reilly and CSK on a combined basis.

Premium to Market Price. The CSK board of directors considered the current and historical market prices of the CSK common stock and the premium implied by the offer price based on market prices of the CSK common stock and O Reilly common stock as of recent and historical dates.

Timing and Certainty of Completion. The CSK board of directors considered the anticipated timing and certainty of consummation of the offer, including the low risk of regulatory review of the transaction by relevant governmental authorities, and the structure of the transaction as an exchange offer for all CSK common stock, which transaction structure may enable CSK s stockholders to receive the offer price and obtain the benefits of the transaction more quickly than might be the case in other transaction structures.

Additional information about the recommendation of CSK s board of directors, including the reasons for the recommendation, is more fully set forth in CSK s Solicitation/Recommendation Statement on Schedule 14D-9, which is being mailed to CSK stockholders together with this prospectus.

Table of Contents

THE OFFER

Exchange of Shares of CSK Common Stock

We are proposing to acquire all of the outstanding shares of CSK common stock in exchange for (i) between 0.3673 and 0.4285 of a share of common stock of O Reilly and (ii) \$1.00 in cash, subject to possible reduction, as described below, for each validly tendered share of CSK common stock.

Stock Component. The stock component consists of between 0.3673 and 0.4285 of a fully paid and nonassessable share of common stock, par value of \$0.01, of O Reilly as determined based on an exchange ratio equal to (i) \$11.00 divided by (ii) the average of the reported closing sale prices of O Reilly common stock for the five (5) consecutive trading days ending on and including the second trading day prior to the consummation of the exchange offer and rounded to four decimal places; provided, however, that if such average closing sale price of O Reilly stock is greater than \$29.95, then the exchange ratio shall equal 0.3673, and if such average closing sale price is less than \$25.67, then the exchange ratio shall equal 0.4285.

Cash Component. The cash component consists of \$1.00 in cash minus the adjustment amount, if any, which we refer to as the per share cash consideration. The adjustment amount is the amount equal to the quotient obtained by dividing (i) the sum of any amount paid by CSK or its subsidiaries to the lenders under its credit agreements in connection with obtaining any bank consent, waiver or amendment under the credit agreements after April 1, 2008 minus \$3,000,000 by (ii) the sum of the (a) total number of shares of CSK common stock outstanding immediately prior to the expiration of the offer and (b) total number of shares of CSK common stock determined by O Reilly up to a maximum of the total number of shares of CSK common stock issuable upon the exercise or conversion of all options, warrants, rights and convertible securities (if any) that will be vested by September 28, 2008. The adjustment amount will be rounded down to the nearest 1/10 (one-tenth) of a cent and will in no event be greater than \$1.00 or less than zero. CSK has indicated to O Reilly that, as of the date of this prospectus, it does not anticipate obtaining any bank consent, waiver or amendment under its credit agreements prior to the anticipated completion of the offer.

The offer consideration consists of the per share cash consideration plus the fraction of a share of O Reilly common stock equal to the exchange ratio.

We will not issue any fractional shares of O Reilly common stock pursuant to the offer or the merger. In lieu thereof, O Reilly will arrange for the exchange agent to make a cash payment (without interest and subject to any withholding for taxes) equal to the fractional share interest multiplied by the average of the reported closing sale prices of O Reilly common stock for the five (5) consecutive trading days ending on and including the second trading day prior to the consummation of the exchange offer and rounded to four decimal places.

By way of example, if the average of the reported closing sale prices of O Reilly common stock as reported on NASDAQ for the five (5) consecutive trading days ending on and including June 17, 2008, the last trading day prior to the printing of this prospectus for which this information was practicably available, were to be used to establish the exchange ratio, each share of CSK common stock would be exchanged into 0.4285 shares of O Reilly common stock and \$1.00 in cash, subject to possible reduction, as described herein.

The expiration date shall refer to 12:00 midnight, New York City time, on July 10, 2008, unless we extend the period of time for which the offer is open, in which case the term expiration date means the latest time and date on which the offer, as so extended, expires.

We will not acquire any shares of CSK common stock in the offer unless CSK stockholders have validly tendered and not properly withdrawn prior to the expiration of the offer that number of shares which, together with the shares then owned directly or indirectly by O Reilly, represents at least a majority of the shares of CSK common stock outstanding on a fully diluted basis. We refer to this condition as the minimum tender condition.

Table of Contents

After completion of the offer, O Reilly will cause OC Acquisition to complete a merger with and into CSK, in which each outstanding share of CSK common stock (except for shares beneficially owned directly or indirectly by O Reilly for its own account and any shares held in treasury by CSK) will be converted into the right to receive the same consideration paid in exchange for each share of CSK common stock in the offer, subject to appraisal rights under Delaware law, to the extent properly exercised. If, after the completion of the offer, either as a result of the offer alone or in conjunction with the exercise of our option to purchase shares directly from CSK, we beneficially own more than 90% of the outstanding shares of CSK common stock, we may effect the merger without the approval of CSK stockholders, as permitted under Delaware law. If, on the other hand, after the completion of the offer, we beneficially own more than 50%, but less than 90%, of the outstanding shares of CSK common stock, a meeting of CSK stockholders and the affirmative vote of at least a majority of the shares of CSK common stock outstanding on the record date for such meeting will be needed to complete the merger. Since O Reilly will own a majority of the shares of CSK common stock outstanding on the record date, approval of the merger by CSK stockholders will be assured. See [Approval of the Merger](#) on page 46.

If the minimum tender condition is satisfied and we consummate the offer, we have the option to purchase from CSK additional shares of common stock equal to the lowest number of shares that, when added to the number of shares already owned by O Reilly, will constitute one share more than 90% of the shares of CSK common stock then outstanding for the same consideration as paid in exchange for each share of CSK common stock in the offer, which we refer to as the top-up option. At O Reilly's option, the aggregate purchase price for such shares may be satisfied with a promissory note, bearing interest at five percent per annum. In no event will the top-up option be exercisable for a number of shares of CSK common stock (i) that would require CSK to obtain stockholder approval under applicable law or the rules and regulations of the NYSE or (ii) in excess of CSK's then authorized and unissued shares of common stock.

The number of shares of O Reilly common stock issued to CSK stockholders in the offer and the merger will constitute approximately 14.0% of the outstanding common stock of the combined company after the merger based upon the number of outstanding shares of O Reilly common stock and CSK common stock on June 17, 2008 and based on the closing price of O Reilly common stock as reported on NASDAQ on June 17, 2008, disregarding stock options and shares of common stock that may be issued by O Reilly or CSK pursuant to an employee stock plan.

If you are the record owner of your shares and you tender your shares directly to the exchange agent, you will not be obligated to pay any charges or expenses of the exchange agent or any brokerage commissions. If you own your shares through a broker or other nominee, and your broker or nominee tenders the shares on your behalf, your broker or nominee may charge you a fee for doing so. You should consult your broker or nominee to determine whether any charges will apply.

Timing of the Offer

We commenced the offer on June 11, 2008, the date of distribution of the initial prospectus. The offer is scheduled to expire at 12:00 midnight, New York City time, on July 10, 2008, unless we extend the period of the offer. All references to the expiration of the offer mean the time of expiration, as extended. For more information, see the discussion under [Extension, Termination and Amendment](#) below.

Extension, Termination and Amendment

In the event that the conditions to the offer have not been satisfied or waived upon the expiration of the offer (as the same may be extended), we are required to extend the offer for periods of up to twenty (20) business days until the earlier of such time that all of the conditions to the offer have been satisfied or waived or the merger agreement has been terminated in accordance with its terms. In addition, we, in our sole discretion, will extend the offer for an aggregate period of not more than ten (10) business days beyond the last expiration date of the

Table of Contents

offer that would otherwise be permitted if, in our reasonable discretion, such extension is necessary to complete the necessary conditions to complete our financing transactions for the offer so long as such extension does not extend the expiration date of the offer beyond thirty (30) business days following commencement of the offer. During any extension, all shares of CSK common stock previously tendered and not validly withdrawn will remain deposited with the exchange agent, subject to your right to withdraw your shares of CSK common stock. If we exercise our right to use a subsequent offering period as described below, we will first consummate the exchange with respect to the shares validly tendered and not properly withdrawn in the initial offer period.

We expressly reserve the right, but shall not be obligated to, waive any conditions to the offer and to make any changes to the terms of or conditions to the offer, provided that, without the prior written consent of CSK, we cannot:

reduce the offer price;

change the form of consideration payable in the offer, other than to increase the consideration;

reduce the number of shares to be purchased in the offer;

waive or amend the minimum tender condition or the condition that the merger agreement has not been terminated;

add any additional conditions to the offer;

extend the offer except as permitted by the merger agreement; or

modify any condition to the offer or any term of the offer in a manner adverse to CSK's stockholders.

In the event the merger agreement is terminated in accordance with its terms prior to the acceptance of any shares of CSK common stock for exchange pursuant to the offer, we will promptly terminate the offer without accepting any shares that were previously tendered.

We will follow any extension, termination, waiver or amendment, as promptly as practicable, with a public announcement. Subject to the requirements of the Exchange Act and other applicable law, and without limiting the manner in which we may choose to make any public announcement, we assume no obligation to publish, advertise or otherwise communicate any public announcement.

Subsequent Offering Period

We may elect to provide subsequent offering periods of up to twenty (20) business days after the acceptance of shares of CSK common stock in the offer in accordance with Rule 14d-11 under the Exchange Act if, on the expiration date of the offer, all of the conditions to the offer have been satisfied or waived, but the total number of shares of CSK common stock that have been validly tendered and not withdrawn pursuant to the offer, together with shares of CSK common stock then directly or indirectly owned by O'Reilly, is less than 90% of the total number of shares of CSK common stock then outstanding. If we exercise our right to use a subsequent offering period, we will first consummate the exchange with respect to the shares validly tendered and not properly withdrawn in the initial offer period. You will not have the right to withdraw any shares of CSK common stock that you tender in the subsequent offering period. If we elect to provide a subsequent offering period, we will make a public announcement to that effect no later than 9:00 a.m. New York City time on the next business day after the previously scheduled expiration.

Conditions of the Offer

The offer is subject to a number of conditions, which we describe below. Notwithstanding any other provisions of the offer, and in addition to O'Reilly's rights to amend the offer at any time in its sole discretion (subject to the provisions of the merger agreement and any applicable rules

and regulations of the SEC, including

Table of Contents

Rule 14e-1(c) under the Exchange Act), O Reilly shall not be required to accept for exchange, or exchange the offer consideration for, any validly tendered shares of CSK common stock if any of these conditions are not satisfied or, where permissible, waived as of the expiration of the offer.

Minimum Tender Condition

There must be validly tendered and not properly withdrawn prior to the expiration of the offer that number of shares of CSK common stock that, together with shares of CSK common stock then directly or indirectly owned by O Reilly, represents at least a majority of the fully diluted shares of CSK common stock.

Regulatory Clearance

The waiting periods under the HSR Act have been terminated and no longer restrict the consummation of the merger. The applicable waiting period under the HSR Act was terminated on April 17, 2008.

Registration Condition

The registration statement on Form S-4 of which this prospectus is a part must have been declared effective by the SEC under the Securities Act and not be the subject of any stop order or proceedings seeking a stop order.

NASDAQ Condition

The shares of O Reilly common stock issuable in exchange for shares of CSK common stock in the offer and the merger shall have been authorized for listing on the NASDAQ.

Tax Opinion Condition

O Reilly shall have received a written opinion from Skadden, Arps, Slate, Meagher & Flom LLP to the effect that the offer, the merger and the LLC merger (if any) together will constitute a reorganization within the meaning of Section 368(a) of the Code (which opinion may rely on such assumptions and representations as such counsel reasonably deems appropriate). In addition, CSK shall have received a written opinion from Gibson, Dunn & Crutcher LLP to the effect that the offer, the merger and the LLC merger (if any) together will constitute a reorganization within the meaning of Section 368(a) of the Code (which opinion may rely on such assumptions and representations as such counsel reasonably deems appropriate).

Additional Conditions

In addition, notwithstanding any other provisions of the offer, subject to the provisions of the merger agreement and any applicable rules and regulations of the SEC (including Rule 14e-1(c) under the Exchange Act), O Reilly shall not be required to accept for exchange, or exchange the offer consideration for, any validly tendered shares of CSK common stock if any of the following events has occurred:

any governmental entity has issued an order, decree, injunction or ruling or taken any other action permanently restraining, enjoining or otherwise materially delaying or preventing the consummation of the offer or the merger and such order, decree, injunction, ruling or other action has become final and non-appealable;

there is any pending action, proceeding or counterclaim by any governmental entity with respect to the actions set forth above in the immediately preceding bullet point; provided, however, that this condition will only be a condition during the first sixty (60) days after April 1, 2008;

any law enacted, entered, enforced, issued or in effect that prohibits or makes illegal the consummation of the offer, the merger or any other transaction contemplated by the merger agreement;

Table of Contents

the representations and warranties of CSK contained in the merger agreement are not true and correct in all respects, as of April 1, 2008 or at the consummation of the offer, as if made at such time, except where the failure to be so true and correct has not had and would not reasonably be expected to have, either individually or in the aggregate, a material adverse effect on CSK (except with respect to the CSK representations relating to the capital stock and authority, which must be correct in all material respects) and such breach has not been cured;

CSK has materially breached any of its obligations under the merger agreement and such breach or failure to perform has not been cured;

any event, change or development shall have occurred following April 1, 2008 that has had or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on CSK and such material adverse effect shall not have been cured;

CSK's board of directors has changed its recommendation of the merger agreement in a manner adverse to O'Reilly and such change has not been withdrawn;

CSK has approved, endorsed or recommended to CSK's stockholders an acquisition proposal other than the offer or the merger with O'Reilly and OC Acquisition; or

the merger agreement has been terminated in accordance with its terms.

General Conditions

All of the foregoing conditions, other than the minimum tender condition and the condition that the merger agreement has not been terminated, are for our sole benefit and may be asserted by us regardless of the circumstances giving rise to any such condition, in whole or in part at any time prior to the expiration of the offer or, with respect to the condition relating to receipt of approvals from any government entity, prior to the acceptance for exchange of any shares of CSK common stock pursuant to the offer, and all conditions, other than the minimum tender condition and the condition that the merger agreement has not been terminated, may be waived by us, in our sole discretion, in whole or in part at any applicable time subject in each case to the terms of the merger agreement and the applicable rules and regulations of the SEC.

O'Reilly has agreed with CSK in the merger agreement that it will not consummate the offer without CSK's consent unless the conditions set forth above under Registration Condition, NASDAQ Condition and Tax Opinion Condition are satisfied. In addition, O'Reilly has also agreed with CSK in the merger agreement that it will not consummate the offer without CSK's consent if:

the representations and warranties of O'Reilly contained in the merger agreement are not true and correct in all respects, as of April 1, 2008 or at the consummation of the offer, as if made at such time, except where the failure to be so true and correct has not had and would not reasonably be expected to have, either individually or in the aggregate, a material adverse effect on O'Reilly (except with respect to the O'Reilly representations relating to the capital stock and authority, which must be correct in all material respects) and such breach has not been cured;

O'Reilly has materially breached any of its obligations under the merger agreement and such breach or failure to perform has not been cured; or

any event, change or development shall have occurred following April 1, 2008 that has had or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on O'Reilly and such material adverse effect shall not have been cured.

The failure by us at any time to exercise any of the foregoing rights shall not be deemed a waiver of any such right and, each such right shall be deemed an ongoing right that may be asserted at any time and from time to time.

Table of Contents

O Reilly and CSK cannot assure you that all of the conditions to completing the offer will be satisfied or waived.

Important Definitions

The merger agreement provides that a material adverse effect means, when used in connection with O Reilly or CSK, any fact, circumstance, event, change, effect, development or occurrence that, either individually or in the aggregate is materially adverse to (i) the business, assets, liabilities, condition (financial or otherwise) or results of operations of O Reilly or CSK and their respective subsidiaries, taken as a whole or (ii) the ability of O Reilly or CSK or perform, in all material respects, their obligations under the merger agreement or to consummate the transactions contemplated by the merger agreement; provided that material adverse effect shall not include the effect of any fact, circumstance, event, change, effect, development or occurrence arising out of or attributable to any of the following, either alone or in combination:

the industry and markets in which O Reilly or CSK and their respective subsidiaries operate generally (that do not materially disproportionately affect O Reilly or CSK, as applicable, and their respective subsidiaries, taken as a whole);

general economic, business, regulatory or political conditions (including those affecting the securities or financial markets) (that do not materially disproportionately affect O Reilly or CSK, as applicable, and their respective subsidiaries, taken as a whole);

gasoline prices in the United States;

any actions required under the merger agreement to obtain any approval or authorization under applicable antitrust or competition laws for the consummation of the offer or the merger;

the public announcement or pendency of the merger agreement or the consummation of the transactions contemplated thereby (including any loss of employees or labor disputes or employee strikes, slowdowns, job actions or work stoppages or labor union activities or any termination or reduction or similar negative impact on relationships, contractual or otherwise, with any customers, suppliers or distributors);

acts of war (whether or not declared), sabotage or terrorism, military actions or the escalation thereof or other force majeure events (such as natural disasters or acts of God) occurring after April 1, 2008 (other than any of the foregoing that causes material damage or destruction to a material number of stores of O Reilly or CSK, as applicable, and their respective subsidiaries, taking into account the proceeds of any applicable insurance policies);

any changes in applicable laws or applicable accounting regulations or principles or interpretations thereof; and

the taking of any action contemplated by or arising from this agreement or consented to or requested by the other party.

In addition to the above, the definition of material adverse effect for CSK excludes the effect of any fact, circumstance, event, change, effect, development or occurrence attributable to certain financial and operational trends of CSK.

Procedure for Tendering Shares

For you to validly tender shares of CSK common stock pursuant to the offer:

Edgar Filing: O REILLY AUTOMOTIVE INC - Form S-4/A

the enclosed letter of transmittal, properly completed and duly executed, or a manually executed facsimile of that document, along with any required signature guarantees, or an agent's message (as defined below) in connection with a book-entry transfer, and any other required documents, must be transmitted to and received by the exchange agent at one of its addresses set forth on the back cover of

Table of Contents

this prospectus, and certificates for tendered shares of CSK common stock must be received by the exchange agent at one of its addresses or those shares of CSK common stock must be tendered pursuant to the procedures for book-entry tender set forth below, and a confirmation of receipt of the tender received, which confirmation we refer to below as a book-entry confirmation, in each case before the offer expiration date; or

you must comply with the guaranteed delivery procedures set forth below.

The term agent's message means a message, transmitted by DTC to, and received by, the exchange agent and forming a part of a book-entry confirmation, which states that DTC has received an express acknowledgment from the participant in DTC tendering the shares of CSK common stock that are the subject of the book-entry confirmation, that the participant has received and agrees to be bound by the terms of the letter of transmittal and that we may enforce that agreement against the participant.

The exchange agent will establish accounts at DTC with respect to the shares of CSK common stock for purposes of the offer within two (2) business days after the date of this prospectus, and any financial institution that is a participant in DTC may make book-entry delivery of the shares of CSK common stock by causing DTC to transfer tendered shares of CSK common stock into the exchange agent's account in accordance with DTC's procedure for the transfer. However, although delivery of shares of CSK common stock may be effected through book-entry at DTC, the letter of transmittal, or a manually signed facsimile thereof, with any required signature guarantees, or an agent's message in connection with a book-entry transfer, and any other required documents, must, in any case, be transmitted to and received by the exchange agent at one of its addresses set forth on the back cover of this prospectus prior to the offer expiration date, or the guaranteed delivery procedures described below must be followed.

Signatures on all letters of transmittal must be guaranteed by an eligible institution, except in cases in which shares of CSK common stock are tendered either by a registered holder of shares of CSK common stock who has not completed the box entitled "Special Payment Instructions" or "Special Delivery Instructions" on the letter of transmittal or for the account of an eligible institution.

If the certificates for shares of CSK common stock are registered in the name of a person other than the person who signs the letter of transmittal, or if certificates for unexchanged shares of CSK common stock are to be issued to a person other than the registered holder(s), the certificates must be endorsed or accompanied by appropriate stock powers, in either case signed exactly as the name or names of the registered holder(s) appear(s) on the certificates, with the signature(s) on the certificates or stock powers guaranteed in the manner we have described above.

Guaranteed Delivery

If you wish to tender shares of CSK common stock pursuant to the offer and your certificates are not immediately available or you cannot deliver the certificates and all other required documents to the exchange agent prior to the expiration date or cannot complete the procedure for book-entry transfer on a timely basis, your shares of CSK common stock may nevertheless be tendered, if all of the following conditions are satisfied:

you make your tender by or through an eligible institution;

the enclosed notice of guaranteed delivery, properly completed and duly executed, substantially in the form enclosed with this prospectus, is received by the exchange agent as provided below on or prior to the expiration date; and

the certificates for all tendered shares of CSK common stock, or a confirmation of a book-entry transfer of tendered shares into the exchange agent's account at DTC as described above, in proper form for transfer, together with a properly completed and duly executed letter of transmittal or a manually signed facsimile thereof, with any required signature guarantees, or, in the case of a book-

Table of Contents

entry transfer, an agent's message, and all other documents required by the letter of transmittal are received by the exchange agent within three (3) New York Stock Exchange trading days after the date of execution of the notice of guaranteed delivery. You may deliver the notice of guaranteed delivery by hand or transmit it by facsimile transmission or mail to the exchange agent and you must include a signature guarantee by an eligible institution in the form set forth in that notice.

In all cases, we will exchange shares of CSK common stock tendered and accepted for exchange pursuant to the offer only after timely receipt by the exchange agent of certificates for shares of CSK common stock, or timely confirmation of a book-entry transfer of tendered shares into the exchange agent's account at DTC as described above, properly completed and duly executed letter(s) of transmittal, or manually signed facsimile(s) thereof, or an agent's message in connection with a book-entry transfer, and any other required documents.

By executing a letter of transmittal, you irrevocably appoint our designees as your attorneys-in-fact and proxies, each with full power of substitution, to the full extent of your rights with respect to your shares of CSK common stock tendered and accepted for exchange by us and with respect to any and all other shares of CSK common stock and other securities. That appointment is effective if and when, and only to the extent that, we accept the shares of CSK common stock for exchange pursuant to the offer. All of these proxies shall be considered coupled with an interest in the tendered shares of CSK common stock and therefore shall not be revocable. Upon the effectiveness of the appointment, all prior proxies that you have given will be revoked, and you may not give any subsequent proxies, and, if given, they will not be deemed effective. Our designees will, with respect to the shares of CSK common stock for which the appointment is effective, be empowered, among other things, to exercise all of your voting and other rights as they, in their sole discretion, deem proper at any annual, special or adjourned meeting of CSK's stockholders or otherwise. We reserve the right to require that, in order for shares of CSK common stock to be deemed validly tendered, immediately upon our exchange of those shares of CSK common stock, we must be able to exercise full voting rights with respect to the tendered shares of CSK common stock.

We will determine questions as to the validity, form, eligibility including time of receipt, and acceptance for exchange of any tender of shares of CSK common stock, in our sole discretion, and our determination shall be final and binding. We reserve the absolute right to reject any and all tenders of shares of CSK common stock that we determine are not in proper form or the acceptance of or exchange for which may, in the opinion of our counsel, be unlawful. We also reserve the absolute right to waive any defect or irregularity in the tender of any shares of CSK common stock. No tender of those shares of CSK common stock will be deemed to have been validly made until all defects and irregularities in tenders of those shares of CSK common stock have been cured or waived. Neither we, the exchange agent, the information agent nor any other person will be under any duty to give notification of any defects or irregularities in the tender of any shares of CSK common stock or will incur any liability for failure to give notification. Our interpretation of the terms and conditions of the offer, including the letter of transmittal and instructions thereto, will be final and binding.

The tender of shares of CSK common stock pursuant to any of the procedures described above will constitute a binding agreement between us and you upon the terms and subject to the conditions of the offer.

Withdrawal Rights

Shares of CSK common stock that you tender pursuant to the offer may be withdrawn according to the procedures set forth below at any time prior to the expiration of the offer and, unless theretofore accepted for exchange in the offer, may also be withdrawn at any time after August 10, 2008.

For your withdrawal to be effective, the exchange agent must timely receive from you a written or facsimile transmission notice of withdrawal at one of its addresses set forth on the back cover of this prospectus, and your notice must include your name, address, social security number, the certificate number(s) and the number of shares of CSK common stock to be withdrawn, as well as the name of the registered holder, if it is different from that of the person who tendered those shares of CSK common stock. If shares of CSK common stock have been

Table of Contents

tendered pursuant to the procedures for book-entry tender discussed above under Procedure for Tendering Shares, any notice of withdrawal must specify the name and number of the account at DTC to be credited with the withdrawn shares of CSK common stock and must otherwise comply with DTC's procedures. If certificates have been delivered or otherwise identified to the exchange agent, the name of the registered holder and the serial numbers of the particular certificates evidencing the shares of CSK common stock withdrawn must also be furnished to the exchange agent, as stated above, prior to the physical release of the certificates. We will decide all questions as to the form and validity (including time of receipt) of any notice of withdrawal, in our sole discretion, and our decision will be final and binding.

An eligible institution must guarantee all signatures on the notice of withdrawal unless the shares of CSK common stock have been tendered for the account of an eligible institution.

None of O'Reilly, the exchange agent, the information agent or any other person will be under any duty to give notification of any defects or irregularities in any notice of withdrawal or will incur any liability for failure to give any notification. Any shares of CSK common stock that you properly withdraw will be deemed not to have been validly tendered for purposes of the offer. However, you may retender withdrawn shares of CSK common stock by following one of the procedures discussed under Procedure for Tendering Shares or Guaranteed Delivery at any time before the expiration of the offer.

Effect of a Tender of Shares

By executing a letter of transmittal, you will agree and acknowledge that our acceptance for exchange of shares of CSK common stock you tender in the offer will, without any further action, revoke any prior powers of attorney and proxies that you may have granted in respect of those shares and you will not grant any subsequent proxies and, if any are granted, they will not be deemed effective. We reserve the right to require that, in order for shares of CSK common stock to be validly tendered, we must be able to exercise full voting, consent and other rights with respect to those shares of CSK common stock immediately upon our acceptance of those shares of CSK common stock for exchange.

We will determine questions as to the validity, form, eligibility (including time of receipt) and acceptance for exchange of any tender of shares of CSK common stock, in our sole discretion, and our determination will be final and binding. We reserve the absolute right to reject any and all tenders of shares of CSK common stock that we determine are not in proper form or the acceptance of or exchange for which may, in the opinion of our counsel, be unlawful. No tender of shares of CSK common stock will be deemed to have been validly made until all defects and irregularities in tenders of those shares have been cured or waived. None of O'Reilly, the exchange agent, the information agent, or any other person will be under any duty to give notification of any defects or irregularities in the tender of any shares of CSK common stock or will incur any liability for failure to give any such notification. Our interpretation of the terms and conditions of the offer, including the letter of transmittal and instructions, will be final and binding.

The tender of shares of CSK common stock pursuant to any of the procedures described above will constitute a binding agreement between you and us upon the terms and subject to the conditions of the offer.

Table of Contents

Delivery of Shares of O Reilly Common Stock and Cash

Subject to the satisfaction (or, where permissible, waiver) of the conditions to the offer as of the expiration of the offer, we will accept for exchange shares of CSK common stock validly tendered and not properly withdrawn promptly after the expiration of the offer and will exchange shares of O Reilly common stock, \$1.00 minus the adjustment amount, if any, and cash in lieu of fractional shares for the tendered shares of CSK common stock. In all cases, exchange of shares of CSK common stock tendered and accepted for exchange pursuant to the offer will be made only if the exchange agent timely receives:

certificates for those shares of CSK common stock, or a timely confirmation of a book-entry transfer of those shares of CSK common stock in the exchange agent's account at DTC, and a properly completed and duly executed letter of transmittal or a duly executed copy thereof, and any other required documents; or

a timely confirmation of a book-entry transfer of those shares of CSK common stock in the exchange agent's account at DTC, together with an agent's message as described under Procedure for Tendering Shares.

For purposes of the offer, we will be deemed to have accepted for exchange shares of CSK common stock validly tendered and not properly withdrawn when, as and if we notify the exchange agent of our acceptance of the tender of those shares of CSK common stock pursuant to the offer. The exchange agent will deliver the shares of O Reilly common stock, the \$1.00 in cash, subject to reduction, if any, and cash in lieu of a fraction of a share of O Reilly common stock promptly after receipt of our notice. The exchange agent will act as agent for tendering CSK stockholders for the purpose of receiving the cash portion of the offer price, the shares of O Reilly common stock and cash instead of a fraction of a share of O Reilly common stock and transmitting the shares and cash to you. You will not receive any interest on any cash that you are entitled to receive, even if there is a delay in making the exchange. If we do not accept shares of CSK common stock for exchange pursuant to the offer or if certificates are submitted for more shares of CSK common stock than are tendered in the offer, we will return certificates for these unexchanged shares of CSK common stock without expense to the tendering stockholder. If we do not accept shares of CSK common stock for exchange pursuant to the offer, shares of CSK common stock tendered by book-entry transfer into the exchange agent's account at DTC pursuant to the procedures set forth under Procedure for Tendering Shares will be credited to the account maintained with DTC from which those shares were originally transferred, promptly following expiration or termination of the offer.

Cash Instead of Fractional Shares of O Reilly Common Stock

We will not issue any fractional shares of O Reilly common stock pursuant to the offer or the merger. Rather, O Reilly will arrange for the exchange agent to make a cash payment (without interest and subject to any withholding for taxes) equal to the fractional share interest multiplied by the average of the reported closing sale prices of O Reilly common stock for the five (5) consecutive trading days ending on and including the second trading day prior to the consummation of the offer and rounded to four decimal places.

Material United States Federal Income Tax Considerations

The following is a general summary of the anticipated material United States federal income tax consequences of the offer, the merger and the LLC merger (if any) to United States holders (as defined below) of CSK common stock. This summary applies only to CSK stockholders who are United States holders and who hold their shares of CSK common stock, and will hold the shares of O Reilly common stock received in exchange for their shares of CSK common stock, as capital assets within the meaning of section 1221 of the Code.

For purposes of this discussion, a United States holder means:

a citizen or resident of the United States;

Table of Contents

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

a trust, the substantial decisions of which are controlled by one or more United States persons and which is subject to the primary supervision of a United States court, or a trust that validly has elected under applicable Treasury Regulations to be treated as a United States person for United States federal income tax purposes; or

an estate that is subject to United States federal income tax on its income regardless of its source.

Holders of CSK common stock who are not United States holders may have different tax consequences than those described below and are urged to consult their own tax advisors regarding the tax treatment to them under United States and non-United States tax laws.

This discussion does not address all of the United States federal income tax consequences that may be relevant to particular United States holders in light of their individual circumstances, and does not address any aspect of state, local, foreign, estate or gift taxation that may be applicable to a United States holder. In addition, this discussion does not consider any specific facts or circumstances that may be relevant to a United States holder subject to special rules under United States federal income, including without limitation:

banks, trusts and other financial institutions;

tax-exempt organizations;

insurance companies;

cooperatives;

dealers in securities or foreign currencies;

mutual funds, regulated investment companies or real estate investment trusts;

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

holders whose functional currency is not the U.S. dollar;

partnerships or other entities treated as partnerships for United States federal income tax purposes;

holders who hold shares as part of a hedge, straddle or other risk reduction, constructive sale or conversion transaction; and

holders who acquired their shares upon the exercise of employee stock options or otherwise as compensation or through a tax-qualified retirement plan.

Edgar Filing: O REILLY AUTOMOTIVE INC - Form S-4/A

If a partnership or other entity treated as a partnership for United States federal income tax purposes holds shares of CSK common stock, the tax treatment of a partner generally will depend on the status of the partner and on the activities of the partnership. Partners of partnerships holding CSK common stock should consult their tax advisors about the tax consequences of the offer, the merger and the LLC merger (if any) to them.

This discussion is based, and the tax opinions referred to in the following paragraphs will be based, upon the provisions of the Code, applicable Treasury Regulations, published positions of the Internal Revenue Service (the IRS), judicial decisions and other applicable authorities, as in effect on the date of the registration statement on Form S-4 of which this prospectus is a part or the date of the tax opinions, as the case may be. There can be no assurance that future legislative, administrative or judicial changes or interpretations, which changes or interpretations could apply retroactively, will not affect the accuracy of this discussion or the statements or conclusions set forth in the tax opinions referred to in the following paragraphs. No rulings have been or will be sought from the IRS concerning the tax consequences of the offer, the merger and the LLC merger (if any), and none of the tax opinions of counsel to be received in connection with the offer and the merger will be binding on the IRS or any court. As such, there can be no assurance that the IRS will not take a contrary position regarding the tax consequences of the offer and the merger described in this discussion or the tax opinions of counsel, or

Table of Contents

that any such contrary position would not be sustained. The tax opinions referred to in the following paragraphs will rely on facts, assumptions and representations of factual statements and covenants contained in officer's certificates of O'Reilly and CSK.

Tax matters are very complicated, and the tax consequences of the offer, the merger and the LLC merger (if any) to CSK stockholders will depend on each such stockholder's particular tax situation. CSK STOCKHOLDERS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS AS TO SPECIFIC TAX CONSEQUENCES TO THEM OF THE OFFER, THE MERGER AND THE LLC MERGER (IF ANY), INCLUDING THE APPLICABILITY AND EFFECT OF ANY STATE, LOCAL, FOREIGN AND OTHER TAX LAWS AND OF CHANGES IN APPLICABLE TAX LAWS.

Tax Consequences of the Offer and the Merger

The obligations of O'Reilly and CSK to complete the offer are conditioned upon the delivery of a written opinion to O'Reilly by Skadden, Arps, Slate, Meagher & Flom LLP and the delivery of a written opinion to CSK by Gibson, Dunn & Crutcher LLP, to the effect that, for United States federal income tax purposes, the offer, the merger and the LLC merger (if any) together will constitute a reorganization within the meaning of section 368(a) of the Code. These opinions of counsel will be given in reliance on customary representations of O'Reilly and CSK and assumptions as to certain factual matters, including that the merger will occur in the ordinary course after completion of the offer and the LLC merger will occur immediately after the merger if necessary to preserve the intended tax treatment of the offer and the merger as a tax free reorganization.

Subject to the limitations and qualifications set forth in this section Material United States Federal Income Tax Considerations, and in the tax opinions filed as Exhibits 8.1 and 8.2 to the registration statement on Form S-4 of which this prospectus is a part, the following are the anticipated material United States federal income tax consequences to CSK common stockholders who, consistent with the opinions of counsel referred to above, receive cash and shares of O'Reilly common stock pursuant to a transaction constituting a reorganization within the meaning of section 368(a) of the Code:

A CSK common stockholder who exchanges his or her shares of CSK common stock for cash (other than cash in lieu of a fractional share of O'Reilly common stock) and shares of O'Reilly common stock pursuant to the offer and/or the merger will recognize gain (but will not recognize any loss), and the gain recognized will be equal to the lesser of (i) any cash received (other than cash received in lieu of a fractional share of O'Reilly common stock) and (ii) the excess, if any, of (x) the sum of the cash received (other than cash received in lieu of a fractional share of O'Reilly common stock) and the fair market value of the O'Reilly common stock received (determined at the effective time of the merger) over (y) the CSK common stockholder's tax basis in the shares of CSK common stock exchanged therefor. The amount of gain (or non-recognized loss) must be computed separately for each block of CSK common stock that was purchased by the CSK common stockholder in the same transaction, and a loss realized on one block of stock may not be used to offset a gain realized on another block of stock. A CSK common stockholder to whom these rules may apply should consult his or her tax advisor regarding the manner in which gain or loss should be computed for different blocks of CSK common stock surrendered in the offer and the merger. Any recognized gain will generally be long-term capital gain if the stockholder's holding period for the shares of CSK common stock surrendered is more than one year at the effective time of the offer or the merger, as the case may be, except as discussed below.

Notwithstanding the above, if the cash received (other than cash in lieu of a fractional share of O'Reilly common stock) has the effect of a distribution of a dividend, any recognized gain will be treated as a dividend to the extent of the CSK stockholder's ratable share of accumulated earnings and profits as computed for United States federal income tax purposes. In general, the determination of whether any gain recognized in the offer and the merger will be treated as capital gain or dividend income will depend upon whether, and to what extent, the exchange in the offer

Table of Contents

and the merger reduces the eligible CSK common stockholder's deemed percentage ownership interest in O Reilly after the merger. For purposes of this determination, an eligible CSK common stockholder will be treated as if he or she first exchanged all of his or her shares of CSK common stock solely for shares of O Reilly common stock and then O Reilly immediately redeemed a portion of those shares in exchange for the cash that the eligible CSK common stockholder actually received (excluding cash in lieu of a fractional share of O Reilly common stock). In determining whether the receipt of cash has the effect of a distribution of a dividend, the Code's constructive ownership rules must be taken into account. The IRS has indicated in rulings that any reduction in the interest of a minority stockholder who owns a small number of shares in a publicly and widely held corporation and who exercises no control over corporate affairs would result in capital gain as opposed to dividend treatment. Each CSK common stockholder should consult his or her tax advisor regarding the application of these rules.

Each CSK stockholder's aggregate tax basis in the shares of O Reilly common stock received in the offer and the merger will be the same as his or her aggregate tax basis in the CSK common stock surrendered in the offer and the merger (including any fractional share of O Reilly common stock for which cash is received), increased by the amount of gain recognized (including any portion of the gain that is treated as a dividend as described above, but excluding any gain attributable to the receipt of cash in lieu of a fractional share of O Reilly common stock) and decreased by (i) any cash received (other than cash received in lieu of a fractional share of O Reilly common stock) and (ii) the amount of any tax basis allocable to any fractional share interest for which cash is received. The holding period of the shares of O Reilly common stock received in the offer and the merger by a CSK common stockholder will include the holding period of the shares of CSK common stock that he or she surrendered in the offer and the merger. If a CSK common stockholder has differing tax bases and/or holding periods in respect of the stockholder's shares of CSK common stock, the stockholder should consult with a tax advisor in order to identify the tax bases and/or holding periods of the particular shares of O Reilly common stock that the stockholder receives.

A cash payment received by a CSK common stockholder in lieu of a fractional share of O Reilly common stock generally will be treated as received in exchange for that fractional share interest, and gain or loss generally will be recognized for federal income tax purposes on the receipt of the cash payment, measured by the difference between the amount of cash received and the portion of the basis of the CSK common stock allocable to the fractional share interest. The gain or loss will be long-term capital gain or loss if the CSK common stock is considered to have been held for more than one year at the effective time of the offer or the merger, as the case may be. The deductibility of capital losses is subject to limitations.

If the IRS determines successfully that the offer, the merger and the LLC merger (if any) together do not constitute a reorganization within the meaning of section 368(a) of the Code, each CSK common stockholder would be required to recognize gain or loss with respect to each share of CSK common stock that he or she surrenders in the offer and the merger in an amount equal to the difference between (i) the sum of any cash received (including cash received in lieu of a fractional share of O Reilly common stock) and the fair market value of O Reilly common stock received and (ii) the tax basis of the shares of CSK common stock surrendered in exchange therefor. The amount and character of gain or loss would be computed separately for each block of CSK common stock that was purchased by the stockholder in the same transaction. A CSK common stockholder's aggregate tax basis in the O Reilly common stock received in the offer and the merger would in this case equal its fair market value at the time of the closing of the offer or the merger, as applicable, and the holding period for the O Reilly common stock would begin the day after the closing of the offer or the merger, as applicable.

Except as provided for in **Appraisal Rights** beginning on page 47, CSK common stockholders are entitled to appraisal rights in connection with the merger, subject to properly perfecting such rights. If a CSK common stockholder receives cash pursuant to the exercise of appraisal rights, such stockholder generally will recognize

Table of Contents

gain or loss, measured by the difference between the amount of cash received and such holder's tax basis in such CSK common stock. A CSK common stockholder who exercises appraisal rights is urged to consult his or her tax advisor.

A United States holder who receives shares of O'Reilly common stock as a result of the offer and the merger will be required to retain records pertaining to the offer and the merger. Each United States holder who is required to file a United States federal income tax return and who is a significant holder that receives shares of O'Reilly common stock generally will be required to file a statement with such holder's United States federal income tax return setting forth such holder's tax basis in the CSK common stock and the fair market value of the O'Reilly common stock received in the merger. A significant holder is a United States holder, who immediately before the offer and the merger owned, either (i) at least 5% (by vote or value) of the outstanding stock of CSK or (ii) securities of CSK with a tax basis of \$1.0 million or more.

Information Reporting and Backup Withholding

CSK common stockholders may be subject to backup withholding for United States federal income tax purposes on any cash received in the offer or in the merger unless certain requirements are met. Payments will not be subject to backup withholding if the stockholder (i) is a corporation or comes within certain other exempt categories and, when required, demonstrates this fact or (ii) provides O'Reilly or the exchange agent, as appropriate, with the stockholder's correct taxpayer identification number and completes the substitute Form W-9 included in the letter of transmittal in which the stockholder certifies that the stockholder is not subject to backup withholding. The taxpayer identification number of an individual is his or her Social Security number. Any amount paid as backup withholding tax will be credited against the stockholder's United States federal income liability provided the stockholder furnishes the required information to the IRS.

Transferability of Shares of O'Reilly Common Stock

The shares of O'Reilly common stock offered hereby will be registered under the Securities Act and quoted on the NASDAQ. Accordingly, such shares may be traded freely subject to restrictions under the Securities Act applicable to subsequent transfers of our shares by our affiliates (as defined in the Securities Act), which, in general, provide that our affiliates may not transfer our shares except pursuant to further registration of those shares under the Securities Act or in compliance with Rule 145 (or if applicable, Rule 144) under the Securities Act or another available exemption from registration under the Securities Act.

Approval of the Merger

Under the DGCL, the approval of the board of directors of a company and the affirmative vote of the holders of a majority of the outstanding shares entitled to vote are required to approve a merger and adopt a merger agreement.

CSK's board of directors has previously approved the merger and adopted the merger agreement. If, after completion of the offer, we own less than 90% of the outstanding shares of CSK common stock, approval of the merger can be accomplished through a special meeting of CSK stockholders to vote on the merger. Since we will own a majority of the shares of CSK common stock on the record date for determining the CSK stockholders entitled to vote, we would have a sufficient number of shares of CSK common stock to approve the merger without the vote of any other CSK stockholder and, therefore, approval of the merger by CSK stockholders would be assured. Completion of the transaction in this manner is referred to in this prospectus as a long-form merger. Under the DGCL, a merger can occur without a vote of CSK stockholders, referred to as a short-form merger, if, after completion of the offer, as it may be extended and including any subsequent offering period, we were to own at least 90% of the outstanding shares of CSK common stock. If, after completion of the offer, as it may be extended and including any subsequent offering period, or after O'Reilly's exercise of its option to purchase additional shares from CSK directly, we own at least 90% of the outstanding shares of CSK common stock, we may complete the acquisition of the remaining outstanding shares of CSK common stock by completing a short-form merger.

Table of Contents

Appraisal Rights

The offer does not entitle CSK stockholders to appraisal rights with respect to their shares of CSK common stock.

Except as provided in the following paragraph, the merger does entitle CSK stockholders to appraisal rights with respect to their shares of CSK common stock. If the merger is consummated, holders of shares of CSK common stock at the effective time of the merger will have certain rights pursuant to the provisions of Section 262 of the DGCL to demand appraisal of their shares of CSK common stock. Under Section 262, CSK stockholders who comply with the applicable statutory procedures will be entitled to receive a judicial determination of the fair value of their shares of CSK common stock (exclusive of any element of value arising from the accomplishment or expectation of the merger) and to receive payment of such fair value in cash, together with interest, if any, at a rate equal to 5% over the federal reserve discount rate (including any surcharge) compounded quarterly, unless the court in its discretion determines otherwise for good cause shown. Any such judicial determination of the fair value of shares of CSK common stock could be based upon factors other than, or in addition to, the price per CSK share to be paid in the merger or the market value of the shares of CSK common stock. The value so determined could be more or less than the price per share of CSK common stock to be paid in the merger.

If the \$1.00 per share cash component of the offer consideration is decreased to zero pursuant to the terms of the offer, and at the record date fixed to determine the CSK stockholders entitled to vote, the CSK common stock and O Reilly common stock are listed on the NYSE, NASDAQ or another national securities exchange or are held of record by more than 2,000 holders, then CSK stockholders will not be entitled to appraisal rights if a vote by the CSK stockholders is required under the DGCL to effect the merger.

The foregoing summary of Section 262 of the DGCL does not purport to be complete and is qualified in its entirety by reference to the full text of Section 262 of the DGCL, which is set forth in Annex B to this prospectus. CSK stockholders who may wish to exercise appraisal rights under Delaware law are urged to consult legal counsel for assistance in exercising their rights. Failure to comply completely and on a timely basis with all requirements of Section 262 for perfecting appraisal rights will result in the loss of those rights.

Holders of O Reilly common stock are not entitled to appraisal rights in connection with the offer or the merger.

CERTAIN LEGAL MATTERS

Regulatory Approvals

We and CSK have agreed pursuant to the merger agreement to use all reasonable best efforts to take whatever actions are required to obtain necessary regulatory approvals with respect to the offer and the merger. Other than clearance under the antitrust laws applicable to the offer and the merger that are described below and that have already been obtained, the SEC declaring the effectiveness of the registration statement of which this prospectus is a part and the filing of a certificate of merger under the DGCL with respect to the merger, we do not believe that any additional governmental filings are required with respect to the offer and the merger.

Under the HSR Act, and the related rules, the merger may not be completed until we and CSK notify and furnish information to the Federal Trade Commission and the Antitrust Division of the United States Department of Justice and specified waiting period requirements have been satisfied. The applicable waiting period under the HSR Act was terminated on April 17, 2008.

State Takeover Laws

A number of states have adopted takeover laws and regulations which purport, to varying degrees, to be applicable to attempts to acquire securities of corporations which have substantial assets, stockholders, principal

Table of Contents

executive offices or principal places of business in those states. CSK has taken all action necessary to exempt the offer and the merger and the transactions contemplated hereby from the provisions of Section 203 of the DGCL. We reserve the right to challenge the validity or applicability of any state law allegedly applicable to the offer, and nothing in this prospectus or any action taken in connection herewith is intended as a waiver of that right. If one or more takeover statutes apply to the offer and are not found to be invalid, we may be required to file documents with, or receive approvals from, relevant state authorities and we may also be unable to accept for exchange shares of CSK common stock tendered into the offer or may delay the offer. See The Offer Conditions of the Offer on page 35.

CERTAIN EFFECTS OF THE OFFER

Effects on the Market; Exchange Act Registration

The tender and the acceptance of shares of CSK common stock in the offer will reduce the number of shares of CSK common stock that might otherwise trade publicly and also the number of holders of shares of CSK common stock. This could adversely affect the liquidity and market value of the remaining shares of CSK common stock held by the public following completion of the offer. Depending upon the number of shares of CSK common stock tendered to and accepted by us in the offer, the shares of CSK common stock may no longer meet the requirements for continued inclusion on the NYSE.

If the NYSE ceased publishing quotations for the shares of CSK common stock, it is possible that the shares of CSK common stock would continue to trade in the over-the-counter market and that price or other quotations would be reported by other sources. The extent of the public market for such shares of CSK common stock and the availability of such quotations would depend, however, upon such factors as the number of stockholders and/or the aggregate market value of such securities remaining at such time, the interest in maintaining a market in the shares of CSK common stock on the part of securities firms, the possible termination of registration under the Exchange Act as described below and other factors. We cannot predict whether the reduction in the number of shares of CSK common stock that might otherwise trade publicly would have an adverse or beneficial effect on the market price for, or marketability of, the shares of CSK common stock.

Shares of CSK common stock are currently registered under the Exchange Act. CSK can terminate that registration upon application to the SEC if the outstanding shares of CSK common stock are not listed on a national securities exchange and if there are fewer than 300 holders of record of shares of CSK common stock. Termination of registration of the shares of CSK common stock under the Exchange Act would reduce the information that CSK must furnish to its stockholders and to the SEC and would make certain provisions of the Exchange Act, such as the short-swing profit recovery provisions of Section 16(b) and the requirement of furnishing a proxy statement in connection with stockholders meetings pursuant to Section 14(a) and the related requirement of furnishing an annual report to stockholders, no longer applicable with respect to the shares of CSK common stock. In addition, if the shares of CSK common stock are no longer registered under the Exchange Act, the requirements of Rule 13e-3 under the Exchange Act with respect to going-private transactions would no longer be applicable to CSK. Furthermore, the ability of affiliates of CSK and persons holding restricted securities of CSK to dispose of such securities pursuant to Rule 144 under the Securities Act may be impaired or eliminated. If registration of the shares of CSK common stock under the Exchange Act were terminated, they would no longer be eligible for NYSE listing or for continued inclusion on the Federal Reserve Board's list of margin securities. O'Reilly may seek to cause CSK to apply for termination of registration of the shares of CSK common stock under the Exchange Act as soon after the expiration of the offer as the requirements for such termination are met. If the NYSE listing and the Exchange Act registration of the shares of CSK common stock are not terminated prior to the merger, then the shares of CSK common stock will be delisted from the NYSE and the registration of the shares of CSK common stock under the Exchange Act will be terminated following the consummation of the merger. The shares of CSK common stock are presently margin securities under the regulations of the Federal Reserve Board, which has the effect, among other things, of

Table of Contents

allowing brokers to extend credit on the collateral of shares of CSK common stock. Depending on the factors similar to those described above with respect to listing and market quotations, following consummation of the offer, the shares of CSK common stock may no longer constitute margin securities for the purposes of the Federal Reserve Board's margin regulations, in which event the shares of CSK common stock would be ineligible to be treated as collateral for margin loans made by brokers.

Financing of the Offer and the Merger

The offer is not conditioned upon the receipt of financing. O Reilly estimates that the total amount of funds necessary to consummate the transactions contemplated by the offer and the merger will be approximately \$1.2 billion, which includes approximately \$42.2 million for payment to holders of CSK common stock for the cash portion of the offer consideration. O Reilly has received a commitment letter from Bank of America, N.A., Banc of America Securities LLC, Lehman Commercial Paper Inc., Lehman Brothers Commercial Bank and Lehman Brothers Inc. for the transactions contemplated by the offer and the merger as set forth in more detail below.

The financing commitments expire on September 28, 2008. The definitive documentation governing the financing arrangements has not been finalized and, accordingly, the actual terms of such arrangements may differ from those described in this prospectus. In addition, although the debt financing described in this prospectus is not subject to a due diligence condition, such financing may not be considered assured. As of the date of this prospectus, no alternative financing arrangements or alternative financing plans have been made in the event the financing described below is not available as anticipated.

General

O Reilly has engaged Banc of America Securities LLC and Lehman Brothers as joint lead arrangers and joint book-runners to arrange and syndicate a 5-year \$1.2 billion asset-based senior secured credit facility. The asset-based credit facility will be comprised of: (i) an up to \$1.075 billion tranche A revolving credit facility and (ii) an up to \$125.0 million first-in-last-out revolving credit facility, or the FILO tranche.

Availability under the credit facility will be subject to a borrowing base determined by advances against the combined company's eligible accounts receivable, inventory and real estate. The credit facility will be utilized for (i) payment of the cash portion of the offer consideration to acquire all of the outstanding shares of CSK common stock, (ii) refinancing certain outstanding O Reilly and CSK indebtedness, (iii) payment of customary fees and expenses associated with the offer, the financing and the merger and (iv) funding working capital requirements and other general corporate purposes of the combined corporation.

Conditions Precedent to Financing Commitments

The financing commitments are subject to, among other things, (i) there not having occurred since November 4, 2007 any event, development or circumstance that has caused or could reasonably be expected to cause a material adverse change in or affecting the business, financial condition, results of operations or prospects of O Reilly and its subsidiaries and CSK and its subsidiaries, taken as a whole, (ii) there not having occurred since November 4, 2007 any fact, circumstance, event, change, effect, development or occurrence that, either individually or in the aggregate, is or would reasonably be expected to be materially adverse to the business, assets, liabilities, condition (financial or otherwise) or results of operations of CSK and its subsidiaries, taken as a whole, or the ability of CSK to perform in all material respects its obligations under the merger agreement, subject to certain exceptions and certain other special provisions, (iii) consummation of the offer pursuant to the merger agreement, (iv) O Reilly having complied in all material respects with all of its obligations under the financing commitments, including payment of all fees and expenses, (v) delivery of certain historical and pro forma financial information, (vi) delivery of lien searches and the absence of any liens other than permitted liens, (vii) delivery of a borrowing base certificate demonstrating certain minimum excess availability (and delivery of satisfactory substantiation therefor), (viii) satisfaction of customary closing conditions and (ix) the successful negotiation, execution and delivery of definitive documentation.

Table of Contents

Interest Rates and Fees

Borrowings under the tranche A revolver are expected to bear interest, at O Reilly's option, at a rate equal to either (i) a base rate plus 1.50% per annum or (ii) LIBOR plus 2.50% per annum, each rate being subject to adjustment based upon certain excess availability thresholds. Borrowings under the FILO tranche are expected to bear interest, at O Reilly's option, at a rate equal to either (i) a base rate plus 2.75% per annum or (ii) LIBOR plus 3.75% per annum, each rate being subject to adjustment based upon certain excess availability thresholds. As used in this section, the base rate is equal to the higher of the prime lending rate established by Bank of America, N.A. from time to time and the federal funds effective rate as in effect from time to time plus 0.50%.

In addition, O Reilly will pay customary commitment fees, letter of credit fees, underwriting fees and other administrative fees in respect of the credit facility.

Borrowers and Guarantors

O Reilly and any of its material direct, wholly-owned, domestic subsidiaries, including CSK Auto Inc., which own any assets of the type included in the borrowing base may be borrowers. CSK and each of the material direct and indirect, wholly-owned, domestic subsidiaries of O Reilly and CSK that are not borrowers shall be guarantors.

Security

All of the obligations under the credit facility will be secured by liens on (i) substantially all of the tangible and intangible assets of O Reilly and each of its material direct and indirect, wholly-owned, domestic subsidiaries, including CSK, collectively referred to as the credit parties, (ii) all of the capital stock of each direct domestic subsidiary of each credit party and (iii) 65% of the voting stock and 100% of the non-voting stock of each direct foreign subsidiary of each credit party.

Other Terms

The credit facility will contain customary representations and warranties and customary affirmative and negative covenants, including, among other things, restrictions on indebtedness, liens, mergers and consolidations, sales of assets, investments and dividends and other distributions. The credit facility will also include customary events of defaults, including a change of control to be defined.

Conduct of CSK if the Offer is Not Completed

If the offer is not completed because the minimum tender condition or another condition is not satisfied or, if permissible, waived, we expect that CSK will continue to operate its business as presently operated, subject to market and industry conditions.

Accounting Treatment

In accordance with Statement of Financial Accounting Standards (SFAS) No. 141, Business Combinations, O Reilly will account for the transactions as a purchase business combination. Upon consummation of the transactions, O Reilly will record the acquisition at cost with cost consisting of the fair value of O Reilly common stock and stock options issued, the cash consideration issued and transaction costs. The total cost will be allocated based on the fair value of tangible and intangible assets acquired and liabilities assumed. The excess of cost over the fair value of net assets acquired will be recorded as goodwill.

Fees and Expenses

O Reilly has retained Lehman Brothers to provide certain financial advisory services in connection with the offer and the merger. Lehman Brothers will receive a customary fee for providing the financial advisory services

Table of Contents

to O Reilly. We have agreed to indemnify Lehman Brothers and related persons against certain liabilities and expenses they may incur in connection with providing financial advisory services for the offer, including certain liabilities and expenses under the federal securities laws. Lehman Brothers is currently engaged by O Reilly and has in the past provided, and may in the future provide, financial advisory and financing services to O Reilly and CSK, including in connection with O Reilly's acquisition of CSK, and has received, and may receive, fees for rendering these services. In the ordinary course of Lehman Brothers' businesses, Lehman Brothers and its affiliates may actively trade in the debt and equity securities of O Reilly and CSK for their own accounts and for the accounts of customers and, accordingly, may at any time hold a long or short position in these securities.

We have retained Innisfree M&A Incorporated as information agent in connection with the offer. The information agent may contact CSK stockholders by mail, telephone, telex, telegraph and personal interview and may request brokers, dealers and other nominee stockholders to forward material relating to the offer to beneficial owners of shares of CSK common stock. We will pay the information agent customary fees for these services in addition to reimbursing the information agent for its reasonable out-of-pocket expenses. We have agreed to indemnify the information agent against certain liabilities and expenses in connection with the offer, including certain liabilities under the United States federal securities laws.

In addition, we have retained Mellon Investor Services LLC as the exchange agent. We will pay the exchange agent customary fees for its services in connection with the offer and the merger, will reimburse the exchange agent for its reasonable out-of-pocket expenses and will indemnify the exchange agent against certain liabilities and expenses.

Except as set forth above, we will not pay any fees or commissions to any broker, dealer or other person for soliciting tenders of shares of CSK common stock pursuant to the offer. We will reimburse brokers, dealers, commercial banks and trust companies and other nominees, upon request, for customary clerical and mailing expenses incurred by them in forwarding offering materials to their customers.

Table of Contents**INTERESTS OF CERTAIN PERSONS IN THE OFFER AND THE MERGER****Interests of Management and the CSK Board**

In considering the recommendations of the CSK board of directors regarding the offer and the merger, CSK stockholders should be aware that the directors and officers of CSK have interests in the offer and the merger that differ from those of other stockholders of CSK, as described below and in more detail in CSK's Solicitation/Recommendation Statement on Schedule 14D-9, including the Information Statement to be attached as Exhibit (a)(4) to the Schedule 14D-9, which will be filed by an Amendment to the Schedule 14D-9. The CSK board of directors was aware of these interests and considered them, among other matters, in recommending the tender of shares in the offer and approval of the merger.

As a result of these interests, the directors and officers of CSK could be more likely to vote to recommend the offer and approval of the merger than if they did not hold these interests, and may have reasons for doing so that are not the same as the interests of other CSK stockholders. CSK stockholders should consider whether these interests may have influenced the directors and officers to support or recommend the offer and the merger.

Treatment of Stock Options and Stock-Based Awards

Certain directors and officers of CSK have received options to acquire shares of CSK common stock. Each outstanding option to acquire shares of CSK common stock outstanding immediately prior to the merger, including options granted to CSK officers and directors, will be assumed upon consummation of the merger by O'Reilly and will thereafter be exercisable for that number of shares of O'Reilly common stock equal to the product obtained by multiplying (i) the number of shares subject to such cancelled option by (ii) the option exchange ratio (as described below), rounded down to the nearest whole share of O'Reilly common stock. Option holders will not receive the cash portion of the offer consideration and their exchange ratio will be adjusted to account for the cash portion of the offer consideration as follows: the option exchange ratio will be equal to the sum of (i) the exchange ratio and (ii) the number equal to the quotient of (a) \$1.00, subject to possible reduction, as described herein, divided by (b) the average of the reported closing sale prices of O'Reilly common stock for the five (5) consecutive trading days ending on and including the second trading day prior to the consummation of the exchange offer and rounded to four decimal places.

As of June 17, 2008, the following directors and officers of CSK have outstanding options to purchase the number of shares specified below:

Name	Title	Options	Exercise	
			Price	Vesting Status Prior to Closing
James G. Bazlen	Director	10,000	\$ 9.8200	Unvested
		51,000	\$ 11.0000	Vested
		10,000	\$ 13.3200	Vested
		10,000	\$ 14.4000	Vested
		10,000	\$ 16.6150	Vested
Michael Bryk	Senior Vice President of Finance and Controller	50,000	\$ 10.7950	Unvested
Larry Buresh	Senior Vice President and Chief Information Officer	12,500	\$ 9.8700	Vested
		56,202	\$ 10.7950	Unvested
		43,250	\$ 11.0000	Vested
		38,141	\$ 13.3200	Vested
		30,247	\$ 16.6150	20,165 Unvested
		27,555	\$ 16.3500	Vested
James Constantine	Executive Vice President of Finance and Chief Financial Officer	100,000	\$ 10.1500	Unvested
Larry Ellis	Senior Vice President Logistics	5,000	\$ 9.8700	Vested
		42,627	\$ 10.7950	Unvested
		2,800	\$ 11.0000	Vested
		28,432	\$ 13.3200	Vested
		20,643	\$ 16.3500	Vested
		22,914	\$ 16.6150	15,276 Unvested

Table of Contents

Name	Title	Options	Exercise	
			Price	Vesting Status Prior to Closing
Morton Godlas	Director	10,000	\$ 9.8200	Unvested
		10,000	\$ 13.3200	Vested
		10,000	\$ 14.4000	Vested
		10,000	\$ 16.6150	Vested
Terilyn A. Henderson	Director	10,000	\$ 9.8200	Unvested
		10,000	\$ 13.3200	Vested
		10,000	\$ 14.4000	Vested
		10,000	\$ 16.6150	Vested
Greg Langdon	Senior Vice President Store Operations	825	\$ 9.8700	Vested
		12,568	\$ 10.7950	Unvested
		5,645	\$ 11.0000	Vested
		6,000	\$ 13.3200	Vested
		6,756	\$ 16.6150	4,504 Unvested
Charles K. Marquis	Director	3,918	\$ 16.3500	Vested
		10,000	\$ 9.8200	Unvested
		10,000	\$ 13.3200	Vested
		10,000	\$ 14.4000	Vested
Lawrence N. Mondry	President, Chief Executive Officer and Director	10,000	\$ 16.6150	Vested
		144,847	\$ 10.7950	Unvested
		300,000	\$ 18.6550	Unvested
		660	\$ 9.8700	Vested
Randi V Morrison	Senior Vice President, General Counsel and Secretary	42,627	\$ 10.7950	Unvested
		12,000	\$ 13.3200	Vested
		7,727	\$ 16.3500	Vested
		22,914	\$ 16.6150	15,276 Unvested
		5,089	\$ 19.5800	Vested
Charles J. Philippin	Director	10,000	\$ 9.8200	Unvested
		10,000	\$ 13.3200	Vested
		10,000	\$ 14.4000	Vested
		10,000	\$ 16.6150	Vested
John Saar	Senior Vice President Real Estate and Human Resources	1,650	\$ 9.8700	Vested
		40,889	\$ 10.7950	Unvested
		20,000	\$ 13.3200	Vested
		13,154	\$ 16.3500	Vested
William A. Shutzer	Director	21,998	\$ 16.6150	14,666 Unvested
		10,000	\$ 9.8200	Unvested
		10,000	\$ 13.3200	Vested
		10,000	\$ 14.4000	Vested
Dale Ward	Executive Vice President Operations	10,000	\$ 16.6150	Vested
		4,125	\$ 9.8700	Vested
		70,209	\$ 10.7950	Unvested
		40,934	\$ 13.3200	Vested
Brian Woods	Executive Vice President Merchandising	28,676	\$ 16.3500	Vested
		37,741	\$ 16.6150	25,161 Unvested
		100,000	\$ 10.7950	Unvested

Except for 94,847 of the 144,847 options granted to Mr. Mondry with an exercise price of \$10.7950, all options will vest upon consummation of the offer or the merger. The vesting schedule for Mr. Mondry's remaining 94,487 options is as follows: 31,616 options will vest on October 20, 2008, 31,616 options will vest on October 20, 2009, and 31,615 options will vest on October 20, 2010, in all cases, subject to Mr. Mondry being employed on such dates by the combined company.

Table of Contents

As of June 17, 2008, the following directors and officers of CSK have outstanding restricted stock and restricted stock units with respect to shares of CSK common stock specified below:

Name	Title	Shares
Michael Bryk	Senior Vice President of Finance and Controller	10,000
Larry Buresh	Senior Vice President and Chief Information Officer	13,119
James Constantine	Executive Vice President of Finance and Chief Financial Officer	25,000
Larry Ellis	Senior Vice President Logistics	9,933
Greg Langdon	Senior Vice President Store Operations	2,808
Lawrence N. Mondry	President, Chief Executive Officer and Director	50,000
Lawrence N. Mondry	President, Chief Executive Officer and Director	89,899
Randi V. Morrison	Senior Vice President, General Counsel and Secretary	7,942
John Saar	Senior Vice President Real Estate and Human Resources	9,163
Dale Ward	Executive Vice President Operations	16,067
Brian Woods	Executive Vice President Merchandising	25,000

Except as noted in the following sentence, all then unvested restricted stock and restricted stock units will vest upon a change of control of CSK, and under the agreements governing the grant of the restricted stock and restricted stock units, consummation of the offer or the merger will constitute a change of control of CSK. The grant of 89,899 shares of restricted stock to Mr. Mondry will vest upon the earliest of (i) the date that is six months following the consummation of the Offer, or (ii) the date his employment is terminated by reason of an Involuntary Termination (as such term is defined in the Restricted Stock Agreement) after the consummation of the Offer.

The merger agreement provides that, at the effective time of the merger, each vested and outstanding right of any kind, contingent or accrued, to receive shares of CSK common stock or benefits measured by the value of a number of shares of CSK common stock, which we refer to as a CSK stock-based award, will be converted into the right to receive the offer consideration multiplied by the number of shares of CSK common stock subject to such CSK stock-based award, and each unvested and outstanding CSK stock-based award will be converted into the right to receive the number of shares of O'Reilly common stock equal to the product of the number of shares of CSK common stock subject to such CSK stock-based award multiplied by the option exchange ratio.

CSK's 2008 Cash in Lieu Bonus Plan provides executives and employees of CSK Auto, Inc., which we refer to as CSK Auto, who otherwise would have received annual grants of stock options and/or restricted stock in 2008 under CSK's Amended and Restated 2004 Stock and Incentive Plan a right to receive a cash bonus payment. Awards under this plan were made based on the participant's base salary as of the award date as follows: for executive vice presidents, the cash-in-lieu award is equal to 100% of salary; for senior vice presidents, the cash-in-lieu award is equal to 85% of salary; and for vice presidents, the cash-in-lieu award is equal to 35% of salary. Under the 2008 Cash in Lieu Bonus Plan, assuming a change of control of CSK, any unvested portion of any bonus awarded to the participant under such plan will accelerate and become vested and payable in full upon the earliest of (i) the date that is six (6) months following a change of control or (ii) the date the participant's employment is terminated by reason of an involuntary termination after a change of control. Under this plan, consummation of the offer will constitute a change of control of CSK. Involuntary termination means (a) any termination of the participant's employment with CSK Auto for any reason other than for cause (as defined in the 2004 Stock and Incentive Plan) or the participant's death or disability or (b) by the participant for good reason (as defined in such participant's severance agreement).

Severance Agreements

Under the terms of an employment agreement between CSK Auto and Lawrence N. Mondry, dated as of June 8, 2007, and a first amendment to the employment agreement, dated as of March 31, 2008, if Mr. Mondry's employment is terminated by CSK Auto without cause (other than by reason of death or disability), or if Mr. Mondry resigns for any reason, in each case, during the twelve (12) months following a change of control, then Mr. Mondry will be entitled to receive (i) his salary through the date of termination, (ii) any earned but unpaid portion of his annual bonus, (iii) reimbursement for any unreimbursed business expenses properly incurred prior to the date of termination, (iv) such employee benefits, if any, as to which Mr. Mondry may be entitled

Table of Contents

under the employee benefits plans of CSK according to their terms and (v) a lump sum cash payment equal to two (2) times the sum of his base salary and annual target bonus (provided that Mr. Mondry complies with certain confidentiality and non-competition provisions and executes a release). In addition, if a change of control of CSK occurs prior to the end of CSK Auto's 2008 fiscal year and, for a period of six (6) months following such change of control: (i) Mr. Mondry remains continuously employed by CSK Auto or the surviving company or (ii) Mr. Mondry's employment with CSK Auto is terminated by CSK Auto without cause or by Mr. Mondry for good reason, then (a) if Mr. Mondry's employment terminates prior to the end of the 2008 fiscal year, CSK Auto shall pay Mr. Mondry a prorated portion of his target bonus (either in proportion to the number of months Mr. Mondry worked during the 2008 fiscal year or the number of months between February 4, 2008 and the date that is six (6) months following the change of control, whichever is greater) or (b) if Mr. Mondry remains employed by CSK Auto or the surviving company through the end of the 2008 fiscal year, CSK Auto shall pay a gross lump sum cash amount equal to Mr. Mondry's target bonus for the 2008 fiscal year. Finally, the first amendment to the employment agreement extended the period during which Mr. Mondry is entitled to reasonable travel and temporary living expenses and a \$2,000 monthly car allowance from June 30, 2008 until the earlier of (i) the date that is eight (8) months after the consummation of a change of control of CSK and (ii) the date that is thirty (30) days following the date of Mr. Mondry's termination of employment for any reason. Under Mr. Mondry's employment agreement, as amended, consummation of the offer will constitute a change of control of CSK.

CSK Auto has entered into severance and retention agreements with James Constantine, Dale Ward, Brian Woods, Michael Bryk, Larry Buresh, Larry Ellis, Greg Langdon, Randi Morrison and John Saar. Under the terms of these agreements, if a change of control occurs and, for a period of six (6) months following such change of control: (i) such executive remains continuously employed by CSK Auto or the surviving company or (ii) such executive's employment with CSK Auto is terminated by CSK Auto without cause or by such executive for good reason, then CSK Auto shall pay to such executive a gross lump sum cash amount equal to three (3) months of such executive's then current base salary. In addition, if a change of control occurs on or prior to the end of the 2008 fiscal year and, for a period of six (6) months following such change of control, (i) such executive remains continuously employed by CSK Auto or the surviving company or (ii) such executive's employment with CSK Auto is terminated by CSK Auto without cause or by such executive for good reason, then (a) if such executive's employment terminates prior to the end of the 2008 fiscal year, CSK Auto shall pay to such executive a prorated portion of such executive's target bonus (either in proportion to the number of months such executive worked during the 2008 fiscal year or the number of months between February 4, 2008 and the date that is six (6) months following the change of control, whichever is greater) or (b) if such executive remains employed by CSK Auto or the surviving company through the end of the 2008 fiscal year, CSK Auto shall pay a gross lump sum cash amount equal to such executive's target bonus for the 2008 fiscal year. In addition to the retention bonus and the 2008 annual bonus, each executive is entitled to receive severance benefits if (1) a change of control of CSK occurs and, during the twelve (12) months following such change of control, such executive's employment with CSK Auto is terminated by CSK Auto without cause or by such executive for good reason or (2) if a change of control occurs, the acquiring company is O'Reilly (or another competitor), and such executive terminates his or her employment for any reason in the thirty (30) day period following the six-month period following the change of control. Severance benefits include the payment of such executive's salary and target bonus over a twelve (12) month period, continuation of benefits for a period of twelve (12) months following termination, and any amounts due to such executive under CSK Auto's 2008 Cash in Lieu Bonus Plan. Under these agreements, consummation of the offer will constitute a change of control of CSK.

For purposes of the agreements described in this section, "cause" means that the executive (i) has been convicted of a felony, or has entered a plea of guilty or nolo contendere to a felony, (ii) has committed an act of fraud or dishonesty which is injurious to CSK or any of its subsidiaries, (iii) has willfully and continually refused to substantially perform his or her duties with CSK or any of its subsidiaries (after certain procedures for notice have been followed) or (iv) has willfully engaged in gross misconduct injurious to CSK or any of its subsidiaries. For purposes of the agreements described in this section, "good reason" includes a reduction in the executive's responsibilities, compensation, or benefits; a breach of the employment or severance agreement; or a refusal of O'Reilly to assume the obligations of the employment or severance agreement.

Table of Contents

Reimbursement of Travel and Living Expenses

Michael Bryk and James Constantine entered into agreements with CSK Auto pursuant to which, after a change of control, CSK Auto must continue to reimburse each such executive for commuting expenses and temporary living arrangements on terms no less favorable than those provided prior to the change of control until the earlier of (i) the date that is eight months after such change of control or (ii) the date that is thirty (30) days after the date of such executive's termination of employment for any reason. Randi Morrison entered into an agreement with CSK Auto pursuant to which, after a change of control, CSK is required to continue to reimburse Ms. Morrison for her travel and home office expenses incurred for the purposes of telecommuting on terms no less favorable than those provided prior to the change of control until thirty (30) days from the date she is either terminated by CSK without cause or resigns for good reason. Brian Woods entered into an agreement with CSK Auto pursuant to which, after a change of control, CSK Auto must continue to reimburse Mr. Woods for his relocation, home sale and purchase, and temporary living expenses on terms no less favorable than those provided prior to the change of control until the earlier of (i) the date that is eight months after such change of control or (ii) the date that is six (6) months after the date of Mr. Woods' termination of employment for any reason. Under these agreements, consummation of the offer will constitute a change of control of CSK.

Indemnification

The merger agreement provides that, after the effective time of the merger and for a period of six years thereafter, O'Reilly will, or will cause the surviving company to, indemnify and hold harmless, to the fullest extent permitted under applicable law, CSK's certificate of incorporation, and CSK's bylaws, each present (as of the effective time of the merger) and former officer, director, or employee of CSK and its subsidiaries, against all claims, losses, liabilities, damages, judgments, inquiries, fines and reasonable fees, costs and expenses incurred in connection with any suit, claim, action, proceeding, arbitration, mediation or investigation arising out of or pertaining to the fact that such person was an officer, director, or employee of CSK or any of its subsidiaries or for matters existing or occurring prior to the effective time of the merger. In addition, O'Reilly has agreed to cause the surviving company in the merger to advance expenses with respect to any matters subject to indemnification, to the fullest extent permitted under applicable law and in CSK's certificate of incorporation and bylaws, subject to an undertaking by the indemnified person, if so required under applicable law or CSK's certificate of incorporation or bylaws, to repay such advances if it is ultimately determined that such person is not entitled to indemnification. In the merger agreement, O'Reilly has agreed that for a period of six years after the effective time of the merger, all rights to indemnification provided in CSK's certificate of incorporation or bylaws or in any indemnification agreement with CSK shall survive the merger and continue in full force and effect. For a period of six years after the effective time of the merger, O'Reilly has also agreed to either (i) cause to be maintained in effect the current policies of directors' and officers' liability insurance and fiduciary liability insurance maintained by CSK and its subsidiaries, (ii) provide substitute policies of at least the same coverage and amounts (provided that O'Reilly will not be required to pay an annual premium in excess of 250% of the last annual premium paid by CSK prior to the date of the merger agreement), or (iii) permit CSK to purchase a six-year prepaid tail policy prior to the effective time of the merger having a premium of not more than 250% of the last annual premium paid by CSK prior to the date of the merger agreement and on terms and conditions providing substantially equivalent benefits as the current policies of directors' and officers' liability insurance and fiduciary liability insurance maintained by CSK and its subsidiaries with respect to matters arising on or before the effective time of the merger.

Interests of O'Reilly in the Offer

As of the date of this prospectus, O'Reilly beneficially owns 2,153,928 shares of CSK common stock, constituting approximately 4.9% of the fully diluted shares of CSK common stock, which O'Reilly acquired from other CSK stockholders in ordinary brokerage transactions on the open market from October 2, 2007 through November 30, 2007. Such shares will be counted for purposes of determining whether the minimum tender condition in the offer has been satisfied and, after completion of the offer, O'Reilly will vote such shares in favor of the merger.

Table of Contents

Except as outlined in this prospectus, neither we nor, to the best of our knowledge, any of our directors, executive officers or other affiliates has any contract, arrangement, understanding or relationship with any other person with respect to any securities of CSK, including, but not limited to, any contract, arrangement, understanding or relationship concerning the transfer or the voting of any such securities, joint ventures, loan or option arrangements, puts or calls, guaranties of loans, guaranties against loss or the giving or withholding of proxies. Except as described in this prospectus, there have been no negotiations, transactions or material contacts during the two years prior to the filing of this prospectus between us or, to the best of our knowledge, any of our directors, executive officers or other affiliates on the one hand, and CSK or its affiliates, on the other hand, concerning a merger, consolidation or acquisition, a tender offer or other acquisition of securities, an election of directors, or a sale or other transfer of a material amount of assets. Neither we nor, to the best of our knowledge, any of our directors, executive officers or other affiliates has, during the two years prior to the filing of this prospectus, had any transaction with CSK or any of its executive officers, directors or affiliates that would require disclosure under the rules and regulations of the SEC applicable to the offer.

Except as described in this prospectus, neither we nor, to the best of our knowledge, any of our directors, executive officers or other affiliates beneficially owns or has any right to acquire, directly or indirectly, any shares of CSK common stock and neither we nor, to the best of our knowledge, any of our directors, executive officers or other affiliates, has effected any transaction in the shares of CSK common stock during the past sixty (60) days.

Table of Contents

THE MERGER AGREEMENT

The following summary describes the material provisions of the merger agreement. The provisions of the merger agreement are complicated and not easily summarized. This summary may not contain all of the information about the merger agreement that is important to you. The merger agreement is attached to this prospectus as Annex A and is incorporated by reference into this prospectus, and O Reilly and CSK encourage you to read it carefully in its entirety for a more complete understanding of the merger agreement. The merger agreement is not intended to provide any other factual information about either O Reilly or CSK. Such information can be found elsewhere in this prospectus and in the other public filings each of O Reilly and CSK makes with the SEC, which are available without charge at www.sec.gov.

The Offer

Terms of the Offer

The merger agreement provides for the commencement by OC Acquisition, an indirect wholly-owned subsidiary of O Reilly, of the offer to exchange all outstanding shares of CSK common stock, together with the associated common stock purchase rights, for consideration consisting of shares of O Reilly common stock and cash. For each share of CSK common stock (together with the associated common stock purchase rights) that is validly tendered and not properly withdrawn, OC Acquisition is offering (i) between 0.3673 and 0.4285 of a share of common stock of O Reilly and (ii) \$1.00 in cash, subject to possible reduction for the adjustment amount, if any. The number of shares of O Reilly common stock received for each tendered share of CSK common stock will be determined based on an exchange ratio equal to \$11.00 divided by the average of the reported closing sale prices of O Reilly common stock for the five (5) consecutive trading days ending on and including the second trading day prior to the consummation of the offer and rounded to four decimal places; provided, however, that if such average closing sale price of O Reilly stock is greater than \$29.95, then the exchange ratio shall equal 0.3673, and if such average closing sale price is less than \$25.67, then the exchange ratio shall equal 0.4285. The \$1.00 in cash received per share of CSK common stock will be subject to reduction for costs in excess of \$3,000,000, if any, incurred by CSK associated with obtaining any necessary waivers or consents under CSK's credit agreements prior to the completion of the offer. CSK has indicated to O Reilly that, as of the date of this prospectus, it does not anticipate obtaining any waivers or consents under its credit agreements prior to the anticipated completion of the offer.

The merger agreement provides that the initial expiration date of the offer is the twentieth (20th) business day following commencement of the offer and that the offer is subject to a number of conditions, including the minimum tender condition. For a description of those matters, refer to the discussion under *The Offer* on page 33 of this prospectus.

The merger agreement prohibits OC Acquisition from, without the prior written consent of CSK, reducing the offer consideration, changing the form of the consideration payable in the offer (other than adding consideration), reducing the number of shares subject to the offer, waiving or changing the minimum tender condition or the condition that the merger agreement has not been terminated, adding to the offer conditions, extending the expiration of the offer except as provided in the merger agreement or modifying any other condition or any term of the offer set forth in the merger agreement in a manner adverse to the CSK stockholders.

Mandatory Extensions of the Offer

OC Acquisition is required to extend the offer if at the scheduled or extended expiration date of the offer, any of the offer conditions set forth under *The Offer Conditions of the Offer* on page 35 have not been satisfied, until the earlier of (i) the satisfaction or waiver of such conditions and the consummation of the offer or (ii) the termination of the merger agreement in accordance with its terms. OC Acquisition is also required to extend the offer if any period is so required by any rule, regulation, interpretation or position of the SEC or the staff applicable to the offer or any period required by law. No such extension will occur after the earlier to occur of (i) the date on which all the conditions have been satisfied or waived or (ii) September 28, 2008.

Table of Contents

Optional Extensions of the Offer

OC Acquisition has the right to extend the offer if such extension is necessary for O Reilly to satisfy the necessary conditions to complete its financing transactions in connection with the offer for an aggregate period of not more than ten (10) business days beyond the last expiration date of the offer that would otherwise be permitted; provided that such extension would not be permitted if it would extend the expiration date of the offer to a date later than the thirtieth (30th) business day after the date that the offer is commenced.

Top-Up Option

Under the merger agreement, if the minimum tender condition is satisfied and we consummate the offer, we have the option, which we refer to as the top-up option, to purchase from CSK additional shares of CSK common stock equal to the lowest number of shares that, when added to the number of shares already owned by O Reilly, will constitute one share more than 90% of the shares of CSK common stock then outstanding for the same consideration paid in exchange for each share of CSK common stock in the offer.

O Reilly or OC Acquisition may exercise this option at any time after the consummation of the offer and prior to the earlier to occur of (i) the time the merger becomes effective and (ii) the termination of the merger agreement in accordance with its terms. If we exercise this option, we may issue a promissory note, bearing interest at five percent per annum, in the amount required to pay the aggregate purchase price for the additional shares of CSK common stock at the offer price. In no event will the top-up option be exercisable for a number of shares of CSK common stock (i) that would require CSK to obtain stockholder approval under applicable law or the rules and regulations of the NYSE or (ii) in excess of CSK's then authorized and unissued shares of common stock.

Prompt Payment for CSK common stock after the Closing of the Offer

Subject to the conditions of the offer, OC Acquisition will accept for exchange and exchange, promptly after the expiration of the offer, all shares of CSK common stock validly tendered and not properly withdrawn pursuant to the offer. We will not issue fractional shares of O Reilly common stock in the offer. Instead, each tendering CSK stockholder who would otherwise be entitled to a fractional share (after aggregating all fractional shares of O Reilly common stock that otherwise would be received by such stockholder) will receive cash equal to such fraction multiplied by the average of the reported closing sale prices of O Reilly common stock for the five (5) consecutive trading days ending on and including the second trading day prior to the consummation of the exchange offer and rounded to four decimal places.

CSK Board of Directors

Upon the acceptance for exchange of shares of CSK common stock pursuant to the offer, O Reilly will be entitled to designate a number of directors of CSK, rounded up to the next whole number, that equals the product of:

the total number of directors on CSK's board of directors (determined after giving effect to the election of additional directors pursuant to the offer), and

the percentage that the aggregate number of shares of CSK common stock beneficially owned by O Reilly and OC Acquisition at such time (including shares accepted for payment) bears to the total number of CSK common stock then outstanding.

CSK will use commercially reasonable efforts to cause the individuals designated by O Reilly to be elected to CSK's board of directors and to constitute the same percentage as is on the CSK board of directors of:

each committee of the CSK board of directors, other than a committee of the CSK board, if any, established with respect to the merger agreement or the transactions contemplated thereunder, and

each board of directors of each subsidiary of CSK (and each committee thereof).

Table of Contents

Until the merger has become effective, CSK shall use commercially reasonable efforts to cause the board of directors to include at least two members who were independent directors of CSK (as determined under applicable NYSE rules) prior to the consummation of the offer. The merger agreement provides that, prior to the effective time of the merger, the affirmative vote of a majority of the continuing CSK independent directors will be required (or a majority of the board of directors if such CSK independent directors cease to serve as directors for any reason and are not replaced in accordance with the merger agreement) for CSK to:

amend or terminate the merger agreement;

extend the time for performance of O Reilly's or OC Acquisition's obligations under the merger agreement; or

waive any of CSK's rights under the merger agreement or take any other action adversely affecting the rights of stockholders of CSK, with respect to the transactions contemplated by the merger agreement.

The Merger

The merger agreement provides that following completion of the offer, OC Acquisition will be merged with and into CSK with CSK continuing as the surviving corporation. The merger agreement provides that, if necessary to preserve the intended treatment of the offer and the merger as a tax-free reorganization for United States federal income tax purposes, the LLC merger will occur immediately after the merger.

Effective Time of the Merger

The merger will become effective upon the filing of a certificate of merger with the Secretary of State of Delaware or such later time as is agreed by CSK and O Reilly and specified in the certificate of merger. The filing of the certificate of merger will take place as soon as practicable on or after the closing date of the merger.

Treatment of CSK Common Stock

Under the terms of the merger agreement, at the effective time of the merger, each share of CSK common stock will be converted into the right to receive from OC Acquisition the same consideration paid in exchange for each share of CSK common stock in the offer.

Treatment of CSK Options and Other Equity Based Awards

At the effective time of the merger (or such earlier date as O Reilly may elect following completion of the offer), each then outstanding option to purchase shares of CSK common stock granted under any employee or director stock option, stock purchase or equity compensation plan, arrangement or agreement of CSK, whether vested or unvested, will be automatically converted into a vested option to acquire that number of shares of O Reilly equal to the product of multiplying (i) the number of shares of common stock of CSK subject to such cancelled CSK stock option by (ii) the sum of the exchange ratio used to determine the number of O Reilly shares of common stock paid in the offer and the number equal to the quotient of the per share cash consideration divided by the average of the reported closing sale prices of O Reilly common stock for the five (5) consecutive trading days ending on and including the second trading day prior to the consummation of the offer and rounded to four decimal places, which we refer to as the option exchange ratio.

At the effective time of the merger, each right of any kind to receive CSK common stock or benefits measured by the value of a number of CSK common stock, and each award of any kind consisting of CSK common stock (including restricted stock, restricted stock units, performance units, performance shares and other stock-based awards, other than CSK stock options) that is outstanding immediately prior to the effective time, with the exception of the CSK stock award of 89,899 shares of restricted stock relating to Mr. Lawrence Mondry, will be converted into the right to receive the same consideration paid in exchange for each share of CSK common stock in the offer multiplied by the number of CSK common stock subject to such CSK stock-based award. With respect to the award of 89,899 shares of restricted stock, it will be converted into a right to receive a

Table of Contents

comparable right to receive that number of shares of O Reilly common stock equal to the option exchange ratio multiplied by the number of shares of CSK common stock subject to such CSK stock-based award and the award will continue to vest in accordance with its terms.

Representations and Warranties

O Reilly and CSK each made a number of representations and warranties in the merger agreement regarding aspects of their respective businesses, financial condition, structure and other facts pertinent to the merger. Each of the companies made representations and warranties as to:

corporate organization, standing and power;

capitalization;

authorization of the merger agreement by the respective companies;

the lack of conflicts and required consents and approvals;

filings and reports with the SEC;

absence of untrue statements of material fact or omissions of material fact in the registration statement, offer documents, and Schedule 14D-9 to be filed with the SEC;

absence of certain changes or events;

absence of undisclosed material litigation;

compliance with applicable laws and regulatory approvals required to complete the merger;

taxes;

the use of brokers; and

the applicability of state takeover laws to the offer and merger.

In addition, CSK made representations and warranties as to:

employee matters and benefit plans;

labor matters;

environmental matters;

contracts;

insurance;

title to property;

intellectual property;

rights plan;

related party transactions; and

the opinion of CSK's financial advisor.

In addition, O'Reilly and OC Acquisition made representations and warranties as to:

O'Reilly's ownership of OC Acquisition's common stock;

the availability of funds to complete the offer;

votes and approvals required; and

the operations of OC Acquisition.

The representations and warranties asserted in the merger agreement will not survive the merger.

Table of Contents

Covenants

Conduct of Business Pending the Merger

Conduct of CSK. The merger agreement provides that, subject to limited exceptions, until the effective time of the merger, CSK will, unless O Reilly consents in writing otherwise (which consent shall not be unreasonably withheld or delayed), use reasonable efforts to conduct its business in the ordinary course of business consistent with past practice, to preserve substantially intact its business organization and to preserve its present relationships with customers, suppliers, employees and other persons with which it has material business relations. The merger agreement also expressly restricts the ability of CSK to take the following actions without the prior written consent of O Reilly (which consent, in certain instances, shall not be unreasonably withheld or delayed):

amend or otherwise change its certificate of incorporation or bylaws or any similar governing instruments;

adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization;

issue, deliver, sell, pledge, dispose of or otherwise encumber any share of CSK common stock or any securities convertible into shares of CSK common stock or other equity interests;

declare, set aside, make or pay any dividends or other distributions on CSK common stock, split, combine or reclassify any common stock or authorize the issuance of any other securities;

adjust, split, combine, repurchase or otherwise acquire shares of CSK common stock;

acquire any corporation, partnership or other business organization or division thereof;

sell, lease or otherwise dispose of any assets outside of the ordinary course of business;

enter into, materially amend, fail to enforce or terminate any material contract, other than in the ordinary course of business consistent with past practice;

grant to or acquire from any person, or abandon, dispose of or permit to lapse any rights to intellectual property, other than in the ordinary course of business consistent with past practice;

authorize any new capital expenditures in excess of the sum of \$500,000 and CSK's capital expenditure budget;

make any loans or advances, incur any indebtedness for borrowed money or issue any debt securities (other than borrowings under existing credit agreements not in excess of \$475,000,000), or modify or amend any of its debt instruments;

Edgar Filing: O REILLY AUTOMOTIVE INC - Form S-4/A

increase the total compensation or benefits of any director or vice president or higher level position of CSK or terminate, amend to adopt any compensation or benefit plan with or for the benefit of its employees or directors;

enter into any closing agreement with respect to material taxes, settle or compromise any material liability for taxes (except with respect to any tax liability, for an amount that is not materially in excess of the amount reserved therefor on the financial statements of CSK and its subsidiaries), make, revoke, or change any material tax election, knowingly surrender any claim for a material refund of taxes, execute or consent to any waivers extending the statutory period of limitations with respect to the collection or assessment of material taxes (except for extensions routinely granted during the course of an examination or audit), file any material amended tax return involving a material amount of additional taxes (except as required by applicable law), or obtain any material tax ruling;

implement or adopt any material change in its methods of accounting except as may be appropriate to conform to changes in statutory or regulatory accounting rules or requirements or to U.S. generally accepted accounting principles;

Table of Contents

compromise, settle or agree to settle any action, or consent to the same, other than compromises, settlements or agreements in the ordinary course of business that involve only the payment of monetary damages not in excess of \$2,000,000 in the aggregate for the ninety (90) days after April 1, 2008 and not in excess of \$4,000,000 in the aggregate for the 180 days after April 1, 2008;

take any action that would cause any material insurance policy to be cancelled or terminated or fail to use commercially reasonable efforts to renew or replace any expiring policies; or

enter into, materially amend, fail to enforce or terminate any collective bargaining agreement.

Conduct of O Reilly. The merger agreement provides that until the effective time of the merger, O Reilly will not, without the prior written consent of CSK, directly or indirectly, take any action that is intended to or that would reasonably be expected to:

materially adversely affect or materially delay the ability of O Reilly or OC Acquisition to obtain any necessary governmental approvals for completion of the offer or the merger;

materially adversely affect or materially delay the ability of O Reilly or OC Acquisition to perform its covenants or agreements under the merger agreement;

cause any of its representations and warranties to be untrue in any material respect; or

otherwise, individually or in the aggregate, have a material adverse effect on O Reilly.

The merger agreement also expressly restricts the ability of O Reilly to engage in the following actions without the prior consent of CSK:

amend or otherwise change its articles of incorporation or bylaws or any similar governing instruments;

adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization;

declare, set aside, make or pay any dividend or other distribution, payable in cash, stock, property or otherwise, with respect to any of its capital stock (except for any dividend or distribution by a subsidiary of O Reilly to O Reilly or to other subsidiaries); or

adjust, split, combine, redeem, repurchase or otherwise acquire any shares of capital stock of O Reilly (except in connection with the cashless exercises or similar transactions pursuant to the exercise of O Reilly stock options or settlement of other awards or obligations outstanding as of the date hereof), or reclassify, combine, split, subdivide or otherwise amend the terms of its capital stock.

No Solicitation of Acquisition Proposals

The merger agreement provides that, except in the circumstances described below, CSK will not, directly or indirectly:

Edgar Filing: O REILLY AUTOMOTIVE INC - Form S-4/A

initiate, solicit, knowingly encourage or intentionally take any action to facilitate any inquiries, proposals or offers with respect to an acquisition proposal;

engage or participate in any negotiations, discussions or communications concerning, or provide any non-public information relating to CSK or any subsidiary in connection with, an acquisition proposal;

approve, endorse or recommend any acquisition proposal;

approve, endorse or recommend, or enter into any letter of intent or any other agreement relating to an acquisition proposal; or

(i) amend, grant any waiver or release under, or fail to enforce any standstill or similar agreement with respect to CSK or its subsidiaries, (ii) approve any transaction under, or any other person becoming an interested stockholder under Section 203 of the DGCL or (iii) amend or grant any waiver or release under the CSK rights agreement.

Table of Contents

An acquisition proposal is any inquiry, proposal or offer from any person other than O Reilly or one of its subsidiaries for (i) a merger, reorganization, consolidation, share exchange, business combination, joint venture recapitalization, liquidation, dissolution or similar transaction involving an acquisition of CSK (or any subsidiary whose business constitutes 10% or more of the net revenues, income or assets of CSK and its subsidiaries, taken as a whole) or (ii) the acquisition in any manner, directly or indirectly, of over 10% of the equity securities or consolidated total assets of CSK and its subsidiaries, in each case other than the offer or the merger.

Notwithstanding the restrictions described above, prior to the consummation of the offer, CSK may, in response to an unsolicited bona fide written acquisition proposal that CSK's board of directors determines in good faith (after consultation with CSK's outside legal counsel and financial advisors) constitutes or may reasonably be expected to lead to a superior proposal:

furnish to such third party nonpublic information relating to CSK or any of its subsidiaries pursuant to a confidentiality and standstill agreement with terms no less favorable to CSK than those contained in the confidentiality and standstill agreements between CSK and O Reilly; and

participate in discussions or negotiations with such third party regarding such acquisition proposal.

A superior proposal is a bona fide written acquisition proposal (not resulting from a breach by CSK) for at least 80% of the equity securities or consolidated total assets of CSK and its subsidiaries that (i) is not conditioned upon obtaining financing or any regulatory approvals or consents beyond or in addition to those regulatory approvals and consents required in connection with the transactions contemplated by the merger agreement, (ii) is reasonably likely to be consummated (taking into account, among other things, all legal, financial, regulatory and other aspects of such acquisition proposal and the identity of the person submitting such an acquisition proposal) and (iii) CSK's board of directors determines in good faith (after consultation with CSK's outside legal counsel and financial advisors) is more favorable from a financial point of view to CSK's stockholders than the transactions contemplated by the merger agreement, taking into account all the terms and conditions of such acquisition proposal and the merger agreement (including any changes proposed by O Reilly to the terms of the merger agreement in response to the superior proposal).

The merger agreement also provides that CSK's board of directors (or any committee thereof) will not and will not resolve or publicly propose to:

withdraw, modify or qualify in a manner adverse to O Reilly its approval or recommendation of the merger agreement or the merger; or

approve or recommend, or cause or permit CSK to enter into, any letter of intent or other agreement constituting or relating to any acquisition proposal.

Notwithstanding the above, if, prior to the consummation of the offer:

CSK's board of directors determines in good faith (after consultation with CSK's outside legal counsel) that the failure to do so would be inconsistent with the exercise of its fiduciary duties, it may withdraw, modify or qualify in a manner adverse to O Reilly its approval or recommendation of the merger agreement or the merger; or

CSK receives an acquisition proposal that CSK's board of directors determines in good faith (after consultation with CSK's outside legal counsel and financial advisors) constitutes a superior proposal, CSK may terminate the merger agreement and enter into an agreement with respect to the superior proposal, as provided in the following paragraph.

CSK has agreed not to terminate the merger agreement to enter into an agreement with respect to a superior proposal unless:

Edgar Filing: O REILLY AUTOMOTIVE INC - Form S-4/A

CSK has given O Reilly written notice of its intent to terminate the merger agreement, identifying the superior proposal and including the form of the definitive agreement to be entered into;

Table of Contents

within a period of five (5) business days following delivery of notice, O Reilly does not propose adjustments in the terms and conditions of the merger agreement, that CSK's board of directors determines in good faith (after consultation with CSK's financial advisors) to be as favorable to CSK's stockholders from a financial point of view as the superior proposal; and

at least five (5) business days after CSK has provided notice, CSK simultaneously delivers to O Reilly (i) an irrevocable written notice of termination of the merger agreement and (ii) a wire transfer of same day funds in the amount of the termination fee. CSK has also agreed to advise O Reilly orally and in writing within forty-eight (48) hours of the receipt of any inquiries, proposals or offers regarding any acquisition proposal; any request for non-public information relating to the CSK or its subsidiaries (other than requests for information not reasonably expected to be related to an acquisition proposal); and any inquiry or request for discussion or negotiation regarding an acquisition proposal.

Preparation of the Registration Statement

O Reilly is obligated to prepare and file the Form S-4 registration statement with the SEC, of which this prospectus is a part. O Reilly will use its best efforts to have:

the Form S-4 declared effective by the SEC; and

the Form S-4 remain effective as long as necessary to complete the offer and the merger.

O Reilly has agreed to promptly provide CSK with copies of any written comments and to promptly inform CSK of any oral comments that O Reilly may receive from time to time from the SEC with respect to the Form S-4 or the offer documents. O Reilly has agreed not to make any amendment or supplement to the Form S-4 without providing CSK a reasonable opportunity to review the amendment or supplement, and has agreed to give reasonable and good faith consideration to all additions, deletions or changes suggested by CSK.

If, prior to the effective time of the merger, either O Reilly or CSK discovers any information relating to either party that should be set forth in an amendment or a supplement to the Form S-4, or to any of the filings related to the offer, so that the documents would not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading, the party that discovers that information is obligated to promptly notify the other party, and an appropriate amendment or supplement describing such information will be promptly filed with the SEC and disseminated to holders of CSK common stock.

Reasonable Best Efforts

The merger agreement provides that each of O Reilly and CSK will use its reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done all things reasonably necessary, to consummate the offer and the merger and the other transactions contemplated by the merger agreement.

Antitrust Laws

The merger agreement provides that O Reilly and CSK will use reasonable best efforts to obtain all requisite approvals and authorizations for the transactions contemplated by the merger agreement under any applicable antitrust laws. O Reilly and CSK each will use its reasonable best efforts to cooperate in all respects with each other in connection with any filing or submission and in connection with any investigation or other inquiry, including keeping the other party reasonably informed of any communication received from the Federal Trade Commission, the Department of Justice or the competition or merger control authorities of any other governmental entity, permitting the other party to review any such communication, consulting with the other party in advance of any meeting or conference and providing the other party the opportunity to attend and

Table of Contents

participate in such meetings and conferences. O Reilly may be required to agree to any divestiture by O Reilly or CSK or any of O Reilly's subsidiaries or affiliates of any assets, properties and stock, or the imposition of any limitation on the ability of O Reilly or CSK or any of O Reilly's subsidiaries or affiliates to conduct their businesses or to own or exercise control of their assets, properties and stock.

Employee Benefits

After the effective time of the merger, O Reilly will give the employees of the surviving company that were employees of CSK immediately prior to the effective time full credit for purposes of eligibility and vesting and benefit accruals (but not for purposes of benefit accruals under any defined benefit pension plans other than any such plans maintained by CSK) under any employee compensation, incentive and benefit plans, programs, policies and arrangements maintained for the benefit of CSK employees to the same extent recognized by CSK immediately prior to the merger, except to the extent such recognition would result in duplication of benefits.

O Reilly will assume, honor and be responsible for any accrued or unused vacation, sick and personal leave to which any CSK employee is entitled pursuant to the paid time-off policy applicable to such CSK employee immediately prior to the effective time of the merger. O Reilly will continue to provide paid time-off benefits to CSK employees on terms at least equal to the paid time-off benefits provided under the CSK policy prior to the effective time of the merger.

No Rights Agreement Amendment

Prior to the termination of the merger agreement, CSK will not:

redeem the rights distributed to the CSK common stockholders pursuant to the rights agreement between CSK and Mellon Investor Services LLC;

amend the rights agreement; or

take any action that would allow any person other than O Reilly, OC Acquisition or any of their respective subsidiaries to beneficially own more than 10% or more of the CSK common stock without causing a distribution date or triggering event (as each is defined in the rights agreement) to occur.

Treatment of Exchangeable Notes

CSK will use reasonable efforts to cooperate and assist O Reilly with respect to O Reilly's assumption of CSK's senior exchangeable notes due 2025 as a successor under the indenture relating to the exchangeable notes. CSK agrees to provide on a timely basis, all reasonable cooperation in connection with this assumption, as may be reasonably requested by O Reilly, including:

requiring CSK directors to appoint the directors O Reilly is entitled to designate pursuant to the merger agreement;

assisting O Reilly in the preparation by O Reilly of a supplemental indenture with respect to the assumption by O Reilly of the exchangeable notes; and

promptly notifying O Reilly of an event of default, any correspondence with the trustee and any action taken by the holders of the exchangeable notes under the terms of the indenture.

Financing

At the sole cost and expense of O Reilly, CSK will use its reasonable efforts to cooperate and assist O Reilly with respect to the arrangement of O Reilly's financing. CSK agrees to provide on a timely basis, all reasonable cooperation in connection with the arrangement of the financing as

may be reasonably requested by O Reilly, including:

participation in meetings, drafting sessions and due diligence sessions led by O Reilly;

Table of Contents

furnishing O Reilly and its financing sources with financial and other pertinent information regarding CSK as may be reasonably requested by O Reilly;

assisting O Reilly with the preparation by O Reilly of an offering document for the financing and materials for rating agency presentations;

reasonably cooperating with marketing efforts and related roadshow activities of O Reilly;

providing and executing documents as may be reasonably requested by O Reilly and assisting O Reilly in obtaining comfort letters of CSK's accountants, consents of CSK's accountants for use of their reports in any materials relating to the financing, legal opinions of CSK's counsel and surveys and title insurance with respect to real property;

coordinating and making its real property available for appraisal and inspection;

making senior officers and representatives of CSK reasonably available for presentations to rating agencies and roadshow presentations; and

reasonably facilitating the pledge of the surviving corporation's collateral.

Indemnification and Insurance

The merger agreement provides that, after the effective time of the merger and for a period of six years thereafter, O Reilly will, or will cause the surviving company to, indemnify, advance expenses, and hold harmless, to the fullest extent permitted under applicable law, CSK's certificate of incorporation, and CSK's bylaws, each present (as of the effective time of the merger) and former officer, director, or employee of CSK and its subsidiaries, for acts or omissions pertaining to the fact that such person was an officer, director, or employee of CSK or any of its subsidiaries or for matters existing or occurring prior to the effective time of the merger. In the merger agreement, O Reilly has agreed to maintain in effect, for a period of six years after the effective time of the merger, all rights to indemnification provided in CSK's certificate of incorporation or bylaws or in any indemnification agreement with CSK. For a period of six years after the effective time of the merger, O Reilly has also agreed to either (i) cause to be maintained in effect the current policies of directors' and officers' liability insurance and fiduciary liability insurance maintained by CSK and its subsidiaries, (ii) provide substitute policies of at least the same coverage and amounts (provided that O Reilly will not be required to pay an annual premium in excess of 250% of the last annual premium paid by CSK prior to the date of the merger agreement), or (iii) permit CSK to purchase a six-year prepaid tail policy prior to the effective time of the merger having a premium of not more than 250% of the last annual premium paid by CSK prior to the date of the merger agreement and on terms and conditions providing substantially equivalent benefits as the current policies of directors' and officers' liability insurance and fiduciary liability insurance maintained by CSK and its subsidiaries.

Conditions of the Offer

For a description of the conditions of the offer, see *The Offer* *Conditions of the Offer* on page 35.

Conditions of the Merger

The obligations of O Reilly, OC Acquisition and CSK to consummate the merger are subject to the satisfaction of the following conditions:

if required by Delaware law, the merger agreement shall have been approved and adopted by the holders of a majority of each class of CSK entitled to vote on the merger agreement and the merger in accordance with Delaware law and CSK's certificate of incorporation and bylaws;

no court or other governmental entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, judgment, decree, injunction or other order (whether temporary, preliminary or permanent) which is in effect and prohibits consummation of the merger;

Table of Contents

any waiting period applicable under the HSR Act will have expired, been terminated, or no longer restrict the consummation of the merger, which occurred on April 17, 2008;

OC Acquisition or O Reilly shall have purchased all shares of CSK common stock validly tendered and not withdrawn pursuant to the offer;

the registration statement on Form S-4 relating to the merger, including any post-effective amendment thereto, shall have been declared effective by the SEC and no stop order suspending effectiveness shall be in effect and no proceedings for such purpose shall be pending before or threatened by the SEC;

the shares of O Reilly common stock to be issued in the merger shall have been approved for listing on the NASDAQ, subject to official notice of issuance, or shall be exempt from such requirement under the then applicable laws, regulations and rules of the NASDAQ; and

neither the O Reilly tax opinion nor the CSK tax opinion shall have been withdrawn and no event shall have occurred that would prevent O Reilly from relying on the O Reilly tax opinion or CSK from relying on the CSK tax opinion.

Termination of the Merger Agreement

Termination by Mutual Agreement

The merger agreement may be terminated at any time prior to the effective time of the merger by mutual written agreement of O Reilly and CSK.

Termination by Either O Reilly or CSK

The merger agreement may be terminated prior to the effective time of the merger by either O Reilly or CSK by giving notice of termination to the non-terminating party:

if the offer has not been consummated on or before September 28, 2008, unless the failure to consummate the offer is caused by or results from the failure of the party seeking to terminate to perform or comply with the covenants and agreements of such party set forth in the merger agreement and such action or failure to perform constitutes a breach of the merger agreement; or

on or after September 28, 2008, if any court or governmental entity issues a nonappealable final judgment, order, injunction, rule or decree, or takes any other action restraining, enjoining or otherwise prohibiting any of the transactions contemplated by the merger agreement, including the acceptance for payment of, and payment for, the shares of CSK common stock pursuant to the offer, *provided*, that a party seeking to terminate shall have in all respects complied with its obligations to contest, appeal and remove such judgment, order, injunction, rule, decree, ruling or take other action in accordance with the merger agreement.

Termination by O Reilly

O Reilly may terminate the merger agreement at any time prior to the effective time of the merger if:

CSK breaches any of its representations, warranties, covenants or agreements set forth in the merger agreement, which breach would result in a failure of a condition to the offer or the merger and cannot be cured by September 28, 2008;

Edgar Filing: O REILLY AUTOMOTIVE INC - Form S-4/A

CSK's board of directors, or any of its committees, (i) withdraws, modifies or qualifies in a manner adverse to O'Reilly its approval or recommendation in favor of the merger agreement or the merger, (ii) approves, endorses or recommends to CSK's stockholders an acquisition proposal other than the offer or the merger, or (iii) fails to publicly reaffirm its recommendation of the merger agreement within seven (7) business days following receipt of a written request by O'Reilly to provide such reaffirmation following the public announcement of an acquisition proposal;

Table of Contents

a material adverse effect has occurred with respect to CSK that is not capable of being cured by September 28, 2008;

any of the following occur (i) filing of a case by CSK under the United States Bankruptcy Code, (ii) the acceleration of the payment of the principal or other material amounts under any debt instruments of CSK, (iii) the failure of CSK or any of its subsidiaries to make any payment when due under any debt instrument, (iv) the lenders under any of the debt instruments of CSK ceasing to make loans, advances or otherwise extend credit to CSK which cessation continues for five (5) business days or (v) the occurrence of any other action undertaken by the lenders of the debt instruments of CSK that in any way impairs, in any material respect, the availability of loans and other credit extensions to CSK and its subsidiaries, which impairment continues for ten (10) business days; or

CSK receives an audit report with respect to the audited financial statements for its fiscal year ended February 3, 2008 that contains an adverse opinion or is qualified in certain respects.

Termination by CSK

CSK may terminate the merger agreement at any time prior the consummation of the offer if:

O Reilly or OC Acquisition breaches any of its representations, warranties, covenants or agreements set forth in the merger agreement, which breach would result in a failure of a condition to the offer or the merger and cannot be cured by September 28, 2008;

CSK's board of directors accepts a superior proposal in compliance with the merger agreement and CSK enters into an agreement regarding such superior proposal and pays the termination fee;

a material adverse effect has occurred with respect to O Reilly that is not capable of being cured by September 28, 2008; or

the average of the reported closing sale prices of O Reilly common stock for the five (5) consecutive trading days ending on and including the second trading day prior to the consummation of the exchange offer and rounded to four decimal places is less than or equal to \$21.00, provided that no right of termination will exist if O Reilly elects to increase the number of shares of O Reilly common stock or cash included in the offer price such that the value of the offer price per share of CSK common stock is at least equal to \$10.00.

Termination Fee

CSK has agreed to pay O Reilly a termination fee of \$22,000,000 if the merger agreement is terminated:

(i) by O Reilly pursuant to a breach or failure by CSK to perform any of its representations, warranties, covenants or agreements or (ii) by CSK if the offer has not been consummated on or before September 28, 2008 and, in either case, prior to termination of the merger agreement, an acquisition proposal for at least 35% of the equity securities or consolidated total assets of CSK and its subsidiaries was communicated to CSK's senior management or CSK's board of directors or was made publicly known to CSK's stockholders and within twelve (12) months after such termination, CSK entered into a definitive material agreement with respect to, or has consummated an acquisition proposal for at least 35% of the equity securities or consolidated total assets of CSK and its subsidiaries;

by CSK in order to enter into a transaction that is a superior proposal; or

Edgar Filing: O REILLY AUTOMOTIVE INC - Form S-4/A

by O Reilly if CSK's board of directors, or any of its committees, (i) withdraws, modifies or qualifies in a manner adverse to O Reilly its approval or recommendation in favor of the merger agreement or the merger, (ii) approves, endorses or recommends to CSK's stockholders an acquisition proposal other than the offer or the merger, or (iii) fails to publicly reaffirm its recommendation of the merger agreement within seven (7) business days following receipt of a written request by O Reilly to provide such reaffirmation following the public announcement of an acquisition proposal.

Table of Contents

CSK has also agreed to pay O Reilly promptly (in no event later than two (2) business days) an amount equal to O Reilly's actual expenses in connection with the negotiation, execution, and delivery of the merger agreement and actions taken in furtherance of the transactions contemplated by the merger agreement, if the merger agreement is terminated:

due to (i) filing of a case by CSK under the United States Bankruptcy Code, (ii) the acceleration of the payment of the principal or other material amounts under any debt instruments of CSK, (iii) the failure of CSK or any of its subsidiaries to make any payment when due under any debt instrument, (iv) the lenders under any of the debt instruments of CSK ceasing to make loans, advances or otherwise extend credit to CSK which cessation continues for five (5) business days or (v) the occurrence of any other action undertaken by the lenders of the debt instruments of CSK that in any way impairs, in any material respect, the availability of loans and other credit extensions to CSK and its subsidiaries, which impairment continues for ten (10) business days; or

due to the receipt by CSK of an audit report with respect to the audited financial statements for its fiscal year ended February 3, 2008 that contains an adverse opinion or is qualified in certain respects.

Extension, Waivers and Amendment

At any time prior to the effective time of the merger, O Reilly, CSK and OC Acquisition may, by action taken or authorized by their respective boards of directors, to the extent permitted by applicable law, (i) extend the time for the performance of any of the obligations or acts of the other party under the merger agreement, (ii) waive any inaccuracies in the representations and warranties of the other parties set forth in the merger agreement or (iii) subject to applicable law, waive compliance with any of the agreements or conditions of the other parties contained in the merger agreement. However, after the CSK stockholder approval has been obtained, no amendment may be made that pursuant to applicable law requires further approval or adoption by the stockholders of CSK without such further approval or adoption.

Table of Contents

INFORMATION WITH RESPECT TO CSK

CSK Auto Corporation, incorporated under the laws of Delaware, is the largest specialty retailer of automotive parts and accessories in the western United States and one of the largest such retailers of products in the country. As of May 4, 2008, through its wholly owned subsidiary, CSK Auto, Inc., CSK operated 1,345 stores in the United States, principally concentrated in the western United States. CSK's stores are known by the following four brand names: (i) Checker Auto Parts, founded in 1969, with 487 stores in the Southwestern, Rocky Mountain and Northern Plains states and Hawaii; (ii) Schuck's Auto Supply, founded in 1917, with 222 stores in the Pacific Northwest states and Alaska; (iii) Kragen Auto Parts, founded in 1947, with 504 stores primarily in California; and (iv) Murray's Discount Auto Stores, founded in 1972, with 136 stores in the Midwest.

CSK Auto Corporation

645 E. Missouri Ave., Suite 400

Phoenix, Arizona 85012

Telephone: (602) 265-9200

www.cskauto.com

CSK's common stock is currently quoted on the NYSE (symbol: CAO).

INFORMATION WITH RESPECT TO O REILLY AND OC ACQUISITION

O Reilly

O Reilly Automotive, Inc., founded in 1957 and incorporated under the laws of Missouri, is one of the largest specialty retailers of automotive aftermarket parts, tools, supplies, equipment and accessories in the United States. O Reilly sells its products to do-it-yourself customers and professional installers. At March 31, 2008, we operated 1,867 stores in Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Virginia, Wisconsin and Wyoming. The principal executive offices of O Reilly are located at:

O Reilly Automotive, Inc.

233 South Patterson

Springfield, Missouri 65802

Telephone: (417) 862-6708

www.oreillyauto.com

O Reilly's common stock is currently quoted on the NASDAQ (symbol: ORLY).

OC Acquisition

OC Acquisition is a Delaware corporation incorporated on March 28, 2008, and, to date, has engaged in no activities other than those incident to its formation and to the offer and the merger. OC Acquisition is an indirect wholly-owned subsidiary of O Reilly. The principal executive offices of OC Acquisition are located at:

OC Acquisition Company

233 South Patterson

Springfield, Missouri 65802

Telephone: (417) 862-6708

Table of Contents

DESCRIPTION OF O REILLY CAPITAL STOCK

O Reilly's articles of incorporation permit it to issue up to 245,000,000 shares of common stock, par value \$0.01 per share, and 5,000,000 shares of preferred stock, par value \$0.01 per share. As of June 17, 2008, there were 115,730,387 shares of O Reilly's common stock outstanding held of record by approximately 12,707 shareholders and no shares of preferred stock outstanding. The following description of O Reilly's common stock and provisions of its articles of incorporation and bylaws is only a summary, and O Reilly encourages you to review complete copies of O Reilly's articles of incorporation and bylaws, which O Reilly has previously filed with the SEC.

Holders of O Reilly's common stock are entitled to receive, as, when and if declared by its board of directors, dividends and other distributions in cash, stock or property from its assets or funds legally available for those purposes subject to any dividend preferences that may be attributable to preferred stock. Holders of common stock are entitled to one vote for each share held of record on all matters on which shareholders may vote. Holders of common stock are not entitled to cumulative voting for the election of directors. There are no preemptive, conversion, redemption or sinking fund provisions applicable to O Reilly's common stock. All outstanding shares of O Reilly's common stock are fully paid and non-assessable. In the event of O Reilly's liquidation, dissolution or winding up, holders of common stock are entitled to share ratably in the assets available for distribution, subject to any prior rights of any holders of preferred stock then outstanding.

O Reilly's common stock is traded on the NASDAQ under the symbol ORLY.

COMPARISON OF RIGHTS OF HOLDERS OF

O REILLY COMMON STOCK AND CSK COMMON STOCK

General

O Reilly is a Missouri corporation, and its shareholders' rights are governed by the General and Business Corporation Law of Missouri (the MGBCL), as well as its articles of incorporation and bylaws. CSK is a Delaware corporation, and its stockholders' rights are governed by the DGCL, as well as its certificate of incorporation and bylaws. Although the rights and privileges of stockholders of a Delaware corporation are in many instances comparable to those of shareholders of a Missouri corporation, there are also differences.

As a result of the offer and the merger, CSK's stockholders will become shareholders of O Reilly. The following discussion of certain similarities and material differences between the rights of CSK stockholders and the rights of O Reilly shareholders under O Reilly's articles of incorporation and CSK's certificate of incorporation and their respective bylaws is only a summary of certain provisions and does not purport to be a complete description of the similarities and differences, and is qualified in its entirety by reference to the MGBCL and the DGCL, common law and the full text of the articles/certificate of incorporation and bylaws of each of O Reilly and CSK. While O Reilly believes that the description covers the material differences between the two, this summary may not contain all of the information that is important to you. You should carefully read this entire document and the other documents referred to for a more complete understanding of the differences between being a stockholder of CSK and being a shareholder of O Reilly. When reading this description, please note that the DGCL refers to holders of common stock as stockholders while the MGBCL uses the term shareholder. The two terms mean the same thing in practice and for all practical purposes may be used interchangeably; however, the discussion generally uses the term "stockholder" when referring to holders of CSK common stock or to the DGCL and "shareholder" when referring to holders of O Reilly common stock or to the MGBCL.

Table of Contents

Authorized Capital Stock

O Reilly's articles of incorporation permit it to issue up to 245,000,000 shares of common stock, par value \$0.01 per share, and 5,000,000 shares of preferred stock, par value \$0.01 per share. As of June 17, 2008, there were 115,730,387 shares of O Reilly's common stock outstanding and no shares of preferred stock outstanding.

CSK's certificate of incorporation permits it to issue up to 90,000,000 shares of common stock, par value \$0.01 per share. As of June 17, 2008, there were 44,054,011 shares of CSK's common stock outstanding.

Size of Board of Directors

Under the MGBCL, the board of directors shall consist of one or more individuals, the number being specified or fixed in accordance with the articles of incorporation or bylaws. O Reilly's articles of incorporation provide that the number of directors shall be the number fixed in the bylaws but not less than three (3). O Reilly's bylaws provide that the number of directors will be nine (9). O Reilly currently has nine (9) directors.

The DGCL permits the board of directors to change the authorized number of directors by amendment to the bylaws or in the manner provided in the bylaws unless the number of directors is fixed in the certificate of incorporation. The DGCL minimum requirement for the board of directors is one (1) or more members. CSK's certificate of incorporation provides that the number of directors which constitute the board of directors will be fixed by the bylaws. CSK's bylaws provide that the authorized number of directors of the corporation may be fixed from time to time by the board of directors or the stockholders by resolution. The number of directors is currently fixed at twelve (12).

Cumulative Voting

Cumulative voting allows a stockholder to cast a number of votes equal to the number of directors to be elected multiplied by the number of shares held in the stockholder's name on the record date. This total number of votes may be cast for one nominee or may be distributed among as many of the candidates as the stockholder desires. The candidates who receive the highest number of votes are elected, up to the total number of directors to be elected. In general, cumulative voting may help groups of minority stockholders elect some candidates to the board.

The MGBCL provides for cumulative voting for directors unless the corporation's articles or bylaws provide otherwise. O Reilly's articles of incorporation explicitly state that there is no right to cumulative voting.

Under the DGCL, cumulative voting in the election of directors is not mandatory, and for cumulative voting to be effective it must be expressly provided for in the certificate of incorporation. CSK's certificate of incorporation is silent with respect to cumulative voting rights, so holders of CSK common stock have no cumulative voting rights.

Classified Board of Directors

O Reilly currently has a classified board of directors. The articles of incorporation provide for a board of directors that is divided into three classes, as nearly equal in number of directors as possible, which will be designated Class I, Class II and Class III. Directors in each class are elected to hold office for a term of three (3) years or until their successors are duly elected and qualified, or if earlier, until their death, resignation or removal.

CSK's directors are elected at each annual meeting of stockholders. All directors, including those elected prior to the annual meeting to fill a vacancy or a newly created directorship, will hold office until the next annual meeting of stockholders and until their respective successors have been elected and qualified or until their earlier resignation or removal. Newly created directorships and vacancies in the board of directors may only be filled by a majority vote of the directors then in office.

Table of Contents

Removal of Directors

Under the MGBCL, unless the articles of incorporation or bylaws provide otherwise, any number of directors or the entire board of directors may be removed with or without cause, by a vote of a majority of the shares then entitled to vote at an election of the directors. The MGBCL provides that any director of the corporation may be removed for cause by an action of a majority of the entire board of directors if the director to be removed shall, at the time of removal, fail to meet the qualifications set forth in the articles of incorporation or bylaws for election as a director or shall be in breach of any agreement between such director and the corporation relating to such director's services as a director or employee of the corporation. O'Reilly's articles of incorporation and bylaws are silent with respect to removal of directors.

Under the DGCL, a director of a corporation that does not have a classified board of directors may be removed with or without cause by a majority stockholder vote. CSK's bylaws allow for any or all directors to be removed with or without cause by the stockholders at a special meeting held for that purpose.

Vacancies on the Board

The MGBCL provides that, unless otherwise provided for in the articles of incorporation or bylaws of the corporation, vacancies on the board and newly created directorships may be filled by a majority vote of the directors then in office, even if less than a quorum, or by a sole remaining director, until the next election of directors by the shareholders of the corporation. If holders of any class or classes of stock are entitled to elect one or more directors by the articles of incorporation, vacancies may be filled by a majority of the directors elected by such class then in office. O'Reilly's articles of incorporation and bylaws provide that a vacancy occurring in the board will be filled only by the affirmative vote of the majority of remaining directors still in office, even if less than a quorum.

Under the DGCL, vacancies and newly created directorships may be filled by a majority of the directors then in office, even though less than a quorum, unless otherwise provided in the certificate of incorporation or bylaws and unless the certificate of incorporation directs that a particular class is to elect the director, in which case any other directors elected by such class, or a sole remaining director, shall fill such vacancy. CSK's bylaws provide that vacancies may only be filled by the vote of a majority of the directors then in office. Each director so selected shall hold office until the next annual meeting of stockholders and until his successor is duly elected and qualified.

Fiduciary Duties of Directors

Directors of corporations incorporated or organized under Delaware law and Missouri law have fiduciary obligations to the corporation and its stockholders. Pursuant to these fiduciary obligations, the directors must act in accordance with the so-called duties of due care and loyalty. Under Delaware law, the duty of care requires that the directors act in an informed and deliberative manner and to inform themselves, prior to making a business decision, of all material information reasonably available to them. The duty of loyalty may be summarized as the duty to act in good faith, not out of self-interest and in a manner that the directors reasonably believe to be in the best interests of the corporation. Under Missouri law, the duty of care requires that a director's duties be discharged with the care and skill which ordinarily prudent and diligent persons would exercise under similar circumstances. The duty of loyalty prohibits diverting corporate opportunities in furtherance of self-interests and acting on corporate matters which conflict with the self-interests of directors and requires director conduct that is fair, open and in the utmost good faith.

Transactions Involving Directors

The MGBCL generally permits transactions involving a Missouri corporation and an interested director of that corporation if: (i) the material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the board of directors or committee, and the board of directors or committee in good

Table of Contents

faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or (ii) the material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the shareholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the shareholders; or (iii) the contract or transaction is fair as to the corporation as of the time it is authorized or approved by the board of directors, a committee thereof, or the shareholders.

The DGCL generally permits transactions involving a Delaware corporation and an interested director of that corporation if: (i) the material facts as to the director's or officer's relationship or interest and as to the transaction are disclosed or are known to the board of directors or a committee thereof, and the board of directors or committee in good faith authorizes the transaction by the affirmative vote of a majority of the disinterested directors, even though the disinterested directors represent less than a quorum; or (ii) the material facts as to the director's or officer's relationship or interest and as to the transaction are disclosed or are known to the stockholders entitled to vote thereon, and the transaction is specifically approved in good faith by vote of the stockholders; or (iii) the transaction is fair to the corporation. The DGCL allows loans to officers and employees whenever, in the judgment of the directors, such loan may reasonably be expected to benefit the corporation.

Indemnification and Limitation of Liability

The MGBCL and the DGCL contain similar provisions and limitations on indemnification by a corporation of its officers, directors, employees and other agents. Both the MGBCL and the DGCL also permit a corporation to adopt a provision in its charter eliminating the liability of a director to the corporation or the holders of its capital stock for monetary damages for breach of fiduciary duty as a director, provided such liability does not arise from certain proscribed conduct, including, in the case of Delaware law, any breach of the director's duty of loyalty to the corporation or its stockholders, acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, the payment of unlawful dividends or expenditure of funds for unlawful stock purchases or redemptions or transactions from which such director derived an improper personal benefit, or, in the case of Missouri law, if the individual acted in good faith and in a manner such individual reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such individual's conduct was unlawful. The O'Reilly articles of incorporation set forth the same indemnification provisions as the MGBCL. The CSK certificate of incorporation authorizes indemnification of directors and officers and other authorized representatives of the corporation to the fullest extent permitted by the DGCL.

Special Meetings

Under the MGBCL, special meetings of the shareholders may be called by the board of directors or by such other person or persons as may be authorized by the articles of incorporation or the bylaws. O'Reilly's articles of incorporation provide that a special meeting of the shareholders may be called only by (i) the board of directors pursuant to a resolution adopted by the affirmative vote of a majority of the entire board of directors, (ii) the chief executive officer of the corporation or (iii) the chief operating officer of the corporation. O'Reilly's bylaws provide that a special meeting of the shareholders may be called only by (a) the board of directors pursuant to a resolution adopted by the affirmative majority of the entire board of directors or (b) a president of the corporation.

Under the DGCL, a special meeting of stockholders may be called by the board of directors or by any other person authorized to do so in the certificate of incorporation or the bylaws. CSK's bylaws provide that special meetings of stockholders may be called by the board of directors, either by written instrument or a vote of the majority, and will be called whenever stockholders owning one-fourth of the capital stock issued and outstanding shall, in writing, make application before the president stating the object of such meeting.

Table of Contents

Nominations and Proposals by Holders of Common Stock

O Reilly's bylaws provide that for a shareholder proposal to be considered, it must have been properly brought before the meeting by the board of directors or by a shareholder of record who has complied with the following procedures. The shareholder must have given notice either by personal delivery or by United States mail, postage prepaid, to the Secretary of the corporation not less than sixty (60) days nor more than ninety (90) days prior to the meeting, provided however, that if less than seventy (70) days notice or prior public disclosure of the date of such meeting has been given or made to shareholders, notice by the shareholder of such meeting has been given or made to shareholders notice by the shareholder to be timely must be received not later than the close of business on the tenth day following the earlier of (i) the day on which notice of the date of the meeting was mailed or (ii) the day on which public disclosure of the meeting was made. The notice must set forth (i) a brief description of the proposal desired to be brought before the meeting and the reasons for considering such proposal, (ii) the name and address of record of the shareholder making the proposal and any other shareholders known to be in support thereof, (iii) the class and number of shares of capital stock that are beneficially owned by the shareholder on the date of the shareholder notice and by any other shareholders known by such shareholder to be supporting the proposal on the date of the shareholder notice and (iv) any material interest of the shareholder in the proposal. O Reilly's bylaws also state that only persons who are nominated in accordance with the procedures for nominating directors will be eligible for election of directors of the corporation.

CSK's bylaws provide that stockholder nominations for election of directors and proposals of business must either be (i) specified in the notice of meeting given by or at the direction of the board or any authorized committee thereof, (ii) brought at an annual meeting at the direction of the president, the chairman of the board or by a vote of the majority of the full board or (iii) brought at an annual meeting by any stockholder of record who is entitled to vote and has given proper notice. To constitute proper notice, a stockholder's proposal must be received at CSK's principal executive offices not less than 120 calendar days before the date corresponding with the date set forth on CSK's proxy statement released to stockholders in connection with the previous year's annual meeting; provided however, that if CSK did not hold an annual meeting the previous year, or if the date of the current year's annual meeting has been changed by more than thirty (30) days from the anniversary date of the previous year's meeting, then the stockholder's proposal must be received no later than the close of business 120 days prior to the upcoming annual meeting.

Inspection of Lists of Holders of Common Stock

Both the MGBCL and the DGCL allow any stockholder to inspect the stockholders' list for a purpose reasonably related to such person's interest as a stockholder. The MGBCL provides an absolute right of inspection of a corporation's list of shareholders to any shareholder. O Reilly's bylaws provide that at least ten (10) days before each meeting of shareholders, the officer or agent having charge of the transfer book for shares of the corporation will make a complete list of the shareholders entitled to vote at such meeting with the address of, and the number shares held by each shareholder, which list, for a period of not less than ten (10) days, will be kept on file at the registered office of the corporation and will be subject to inspection by any shareholder during usual business hours. Such list will also be produced at the meeting.

The DGCL provides for inspection rights as to a list of stockholders entitled to vote at a meeting within a ten (10) day period preceding a stockholders' meeting for any purpose germane to the meeting. CSK's bylaws provide that the secretary or other officer of the corporation having charge of the stock ledger of the corporation will prepare and make, at least ten (10) days before every meeting of the stockholders, a complete list of the stockholders, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list will be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours for a period of at least ten (10) days prior to the meeting. The list will also be available at the time and place of the meeting during the whole time thereof and may be inspected by any stockholder who is present.

Table of Contents

Shareholder Rights Plan

O Reilly. Sections 351.180 and 351.182 of the MGBCL grant the board of directors the authority to adopt a shareholder rights plan. *O Reilly* adopted its shareholder rights plan on May 7, 2002. The rights under the plan will become exercisable upon the occurrence, subject to certain exceptions, of certain triggering events, including upon the acquisition by an acquiring person of beneficial ownership of 15% or more of the outstanding shares of common stock. The rights will also become exercisable upon the commencement of a tender offer or exchange offer that would result in a person or group becoming an acquiring person. The existence of a shareholder rights plan may discourage or render more difficult an acquisition of *O Reilly* that is deemed undesirable by *O Reilly*'s board of directors.

CSK. The DGCL does not include a statutory provision expressly validating stockholder rights plans, however, such plans have generally been upheld by decisions of courts applying Delaware law. *CSK* adopted its stockholder rights agreement on February 4, 2008. The rights under the rights agreement will become exercisable upon the date, subject to certain exceptions, of certain triggering events, including upon any person acquiring beneficial ownership of 10% or more of the outstanding shares of common stock. However, *CSK*'s board of directors has taken action to render the rights agreement inapplicable to the offer and the merger and cause the rights to expire immediately prior to consummation of the merger. The existence of a stockholder rights plan may discourage or render more difficult an acquisition of *CSK* that is deemed undesirable by *CSK*'s board of directors.

Dividends

Under the MGBCL, a corporation may make a distribution to its shareholders as long as the corporation's net assets are not less than its stated capital or when the payment thereof would not reduce the net assets of the corporation below its stated capital. If a dividend is declared out of the paid-in surplus of the corporation, whether created by reduction of stated capital or otherwise, (i) no such distribution may be made to any class of shareholders unless all cumulative dividends accrued on preferred special classes of shares entitled to preferred dividends have been fully paid and (ii) each distribution, when made, shall be identified as a liquidating dividend and the amount per share shall be disclosed to the shareholders receiving the same, concurrently with the payment thereof. *O Reilly*'s articles of incorporation provide that the board will determine the dividend rate, whether dividends should be cumulative and, if so, from which date or dates and the relative rights of priority of the payment of dividends on that series. *O Reilly*'s bylaws state that the board may, from time to time, declare, and the corporation may pay, dividends on its outstanding shares in the manner and condition provided by law and in the articles of incorporation.

The DGCL recognizes the concepts of par value, capital and surplus. The DGCL permits a corporation, unless otherwise restricted by its certificate of incorporation, to declare and pay dividends out of its surplus or, if there is no surplus, out of next profits for the fiscal year in which the dividend is declared and/or for the preceding fiscal year, as long as the amount of capital of the corporation is not less than the aggregate amount of the capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets. The ability of a Delaware corporation to pay dividends on its shares is dependent on the financial status of the corporation standing alone and not on a consolidated basis. In determining the amount of surplus of a Delaware corporation, the assets of the corporation, including stock of subsidiaries owned by the corporation, must be valued at their fair market value as determined by the board of directors, regardless of their historical book value. *CSK*'s certificate of incorporation and bylaws are silent with respect to dividends.

Amendment of the Articles or Certificate of Incorporation

Under the MGBCL, after a corporation has received any payment for any of its stock, an amendment to the articles of incorporation requires the approval of the corporation's board of directors and a majority of the outstanding shares entitled to vote, either before or after the board approval. *O Reilly*'s articles of incorporation may be amended in accordance with MGBCL and do not require a supermajority vote to approve amendments.

Table of Contents

Under the DGCL, after a corporation has received any payment for any of its stock, an amendment to the certificate of incorporation requires the approval of the corporation's board of directors and a majority of the outstanding shares. CSK's certificate of incorporation provides that the certificate of incorporation may be amended, altered or repealed and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted in the manner prescribed in the bylaws. CSK's bylaws do not require a supermajority vote to approve amendments.

Amendment of Bylaws

Under the MGBCL, after a corporation has received any payment for any of its stock, a corporation's bylaws may be adopted, amended or repealed by the shareholders, unless and to the extent that such power may be vested in the board by the articles of incorporation. O'Reilly's articles of incorporation provide that the board of directors has power to adopt, repeal or amend the bylaws and to adopt new or additional bylaws, subject to the paramount right of the shareholders to divest the board of directors of such power. O'Reilly's bylaws also provide that the majority of the board of directors may alter, amend or repeal any bylaws, provided that no bylaw may be adopted or amended so as to be inconsistent with the articles of incorporation or the constitution or laws of the State of Missouri.

Under the DGCL, after a corporation has received any payment for any of its stock, the power to adopt, amend or repeal bylaws is entirely with the stockholders of the corporation. However, a corporation may, in its certificate of incorporation, confer the power to adopt, amend or repeal bylaws upon the directors of the corporation. CSK's certificate of incorporation and bylaws expressly provide that the board of directors of CSK has the power and authority to make, alter, amend, change, add to or repeal the bylaws of CSK.

Advance Notice of Record Date

As permitted under the MGBCL, O'Reilly's bylaws provide that, in order that the corporation may determine the shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, the board of directors may fix a record date, which record date will not be more than seventy (70) days before the date of such meeting.

The DGCL requires that stockholders be provided prior written notice no more than sixty (60) days nor less than ten (10) days prior to the record date for determining the rights to vote at the meeting of stockholders. The DGCL further states that the record date to determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action shall not precede the date upon which the resolution fixing the record date is adopted and which record date shall be not more than sixty (60) days prior to such action. Finally, the DGCL provides that due notice of the time, place and purpose of the meeting to approve a merger agreement be mailed at least twenty (20) days prior to the date of the meeting. CSK's bylaws provide that for the purposes of determining the stockholders entitled to notice of any meeting, the directors may fix, in advance, a record date which will not be more than sixty (60) days nor less than ten (10) days before the meeting.

Consent in Lieu of Meeting

The MGBCL provides that, unless otherwise provided in the articles of incorporation, any action required or allowed to be taken at a meeting of the shareholders of a corporation may be taken without a meeting if consents in writing, setting forth the action so taken, are signed by all of the shareholders entitled to vote with respect to the subject matter thereof. Such consents have the same force and effect as a unanimous vote of the shareholders at a meeting duly held and may be stated as such in any certificate or document filed under the MGBCL. O'Reilly's bylaws provide that any action which may be taken at a meeting of the shareholders may be taken without a meeting if a consent in writing is signed by all shareholders entitled to vote with respect to the subject matter thereof.

Table of Contents

Under the DGCL, unless otherwise provided in the certificate of incorporation, any action to be taken at an annual or special meeting of stockholders may be taken without a meeting, without prior notice and without a vote if a written consent to the action shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize such action at a meeting at which all shares entitled to vote were present and voted. Additionally, unless the certificate of incorporation provides otherwise, stockholders may act by written consent to elect directors; provided, however, that, if such consent is less than unanimous, such action by written consent may be held in lieu of an annual meeting only if all of the directorships to which directors could be elected at an annual meeting are vacant and are filled by such action. CSK's bylaws provide that any action required by the DGCL to be taken at any annual or special meeting may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action to be taken, is signed by the holders of outstanding stock having not less than the minimum votes necessary had there been a meeting where votes were actually taken.

Derivative Actions

Under Missouri law, shareholders may bring derivative actions on behalf of, and for the benefit of, the corporation. A shareholder may not sue derivatively unless he first makes demand on the corporation that it bring suit and such demand has been refused, unless it is shown that such demand would have been futile.

Derivative actions may be brought in Delaware by a stockholder on behalf of, and for the benefit of, the corporation. Delaware law provides that a stockholder must aver in the complaint that he or she was a stockholder of the corporation at the time of the transaction of which he or she complains. A stockholder may not sue derivatively unless he first makes demand on the corporation that it bring suit and such demand has been refused, unless it is shown that such demand would have been futile.

Dissenters' Rights

Delaware General Corporation Law. Under the DGCL, dissenters' appraisal rights are available to a corporation's stockholders in connection with certain mergers and consolidations. However, no rights are available in certain situations. A corporation's stockholders will not receive such rights if the corporation is the surviving corporation and no stockholder vote is required for the merger. Also, no such rights are available if the corporation's stock is either:

listed on a national securities exchange, or

held of record by more than 2,000 stockholders.

However, dissenters' appraisal rights will be available if the merger or consolidation requires stockholders to exchange their stock for anything other than:

shares of the surviving corporation,

shares of another corporation that will be listed on a national securities exchange or held of record by more than 2,000 stockholders, or

cash in place of fractional shares.

For more information regarding appraisal rights with respect to the offer and the merger, see *The Offer Appraisal Rights* on page 47.

O Reilly. Under the MGBCL, O Reilly's shareholders will not have any appraisal or dissenters' rights as a result of the issuance of additional shares of O Reilly common stock in connection with the offer or the merger.

CSK. Under Section 262 of the DGCL, CSK stockholders who have not voted in favor of the merger are expected to be entitled to demand appraisal of their shares. See *Annex B Section 262 of the Delaware General Corporation Law* on page B-1.

Table of Contents**Business Combination Statutes**

General and Business Corporation Law of Missouri. The MGBCL protects domestic corporations from unsolicited takeovers by prohibiting certain transactions once an acquiror has gained control. The statute restricts certain Business Combinations between a corporation and an Interested Shareholder or affiliates of the Interested Shareholder for a period of five (5) years unless certain conditions are met. A Business Combination includes a merger or consolidation, certain sales, leases, exchanges, pledges and similar dispositions of corporate assets or stock and certain reclassifications and recapitalizations. An Interested Shareholder includes any person or entity which beneficially owns or controls 20% or more of the outstanding voting shares of the corporation.

During the initial five-year restricted period, no Business Combination may occur unless such Business Combination or the transaction in which an Interested Shareholder becomes interested is approved by the board of directors of the corporation. Business Combinations may occur during such five-year period if: (i) prior to the stock acquisition by the Interested Shareholder, the board of directors approves the transaction in which the Interested Shareholder became such or approves the Business Combination in question; (ii) the holders of a majority of the outstanding voting stock, other than stock owned by the Interested Shareholder, approve the Business Combination; or (iii) the Business Combination satisfies certain detailed fairness and procedural requirements. The MGBCL exempts from its provisions: (i) corporations not having a class of voting stock registered under Section 12 of the Exchange Act; (ii) corporations which adopt provisions in their articles of incorporation or bylaws expressly electing not to be covered by the statute; and (iii) certain circumstances in which a shareholder inadvertently becomes an Interested Shareholder.

O Reilly's articles of incorporation expressly elect not to be covered by this statute.

Delaware General Corporation Law. Section 203 of the DGCL makes it more difficult to effect certain transactions between a corporation and a person or group that owns 15% or more of the corporation's outstanding voting stock (including any rights to acquire stock pursuant to an option, warrant, agreement, arrangement or understanding, or upon the exercise of conversion or exchange rights, and stock with respect to which the person has voting rights only), or is an affiliate or associate of the corporation and was the owner of 15% or more of such voting stock, referred to as a 15% stockholder, at any time within the previous three (3) years (excluding persons who became 15% stockholders by action of the corporation alone). For a period of three (3) years following the date that a stockholder became a holder of 15% or more of the corporation's outstanding voting stock, the following types of transactions between the corporation and the 15% stockholder are prohibited (unless certain conditions, described below, are met): (i) mergers or consolidations; (ii) sales, leases, exchanges or other transfers of 10% or more of the aggregate assets of the corporation; (iii) issuances or transfers by the corporation of any stock of the corporation which would have the effect of increasing the 15% stockholder's proportionate share of the stock of any class or series of the corporation; (iv) receipt by the 15% stockholder of the benefit (except proportionately as a stockholder) of loans, advances, guarantees, pledges or other financial benefits provided by the corporation; and (v) any other transaction which has the effect of increasing the proportionate share of the stock of any class or series of the corporation which is owned by the 15% stockholder. The three-year ban does not apply if either the proposed transactions or the transaction by which the 15% stockholder became a 15% stockholder is approved by the board of directors of the corporation prior to the date such stockholder became a 15% stockholder. Additionally, a 15% stockholder may avoid the statutory restriction if upon the consummation of the transaction whereby such stockholder became a 15% stockholder, the stockholder owns at least 85% of the outstanding voting stock of the corporation without regard to those shares owned by the corporation's officers and directors or certain employee stock plans. Business combinations are also permitted within the three-year period if approved by the board of directors and, at an annual or special meeting, by the holders of 66²/₃% of the voting stock not owned by the 15% stockholder.

A corporation may, at its option, exclude itself from the coverage of Section 203 by providing in its certificate of incorporation or bylaws at any time that it is exempt from Section 203, provided that a certificate or bylaws amendment cannot become effective for twelve (12) months after such amendment is adopted. In

Table of Contents

addition, any transaction is exempt from the statutory ban if it is proposed at a time when the corporation has proposed, and a majority of certain continuing directors of the corporation have approved, a transaction with a party who is not a 15% stockholder of the corporation (or who became such with board approval) if the proposed transaction involves (i) certain mergers or consolidations involving the corporation; (ii) a sale or other transfer of over 50% of the aggregate assets of the corporation; or (iii) a tender or exchange offer for 50% or more of the outstanding voting stock of the corporation. CSK's certificate of incorporation and bylaws do not exempt the corporation from the coverage of Section 203. The application of Section 203 to CSK confers upon the board of directors the power to reject a proposed business combination in certain circumstances, even though a potential acquiror may be offering a substantial premium for CSK's shares over the then-current market price.

ADDITIONAL INFORMATION

Legal Matters

The validity of the issuance of the O Reilly common stock offered hereby will be passed upon for O Reilly by Gallop, Johnson & Neuman, L.C., St. Louis, Missouri.

Experts

The consolidated financial statements of O Reilly and its subsidiaries incorporated by reference in O Reilly's Annual Report (Form 10-K) for the year ended December 31, 2007 (including the schedule appearing therein), have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their report on the consolidated financial statements, incorporated by reference therein, and their report on the schedule included therein, and collectively incorporated herein by reference. Such consolidated financial statements are incorporated herein by reference in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

The consolidated financial statements of CSK and its subsidiaries as of February 3, 2008 and February 4, 2007 and for each of the three years in the period ended February 3, 2008 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) as of February 3, 2008 included in this prospectus have been so included in reliance on the report (which contains (i) an explanatory paragraph relating to CSK's entering into an agreement and plan of merger with O Reilly and CSK's compliance with debt covenants both as more fully described in Note 1 to the consolidated financial statements, and (ii) an adverse opinion of the effectiveness of internal control over financial reporting) of PricewaterhouseCoopers LLP, an independent registered accounting firm, given on the authority of said firm as experts in auditing and accounting.

Where You Can Find Additional Information

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 are incorporated by reference into this prospectus. O Reilly and CSK have not authorized anyone to provide you with information that is different from or in addition to the information contained in this document and incorporated by reference into this prospectus.

The following documents, which were filed by O Reilly with the SEC, are incorporated by reference into this prospectus:

- O Reilly's Annual Report on Form 10-K for the fiscal year ended December 31, 2007, filed with the SEC on March 3, 2008;
- O Reilly's Annual Report on Form 10-K/A for the fiscal year ended December 31, 2007, filed with the SEC on June 10, 2008;
- O Reilly's Quarterly Report on Form 10-Q for the fiscal year ended March 31, 2008, filed with the SEC on May 9, 2008;

Table of Contents

O Reilly's Definitive Proxy Statement on Schedule 14A filed with the SEC on March 24, 2008.

O Reilly's Current Reports on Form 8-K filed with the SEC on January 14, 2008, February 1, 2008, February 11, 2008, February 25, 2008, April 1, 2008, April 7, 2008, April 11, 2008, April 18, 2008, April 23, 2008 and June 11, 2008.

In addition, all documents filed by O Reilly pursuant to Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act after the date of this prospectus are deemed to be incorporated by reference into, and to be a part of, this prospectus from the date of filing of those documents.

Any statement contained in this prospectus or in a document incorporated or deemed to be incorporated by reference into this prospectus will be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained in this prospectus or any other subsequently filed document that is deemed to be incorporated by reference into this prospectus modifies or supersedes the statement. Any statement so modified or superseded will not be deemed, except as so modified or superseded, to constitute a part of this prospectus.

O Reilly has supplied all information contained in this prospectus about O Reilly, and CSK has supplied all information contained or incorporated by reference in this prospectus about CSK.

The documents incorporated by reference into this prospectus are available upon request. O Reilly will provide a copy of any and all of the information that is incorporated by reference in this prospectus (not including exhibits to the information unless those exhibits are specifically incorporated by reference into this prospectus) to any person, without charge, upon written or oral request.

Any questions about the offer or the merger, requests for assistance or requests for a copy of information incorporated by reference into this prospectus should be directed to:

INNISFREE M&A INCORPORATED

501 Madison Avenue, 20th Floor

New York, NY 10022

Stockholders Call Toll-Free: (888) 750-5834

Banks and Brokers Call Collect: (212) 750-5833

For information relating to CSK:

CSK Auto Corporation

645 E. Missouri Ave.

Suite 400

Phoenix, Arizona 85012

Attention: Brenda Bonn, Investor Relations Manager

(602) 631-7483

O Reilly and CSK file annual, quarterly and current reports, proxy and information statements and other information with the SEC. Copies of the reports, proxy and information statements and other information filed by O Reilly and CSK with the SEC may be read and copied by the public at the Public Reference Room maintained by the SEC at:

100 F Street, N.E.

Washington, D.C. 20549

Edgar Filing: O REILLY AUTOMOTIVE INC - Form S-4/A

Please call the SEC at 1-800-SEC-0330 for information on the operation of the Public Reference Room.

Reports, proxy and information statements and other information concerning O Reilly may be inspected at:

NASDAQ Stock Market, Inc.

1735 K Street, N.W.

Washington, D.C. 20006

Table of Contents

Reports, proxy and information statements and other information concerning CSK may be inspected at:

New York Stock Exchange

20 Broad Street

New York, New York 10005.

The public may read and copy any of the materials filed with the SEC by O Reilly and CSK at the SEC's Public Reference Section located at 100 F Street, N.E., Washington, D.C. 20549. The public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC maintains an internet site that contains reports, proxy and information statements, and other information regarding O Reilly and CSK. The address of the SEC internet site is <http://www.sec.gov>.

O Reilly has filed a registration statement on Form S-4 under the Securities Act with the SEC with respect to O Reilly's common stock to be issued to CSK stockholders in connection with the offer and the merger. This prospectus constitutes the prospectus of O Reilly filed as part of the registration statement. This prospectus does not contain all of the information set forth in the registration statement because certain parts of the registration statement are omitted in accordance with the rules and regulations of the SEC. The registration statement and its exhibits are available for inspection and copying as set forth above.

Miscellaneous

The offer is being made solely by this prospectus and the related letter of transmittal and is being made to holders of all outstanding shares of CSK common stock. We are not aware of any jurisdiction where the making of the offer is prohibited by any administrative or judicial action or pursuant to any valid state statute. If we become aware of any valid state statute prohibiting the making of the offer or the acceptance of shares pursuant thereto, we will make a good faith effort to comply with any such state statute. If, after making a good faith effort, we cannot comply with that state statute, the offer will not be made to (nor will tenders be accepted from or on behalf of) the holders of shares in that state. In any jurisdiction where the securities, blue sky or other laws require the offer to be made by a licensed broker or dealer, the offer shall be deemed to be made on our behalf by one or more registered brokers or dealers licensed under the laws of that jurisdiction. No person has been authorized to give any information or make any representation on behalf of O Reilly not contained in this prospectus or in the letter of transmittal, and if given or made, such information or representation must not be relied upon as having been authorized.

Table of Contents**UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL DATA**

The following unaudited pro forma condensed, combined financial data is designed to show how the merger of O Reilly and CSK might have affected the historical financial data of O Reilly, giving effect to the merger and related financing as if they had been consummated at an earlier date. The following unaudited pro forma condensed, combined financial data give effect to the merger and related financing as if they had been completed on March 31, 2008, with respect to the pro forma balance sheet data, and as of January 1, 2007, with respect to the pro forma statement of income data.

It should be noted that O Reilly and CSK have different fiscal year ends. Accordingly, the selected unaudited pro forma income statement data for the calendar year ended December 31, 2007 combine O Reilly's historical consolidated income statement data for the year then ended with CSK's historical consolidated income statement data for the fiscal year (fifty-two weeks) ended February 3, 2008. The selected unaudited pro forma income statement data for the three months ended March 31, 2008 combine O Reilly's historical consolidated income statement data for the three calendar months then ended with CSK's historical consolidated income statement data for its first fiscal quarter (thirteen weeks) ended May 4, 2008. The selected unaudited pro forma balance sheet data combine O Reilly's historical consolidated balance sheet data as of March 31, 2008 with CSK's historical consolidated balance sheet data as of May 4, 2008.

The following unaudited pro forma condensed, combined financial data should be read in conjunction with the historical consolidated financial statements and notes thereto of O Reilly, which are incorporated into this document by reference and the historical consolidated financial statements and notes thereto of CSK, which are set forth in CSK's Annual Report on Form 10-K for the year ended February 3, 2008, attached as Annex D to this prospectus and CSK's Quarterly Report on Form 10-Q for the quarter ended May 4, 2008, attached as Annex G to this prospectus. See *Additional Information-Where You Can Find Additional Information* on page 81. Certain amounts in CSK's historical financial statements have been reclassified to conform to O Reilly's presentation of such items.

The following unaudited pro forma condensed, combined financial data are presented for illustrative purposes only and are not necessarily indicative of what O Reilly's actual financial position or results of operations would have been had the merger and financing been completed on the dates indicated above. In addition, the following selected unaudited pro forma condensed, combined financial data do not purport to project the future financial position or results of operations of the combined company. The following unaudited pro forma condensed, combined financial data do not give effect to (1) O Reilly's or CSK's results of operations or other transactions or developments since March 31, 2008 and May 4, 2008, respectively, (2) the synergies, cost savings and one-time charges expected to result from the merger, (3) the effects of transactions or developments which may occur subsequent to the merger, or (4) the determination of the final purchase price or purchase price allocation, which is discussed below. In addition, the following unaudited pro forma condensed, combined financial data assume that the cash portion of the purchase price will be \$1.00 per share and will not be reduced.

Estimated Purchase Price

The estimated purchase price of \$539.8 million used in preparing the pro forma data has been calculated as follows (in thousands except per share amounts and ratio):

Historical cost of CSK shares owned by O Reilly at March 31, 2008	\$ 21,724
Number of shares of CSK common stock outstanding at March 31, 2008 (1)	44,312
Number of shares of CSK common stock held by O Reilly at March 31, 2008	(2,154)
Estimated number of shares of CSK common stock to be exchanged	42,158
Estimated stock exchange ratio (2)	0.4285
Multiplied by O Reilly common stock average stock price (3)	\$ 25.42
Estimated value of shares issued	459,205
Estimated cash distribution to CSK common stockholders	42,158
Estimated fair value of options exchanged and unvested restricted stock exchanged (4)	8,689
Estimated transaction costs	8,000
Estimated purchase price	\$ 539,776

Table of Contents

- (1) The number of shares outstanding at March 31, 2008 includes 281,000 unvested restricted shares at March 31, 2008 that will vest in conjunction with the merger and will receive the same stock and cash consideration as unrestricted CSK shares.
- (2) The number of shares of O Reilly common stock received for each validly tendered share of CSK common stock will be determined based on an exchange ratio equal to \$11.00 divided by the average of the reported closing sale prices of O Reilly common stock for the five (5) consecutive trading days ending on and including the second trading day prior to the consummation of the offer and rounded to four decimal places; provided, however, that if such average closing sale price of O Reilly stock is greater than \$29.95, then the exchange ratio shall equal 0.3673, and if such average closing sale price is less than \$25.67, then the exchange ratio shall equal 0.4285. The estimated stock exchange ratio reflected in the calculation of estimated purchase price in the above table is derived in accordance with the exchange ratio formula based on the average of the reported closing sale prices of O Reilly common stock for the five (5) consecutive trading days ending on and including June 17, 2008.
- (3) The estimated common stock average stock price is calculated as the average of the reported closing sale prices of O Reilly common stock for the five (5) consecutive trading days ending on and including June 17, 2008.
- (4) Under the terms of the merger agreement, at the effective time of the merger, each CSK stock option that is outstanding and unexercised immediately prior to the effective time will be converted into an option to purchase O Reilly common stock and O Reilly will assume that stock option in accordance with the terms of the applicable CSK stock option plan and terms of the stock option agreement relating to that CSK stock option. Based on CSK's stock options outstanding at March 31, 2008, O Reilly would convert options to purchase approximately 3.8 million shares of CSK common stock into options to purchase approximately 1.7 million shares of O Reilly common stock. The actual number of O Reilly stock options into which CSK stock options will be converted will be determined based on the actual number of CSK stock options outstanding at the consummation of the merger and the final stock exchange ratio (adjusted to reflect the per share cash consideration as set forth in the merger agreement). The fair value of the options to be exchanged was determined using a Black-Scholes valuation model with the following weighted-average assumptions: volatility of 32%; risk-free interest rates ranging from 1.77%-2.30%, weighted-average expected life of 2.2 years and dividend yield of zero resulting in an estimated weighted-average fair value of \$4.38 per share. As discussed above, 281,000 shares of restricted stock outstanding at March 31, 2008 will vest in conjunction with the merger and will receive the same stock and cash consideration as unrestricted CSK shares. O Reilly will exchange the remaining 89,899 shares of unvested restricted stock for O Reilly shares, after applying the exchange ratio (adjusted to reflect the per share cash consideration) and it will continue to vest in accordance with its terms. The actual number of shares of unvested restricted stock to be exchanged will be determined based on the actual number of shares of CSK restricted stock outstanding upon the consummation of the merger. The fair value of the restricted stock to be issued was determined based on the exchange ratio formula based on the average of the reported closing sale prices of O Reilly common stock for the five (5) consecutive trading days ending on and including June 17, 2008 and the resulting intrinsic value of each share.

Purchase Price Allocation

The merger will be accounted for under the purchase method of accounting, with O Reilly treated as the acquiring entity. Under this method of accounting, the purchase price will be allocated to CSK's assets acquired and liabilities assumed based upon estimated fair values at the date of acquisition. For purposes of estimating the purchase price, it is assumed that the \$1.00 in cash per share to be received by the CSK stockholders will not be reduced. The actual purchase price to be so allocated will depend upon, among other things, the final stock exchange ratio and the number of shares of CSK common stock issued and outstanding or subject to outstanding options immediately prior to the merger. The final purchase price allocation is dependent upon certain valuations and other analyses that cannot be completed prior to the merger and are required to make a final allocation. In certain instances, O Reilly has identified intangible assets of CSK for which there has not been sufficient information available to make a preliminary estimate of fair value at the time of this filing. For example,

Table of Contents

O Reilly expects to record assets and liabilities for fair value adjustments to CSK lease arrangements once access to all of CSK's lease information and market research is available to O Reilly. The purchase price paid for these intangible assets has been allocated to goodwill until such time as a preliminary estimate is available. Additionally, we have not received sufficient information to make a preliminary estimate of the fair value of CSK's inventory and property and equipment and the purchase price paid for these assets has been reflected in the pro forma data at CSK's historical cost. At the time of this filing, we anticipate that the range of estimated useful lives of CSK's property and equipment, and the corresponding depreciation period for any fair value adjustments, would be four (4) to seven (7) years. The actual estimated useful life will be determined at the time of the final purchase price allocation. Based on this estimate, the total annual incremental depreciation charge for each \$10 million of fair value adjustment to these assets would range from \$1.4 million to \$2.5 million.

The final determination of the fair value of CSK's assets and liabilities will be made after completion of the transaction and will be based on the actual net tangible and intangible assets and liabilities of CSK that exist as of the date of completion of the merger. Accordingly, the pro forma purchase price adjustments are preliminary, subject to future adjustments and have been made solely for the purpose of providing the unaudited pro forma condensed, combined financial data presented below. The estimated purchase price has been assigned to the assets acquired and liabilities assumed as follows (in thousands):

	Preliminary Fair Value (in thousands)
Inventory	\$ 553,470
Other current assets	136,893
Property and equipment	169,162
Goodwill	607,457
Other intangible assets	2,354
Other assets	73,181
Current maturities of long-term debt and capital lease obligations	(502,873)
Other current liabilities	(449,841)
Long-term debt and capital lease obligations, less current portion	(34,550)
Other liabilities	(15,477)
Total estimated purchase price	\$ 539,776

Identifiable Intangible Assets

O Reilly has identified certain intangible assets of CSK expected to be recorded in the final purchase price allocation for which there has not been sufficient information available to make a preliminary estimate of fair value at the time of this filing. We expect these identifiable intangible assets to include the following:

Leasehold interests. We expect to record an intangible asset for properties leased by CSK at rates below the prevailing market rental rates at the time of consummation of the merger. Likewise, we would record a related accrued liability for properties leased by CSK at rates above the prevailing market rental rates at the time of consummation of the merger. These assets and liabilities would be amortized to rent expense over the remaining term of the related leases. As of the date of this prospectus, insufficient information has been made available to estimate these amounts. In particular, O Reilly had been restricted from receiving the detailed information related to individual properties that is required to complete a preliminary estimate because our possession of this information could be disadvantageous to CSK if the merger is not consummated. At the time of this filing, we anticipate that the range of potential amortization periods for favorable and unfavorable lease assets and liabilities, based on the average remaining term to lease expiration of CSK's current leases, would be four (4) to seven (7) years. Based on this estimate, the total annual amortization for each \$10 million of purchase price allocated to these assets and liabilities would range from \$1.4 million to \$2.5 million. The actual amortization period will be determined at the time of the final purchase price allocation.

Table of Contents

Trademarks and tradenames. We expect to record an intangible asset for tradenames and trademarks acquired in this merger. These include the following brand names: Checker Auto Parts, Schuck's Auto Supply, Kragen Auto Parts, and Murray's Discount Auto Stores. At the time of this filing, we anticipate that the range of potential lives for the trademarks and tradenames would be two (2) to five (5) years based on the period of time we expect to receive benefit from such trademarks and tradenames. Based on this estimate, the total annual amortization for each \$10 million of purchase price allocated to these assets would range from \$2.0 million to \$5.0 million. The actual lives will be determined at the time of the final purchase price allocation.

Customer relationships. We expect to record an intangible asset to reflect the value of CSK's ongoing customer relationships with its professional installer customers. As of the date of this prospectus, insufficient information has been made available to estimate these amounts. Detailed information related to individual professional installer customers will not be available to us until after the consummation of the merger. Receipt of this information prior to that time could be disadvantageous to CSK should the merger not be consummated. We expect to amortize the fair value of these assets based on the pattern in which the economic benefits of the intangible asset will be consumed. At the time of this filing, we anticipate that the range of potential lives for the customer relationships intangible would be three (3) to seven (7) years based on our historical experience with this customer base. Based on this estimate, the total annual amortization for each \$10 million of purchase price allocated to this asset would range from \$1.4 million to \$3.3 million. The actual lives will be determined at the time of the final purchase price allocation.

Other. We expect that we could record additional amounts for other identifiable intangible assets, such as non-compete agreements with CSK team members, in the final determination of the fair value of CSK's assets and liabilities. At the time of this filing, we do not expect these amounts to be material.

O Reilly Financing

O Reilly has received a commitment letter from Bank of America, N.A., Banc of America Securities LLC, Lehman Commercial Paper Inc., Lehman Brothers Commercial Bank and Lehman Brothers Inc. to provide an asset-based senior secured credit facility to provide \$1.075 billion through a revolving credit facility and \$125.0 million through a first-in-last-out revolving credit facility. The following unaudited pro forma condensed, combined financial data assumes that O Reilly will finance the merger transaction through the borrowing of \$578.5 million under these facilities. The proceeds of the financing and O Reilly's existing cash will be used to refinance certain existing indebtedness of O Reilly and CSK which will become payable as a direct result of the merger transaction, pay customary fees and expenses relating to the offer, the merger and the financing, and pay approximately \$42.2 million to holders of CSK common stock for the cash portion of the offer consideration. O Reilly has the capacity to incur additional borrowings under the facility following the merger transaction to provide for ongoing working capital requirements of the combined corporation, but these borrowings are not directly attributable to the merger and have not been reflected in the pro forma financial data presented.

The facility will be comprised of: (i) an up to \$1.075 billion tranche A revolving credit facility expected to bear interest, initially, at LIBOR plus 2.50% per annum and (ii) an up to \$125.0 million first-in-last-out revolving credit facility expected to bear interest, initially, at LIBOR plus 3.75% per annum, each of which is described in more detail under "Financing of the Offer and the Merger" on page 49. For the purposes of adjusting interest expense in the pro forma financial data, O Reilly has estimated the weighted-average interest on the anticipated borrowings under the facilities to be LIBOR plus 2.75%, or approximately 5.4%. Actual amounts borrowed, and interest rates payable, will depend upon O Reilly's cash balances at the time of the merger and conditions in the capital markets, principally prevailing rates of interest, at the time the merger is completed (see note (v) to the Unaudited Pro Forma Condensed Combined Financial Statements for the impact of a 1/8% change in interest rates).

Table of Contents**O Reilly Automotive, Inc.****Unaudited Pro Forma Condensed Combined Balance Sheet****March 31, 2008****(in thousands)**

	Historical O Reilly March 31, 2008	Historical CSK May 4, 2008	Reclassifications (a)	Pro Forma Adjustments	O Reilly/ CSK Combined Pro Forma
ASSETS:					
Current assets:					
Cash and cash equivalents	\$ 113,287	\$ 19,679	\$	\$ (80,426) (b)	\$ 52,540
Accounts receivable, net	93,123	36,721	(16,873)		112,971
Amounts receivable from vendors	47,293		15,054		62,347
Inventory	892,583	549,002	4,468		1,446,053
Deferred income taxes		44,527		(10,364) (c)	34,163
Other current assets	20,331	50,434	(2,649)		68,116
Total current assets	1,166,617	700,363		(90,790)	1,776,190
Property and equipment net	1,125,963	159,267	9,895	49,237 (d)	1,344,362
Notes receivable, less current portion	24,253		7,242		31,495
Identified intangibles, net		61,905		(59,551) (e)	2,354
Goodwill	50,583	224,937		(224,937) (f)	
				607,457 (g)	658,040
Deferred income taxes		17,288		(26,651) (c)	
				48,200 (h)	38,837
Other assets	30,320	33,667	(17,137)	7,187 (i)	54,037
Total Assets	\$ 2,397,736	\$ 1,197,427	\$	\$ 310,152	\$ 3,905,315
LIABILITIES AND SHAREHOLDERS EQUITY:					
Current liabilities:					
Accounts payable	\$ 417,128	\$ 291,225	\$ 16,677	\$	\$ 725,030
Self-insurance reserves	31,760		25,031		56,791
Accrued payroll	27,445	59,666	(51,521)		35,590
Accrued benefits and withholdings	14,776		28,673		43,449
Deferred income taxes	10,364			(10,364) (c)	
Other current liabilities	61,530	98,950	(18,860)	(3,458) (j)	138,162
Current portion of long-term debt	25,000	493,443		(397,783) (k)	
				(25,000) (l)	95,660
Current portion of capital lease obligations	323	5,982			6,305
Total current liabilities	588,326	949,266		(436,605)	1,100,987
Long-term debt, less current portion	75,000	16,131		(75,000) (m)	
				9,950 (n)	
				578,510 (o)	604,591
Capital lease obligations, less current portion	68	8,469			8,537
Deferred income taxes	26,651			(26,651) (c)	
Other liabilities	56,678	52,662		(37,185) (p)	72,155
Shareholders equity:					
Common stock	1,155			181 (q)	1,336
Additional paid-in capital	448,173			466,812 (q)	914,985
Retained earnings	1,202,724				1,202,724
Accumulated other comprehensive income	(1,039)			1,039 (r)	

Edgar Filing: O REILLY AUTOMOTIVE INC - Form S-4/A

Stockholders' equity of CSK		170,899		(170,899)	(s)
Total shareholders' equity	1,651,013	170,899		297,133	2,119,045
Total Liabilities and Shareholders' Equity	\$ 2,397,736	\$ 1,197,427	\$	\$ 310,152	\$ 3,905,315

See accompanying Notes to Unaudited Pro Forma Condensed Combined Financial Statements

Table of Contents**O Reilly Automotive, Inc.****Unaudited Pro Forma Condensed Combined Statement of Income****Year Ended December 31, 2007****(in thousands)**

	Historical O Reilly Year ended December 31, 2007	Historical CSK Year ended February 3, 2008	Reclassifications (a)	Pro Forma Adjustments	O Reilly/CSK Combined Pro Forma
Sales	\$ 2,522,319	\$ 1,851,647	\$ (43,606)	\$	\$ 4,330,360
Cost of goods sold	1,401,859	984,649	(43,606)	5,961 (t)	2,348,863
Gross profit	1,120,460	866,998		(5,961)	1,981,497
Selling, general and administrative expenses	815,309	804,265	951	(2,396)(u)	1,618,129
Investigation and restatement costs		12,348			12,348
Securities class action settlement		11,700			11,700
Store closing cost		1,983			1,983
Operating income	305,151	36,702	(951)	(3,565)	337,337
Other income (expense), net:					
Interest expense	(3,723)	(54,163)	(279)	3,574 (v)	(54,591)
Interest income	4,077				4,077
Other	1,983		1,230		3,213
Income before income taxes	307,488	(17,461)		9	290,036
Provision for income taxes	113,500	(6,309)		3 (w)	107,194
Net income	\$ 193,988	\$ (11,152)	\$	\$ 6	\$ 182,842
Basic earnings per share	\$ 1.69				\$ 1.38
Diluted earnings per share	1.67				1.36
Average common shares:					
Basic	114,667			18,065 (x)	132,732
Diluted	116,080			18,330 (x)(y)	134,410

See accompanying Notes to Unaudited Pro Forma Condensed Combined Financial Statements

Table of Contents**O Reilly Automotive, Inc.****Unaudited Pro Forma Condensed Combined Statement of Income****Three Months Ended March 31, 2008****(in thousands)**

	Historical O Reilly Three months ended March 31, 2008	Historical CSK Thirteen weeks ended May 4, 2008	Reclassifications (a)	Pro Forma Adjustments	O Reilly/CSK Combined Pro Forma
Sales	\$ 646,220	\$ 461,104	\$ (10,727)	\$	\$ 1,096,597
Cost of goods sold	357,726	243,801	(10,727)	(2,624)(t)	588,176
Gross profit	288,494	217,303		2,624	508,421
Selling, general and administrative expenses	214,338	205,810	243	(520)(u)	419,871
Investigation and restatement costs		983			983
Insurance recovery		(15,000)			(15,000)
Store closing cost		785			785
Operating income	74,156	24,725	(243)	3,144	101,782
Other income (expense), net:					
Interest expense	(1,371)	(15,445)	(49)	3,341 (v)	(13,524)
Interest income	519				519
Other	402		292		694
Income before income taxes	73,706	9,280		6,485	89,471
Provision for income taxes	27,375	3,913		2,399 (w)	33,687
Net income	\$ 46,331	\$ 5,367	\$	\$ 4,086	\$ 55,784
Basic earnings per share	\$ 0.40				\$ 0.42
Diluted earnings per share	0.40				0.41
Average common shares:					
Basic	115,386			18,065 (x)	133,451
Diluted	116,291			18,295 (x)(y)	134,586

See accompanying Notes to Unaudited Pro Forma Condensed Combined Financial Statements

Table of Contents

Notes to Unaudited Pro Forma Condensed Combined Financial Statements

- (a) Certain reclassifications have been made to the historical presentation of CSK's financial statements to conform to O'Reilly's presentation.
- (b) Reflects (1) the estimated \$42.2 million cash payment to CSK shareholders, (2) estimated direct incremental transaction costs of \$7.5 million incurred by O'Reilly in connection with the merger (\$0.5 million of transaction costs related to the merger had been incurred and paid at March 31, 2008), (3) the estimated payment of \$10 million for transaction advisory fees to be incurred by CSK and, (4) payment of \$20.7 million for a portion of the costs incurred by O'Reilly in conjunction with the issuance of debt and the registration of the shares exchanged in the merger. The remainder of O'Reilly's total debt and equity issuance costs of \$45.4 million is expected to be paid from proceeds from the debt issuance.
- (c) Reflects the reclassification of current and deferred taxes on the unaudited pro forma condensed, combined balance sheet to reflect the categorization of these items on a combined basis. Goodwill recorded on the acquisition is not expected to be deductible for income tax purposes. Deferred tax asset and liability adjustments are expected when the purchase price allocation is finalized.
- (d) At March 31, 2008, O'Reilly leased certain properties under a synthetic operating lease facility. O'Reilly's assumption of certain of CSK's debt obligations and the anticipated borrowings under O'Reilly's new asset-based senior secured credit facility require O'Reilly to purchase the properties held in the lease, which pro forma impact is reflected in the pro forma financial data as a direct result of the acquisition. The repurchase would be financed with borrowings under the new asset-based facility.
- (e) Reflects the elimination of certain of CSK's historical identifiable intangible assets, primarily intangible assets recorded in CSK's acquisition of Murray's.
- (f) Reflects the elimination of CSK's historical goodwill.
- (g) Reflects the estimated goodwill to be recorded in conjunction with the merger prior to the finalization of the purchase price allocation.
- (h) Reflects the impact on deferred taxes as a result of pro forma adjustments.
- (i) Reflects adjustments (1) to eliminate O'Reilly's historical investment of \$21.2 million in CSK's shares, (2) to eliminate CSK's historical deferred financing costs in the amount of \$16.1 million related to the issuance of the term loan facility and senior credit facility that are refinanced in conjunction with the merger, and (3) to record estimated deferred financing costs of \$44.5 million related to O'Reilly's borrowing under its new asset-based senior secured credit facility.
- (j) Reflects the payment of accrued interest on CSK's outstanding debt that would be refinanced in conjunction with the repayment of amounts due under CSK's term loan facility and senior credit facility.
- (k) Reflects the repayment of amounts outstanding under CSK's term loan facility and senior credit facility, and corresponding pre-payment penalties, accelerated as a result of the change in control. The CSK term loan facility and senior credit facility accelerate with the change in control and will be repaid from borrowings under O'Reilly's new asset-based senior secured credit facility.
- (l) Reflects the repayment of \$25 million of O'Reilly Series 2001-B senior notes. O'Reilly's borrowings under its new asset-based senior secured credit facility used to refinance indebtedness in this transaction accelerate the O'Reilly Series 2001-B senior notes.
- (m) Reflects the repayment of O'Reilly Series 2006-A senior notes. O'Reilly's anticipated borrowings under its new asset-based senior secured credit facility accelerate the O'Reilly Series 2006-A senior notes.
- (n) Reflects the estimated fair value adjustment on CSK's 6³ / 4 % senior exchangeable notes based on current market rates. These notes are being assumed by O'Reilly and are expected to remain outstanding after the merger.

Table of Contents

- (o) Reflects estimated borrowings under O Reilly's new asset-based senior secured credit facility required to finance this transaction. The borrowings will be incurred to fund the following:

	in thousands
Repayment of CSK's term loan facility and senior credit facility and accrued interest as a result of the change in control, including corresponding pre-payment penalties of \$3.4 million.	\$ 404,690
Repayment of O Reilly's Series 2001-B and Series 2006-A senior notes as a result of the merger transaction.	100,000
Purchase of properties in O Reilly's synthetic operating lease facility required as a result of O Reilly's anticipated borrowings under the asset-based senior secured credit facility as a result of the merger transaction.	49,237
Financing fees recorded in connection with the new credit facility and costs associated with issuance of the shares exchanged in the merger. A portion of the estimated total \$45.4 million of these costs is assumed to be paid from existing cash balances.	24,583
Adjustment amount	\$ 578,510

- (p) Reflects adjustments (1) to eliminate CSK's historical liability of \$6.2 million for unfavorable leasehold interests, (2) to eliminate CSK's historical accruals for increasing rental rates and free rent periods of \$16.5 million, (3) to eliminate CSK's historical deferred liabilities for landlord inducements of \$13.3 million, and (4) to eliminate CSK's historical deferred gain on sale/leaseback transactions of \$1.2 million.
- (q) Reflects the adjustment to record the estimated fair value of O Reilly common shares to be issued and stock options to be exchanged as part of the purchase price.
- (r) Reflects elimination of O Reilly's unrealized loss on shares of CSK common stock purchased in the fourth quarter of 2007. The historical cost of the shares acquired is a portion of the purchase price consideration.
- (s) Reflects the adjustment to equity to reflect the elimination of CSK's historical stockholders' equity.
- (t) Reflects an estimated LIFO adjustment to conform CSK's method of recording inventory and cost of sales to last-in, first-out method.
- (u) The adjustment to selling, general and administrative expenses reflects the following:

	Year ended December 31, 2007 in thousands	Three months ended March 31, 2008 in thousands
Adjust amortization expense related to the elimination of CSK's historical identifiable intangible assets	\$ (3,108)	\$ (816)
Eliminate the amortization to rent expense of CSK's historical deferred liabilities for landlord inducements	2,437	589
Adjust rent and depreciation to reflect O Reilly's purchase of property, plant and equipment in conjunction with the elimination of the synthetic lease facility	(1,725)	(293)
	\$ (2,396)	\$ (520)

Table of Contents

(v) The adjustment to interest expense reflects the following:

	Year ended December 31, 2007 in thousands	Three months ended March 31, 2008 in thousands
Elimination of interest expense and amortization of deferred financing costs on CSK's term loan facility and senior credit facility repaid as a result of the change in control.	\$ (39,890)	\$ (12,070)
Amortization of estimated premium on fair value adjustment on CSK's 6% senior exchangeable notes and elimination of CSK's historical amortization of discount on the notes.	(3,243)	(713)
Elimination of interest expense on O'Reilly's Series 2001-B and Series 2006-A senior notes repaid as a result of the merger transaction.	(3,681)	(1,367)
Interest expense on O'Reilly's new asset-based senior secured credit facility assuming an interest rate of 5.4%. See the discussion of O'Reilly's financing on page 49 above.	31,240	7,810
Amortization of deferred financing fees recorded in connection with the new credit facility and estimated fees on unused facility capacity	12,000	2,999
Adjustment amount	\$ (3,574)	\$ (3,341)
Impact of 1/8% increase in interest rates on assumed borrowing of \$578.5 million	\$ 723	\$ 181
Impact of 1/8% decrease in interest rates on assumed borrowing of \$578.5 million	(723)	(181)

(w) Reflects the income tax expense related to the effect of the pro forma adjustments at a combined estimated federal and state (net of federal benefit) statutory income tax rate of 37.0%.

(x) Represents the shares of O'Reilly common stock expected to be issued to CSK stockholders to effect the merger.

(y) Includes the estimated dilutive impact of CSK stock options to be exchanged by O'Reilly.

Table of Contents

Annex A

AGREEMENT AND PLAN OF MERGER

among

O REILLY AUTOMOTIVE, INC.,

OC ACQUISITION COMPANY,

and

CSK AUTO CORPORATION

Dated as of April 1, 2008

Table of Contents**TABLE OF CONTENTS**

	Page
<u>ARTICLE I THE OFFER</u>	1
Section 1.1 <u>The Offer</u>	1
Section 1.2 <u>Offer Documents</u>	3
Section 1.3 <u>Company Actions</u>	3
Section 1.4 <u>Directors</u>	4
Section 1.5 <u>The Top-Up Option</u>	5
Section 1.6 <u>Short Form Merger</u>	6
<u>ARTICLE II THE MERGER</u>	6
Section 2.1 <u>The Merger</u>	6
Section 2.2 <u>Closing</u>	6
Section 2.3 <u>Effective Time</u>	7
Section 2.4 <u>Effects of the Merger</u>	7
Section 2.5 <u>Certificate of Incorporation; Bylaws</u>	7
Section 2.6 <u>Directors</u>	7
Section 2.7 <u>Officers</u>	7
Section 2.8 <u>Tax Consequences</u>	7
<u>ARTICLE III EFFECT ON THE CAPITAL STOCK OF THE CONSTITUENT CORPORATIONS; EXCHANGE OF CERTIFICATES</u>	7
Section 3.1 <u>Conversion of Capital Stock</u>	7
Section 3.2 <u>Treatment of Options and Other Equity-Based Awards</u>	8
Section 3.3 <u>Exchange and Payment</u>	9
Section 3.4 <u>Withholding Rights</u>	11
Section 3.5 <u>Dissenting Shares</u>	11
<u>ARTICLE IV REPRESENTATIONS AND WARRANTIES OF THE COMPANY</u>	12
Section 4.1 <u>Organization, Standing and Power</u>	12
Section 4.2 <u>Capital Stock</u>	13
Section 4.3 <u>Authority</u>	14
Section 4.4 <u>No Conflict; Consents and Approvals</u>	15
Section 4.5 <u>SEC Reports; Financial Statements</u>	15
Section 4.6 <u>Certain Information</u>	17
Section 4.7 <u>Absence of Certain Changes or Events</u>	17
Section 4.8 <u>Absence of Litigation</u>	17
Section 4.9 <u>Compliance with Laws</u>	18
Section 4.10 <u>Benefit Plans.</u>	18
Section 4.11 <u>Labor Matters.</u>	20
Section 4.12 <u>Environmental Matters</u>	20
Section 4.13 <u>Taxes</u>	21
Section 4.14 <u>Contracts</u>	23
Section 4.15 <u>Insurance</u>	23
Section 4.16 <u>Properties</u>	24
Section 4.17 <u>Intellectual Property</u>	24
Section 4.18 <u>Rights Plan</u>	25
Section 4.19 <u>Related Party Transactions</u>	25
Section 4.20 <u>Brokers</u>	25
Section 4.21 <u>Opinion of Financial Advisor</u>	25
Section 4.22 <u>Takeover Statute</u>	25

Table of Contents

	Page
<u>ARTICLE V REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB</u>	26
Section 5.1 <u>Organization, Standing and Power</u>	26
Section 5.2 <u>Capital Stock</u>	27
Section 5.3 <u>Authority</u>	28
Section 5.4 <u>No Conflict; Consents and Approvals</u>	28
Section 5.5 <u>SEC Reports; Financials Statements</u>	29
Section 5.6 <u>Certain Information</u>	30
Section 5.7 <u>Absence of Certain Changes or Events</u>	31
Section 5.8 <u>Absence of Litigation</u>	31
Section 5.9 <u>Compliance with Laws</u>	31
Section 5.10 <u>Ownership and Operations of Merger Sub</u>	31
Section 5.11 <u>Financing</u>	31
Section 5.12 <u>Vote/Approval Required</u>	31
Section 5.13 <u>Ownership of Shares</u>	31
Section 5.14 <u>No Other Representations or Warranties</u>	31
Section 5.15 <u>Access to Information</u>	32
Section 5.16 <u>Taxes</u>	32
Section 5.17 <u>Brokers</u>	33
Section 5.18 <u>Takeover Statute</u>	33
<u>ARTICLE VI COVENANTS</u>	33
Section 6.1 <u>Conduct of Business of the Company</u>	33
Section 6.2 <u>Conduct of Business of Parent and Merger Sub Pending the Merger</u>	35
Section 6.3 <u>No Control of Other Party's Business</u>	36
Section 6.4 <u>Acquisition Proposals</u>	36
Section 6.5 <u>Prospectus/Proxy Statement; Registration Statement; Stockholders Meeting</u>	38
Section 6.6 <u>Access to Information: Confidentiality</u>	39
Section 6.7 <u>Further Action; Efforts</u>	40
Section 6.8 <u>Employment and Employee Benefits Matters; Other Plans</u>	41
Section 6.9 <u>Takeover Laws</u>	43
Section 6.10 <u>Notification of Certain Matters</u>	43
Section 6.11 <u>Indemnification, Exculpation and Insurance</u>	43
Section 6.12 <u>Financing</u>	44
Section 6.13 <u>Rights Agreement</u>	45
Section 6.14 <u>Treatment of Exchangeable Notes</u>	45
Section 6.15 <u>Rule 16b-3</u>	46
Section 6.16 <u>Public Announcements</u>	46
Section 6.17 <u>Form S-8</u>	46
Section 6.18 <u>NASDAQ Listing</u>	46
Section 6.19 <u>Accountants</u>	46
Section 6.20 <u>Tax Treatment</u>	46
Section 6.21 <u>Transfer Taxes</u>	47
Section 6.22 <u>SOX Compliance</u>	47
Section 6.23 <u>Consummation of the Offer</u>	47
Section 6.24 <u>Debt Instruments</u>	48
<u>ARTICLE VII CONDITIONS PRECEDENT</u>	48
Section 7.1 <u>Conditions to Each Party's Obligation to Effect the Merger</u>	48
Section 7.2 <u>Frustration of Closing Conditions</u>	48

Table of Contents

	Page
<u>ARTICLE VIII TERMINATION, AMENDMENT AND WAIVER</u>	49
Section 8.1 <u>Termination</u>	49
Section 8.2 <u>Effect of Termination</u>	51
Section 8.3 <u>Fees and Expenses</u>	51
Section 8.4 <u>Amendment or Supplement</u>	52
Section 8.5 <u>Extension of Time; Waiver</u>	52
<u>ARTICLE IX GENERAL PROVISIONS</u>	52
Section 9.1 <u>Nonsurvival of Representations and Warranties</u>	52
Section 9.2 <u>Notices</u>	52
Section 9.3 <u>Certain Definitions</u>	53
Section 9.4 <u>Interpretation</u>	54
Section 9.5 <u>Entire Agreement</u>	54
Section 9.6 <u>Parties in Interest</u>	54
Section 9.7 <u>Governing Law</u>	54
Section 9.8 <u>Submission to Jurisdiction</u>	54
Section 9.9 <u>Assignment; Successors</u>	55
Section 9.10 <u>Enforcement</u>	55
Section 9.11 <u>Currency</u>	55
Section 9.12 <u>Severability</u>	55
Section 9.13 <u>Waiver of Jury Trial</u>	55
Section 9.14 <u>Counterparts</u>	56
Section 9.15 <u>Facsimile Signature</u>	56
Section 9.16 <u>No Presumption Against Drafting Party</u>	56
Section 9.17 <u>Parent Guarantee</u>	56
<u>ANNEX I</u>	58

Table of Contents**INDEX OF DEFINED TERMS**

Definition	Location
\$	9.11
409A Authorities	4.10(b)(v)
Acquisition Proposal	6.4(g)(i)
Action	4.8
Adjustment Amount	3.1(a)
Adverse Recommendation Change	6.4(c)
Affiliate	9.3(a)
Agreement	Preamble
Antitrust Law	6.7(e)
Arrangements	4.10(e)
Assumed Option	3.2(a)
Assumption	6.14
Board Recommendation	1.2(a)
Book-Entry Shares	3.3(b)
Business Day	9.3(b)
Certificate of Merger	2.3
Certificates	3.3(b)
Closing	2.2
Closing Date	2.2
Code	3.4
Common Stock	4.2(a)
Company	Preamble
Company Board	1.2(a)
Company Bylaws	4.1(b)
Company Charter	4.1(b)
Company Directors	1.4(a)
Company Disclosure Documents	4.6
Company Disclosure Letter	Article IV
Company Employees	6.8(b)
Company Equity Plans	3.2(a)
Company Plans	4.10(a)
Company Registered IP	4.17(a)
Company SEC Documents	4.5(a)
Company Stock Option	3.2(a)
Company Stock-Based Award	3.2(b)
Company Stockholder Approval	4.3
Company Stockholders Meeting	6.5(a)
Company Tax Opinion	6.23(a)(vi)
Company Tax Opinion Condition	6.23(a)(vi)
Confidentiality Agreement	1.3(c)
Contract	4.14
control	9.3(c)
controlled	9.3(c)
controlled by	9.3(c)
Costs	6.11(a)
Covered Securityholders	4.10(e)
Credit Agreements	9.3(d)
Debt Instruments	9.3(e)
Delaware Secretary of State	2.3

Table of Contents

Definition	Location
DGCL	1.1(b)
Dissenting Shares	3.5
DOJ	6.7(b)
dollars	9.11
Effective Time	2.3
Environmental Laws	4.12(d)
Environmental Permits	4.12(d)
ERISA	4.10(a)
ERISA Affiliate	4.10(a)
Exchange Act	1.1(a)
Exchange Agent	3.3(a)
Exchange Fund	3.3(a)
Exchange Ratio	3.1(a)
Exchangeable Notes	6.14
Financing	6.12
Financing Extension	1.1(b)
FTC	6.7(b)
Fully-Diluted Shares	1.1(a)
GAAP	4.5(b)
Governmental Entity	4.4(b)
HSR Act	4.4(b)
including	9.4
including, without limitation,	9.4
Indebtedness	4.5(i)
Indemnified Parties	6.11(a)
Indenture	6.14
Intellectual Property	4.17(c)
IRS	4.10(a)
knowledge	9.3(f)
Law	4.4(a)
Lease	4.16(b)
Leases	4.16(b)
Liens	4.2(a)
LLC	Recitals
LLC Merger	Recitals
Material Adverse Effect	4.1(a)
Material Contract	4.14(vii)
Materials of Environmental Concern	4.12(d)
Merger	Recitals
Merger Consideration	3.1(a)
Merger Sub	Preamble
Minimum Condition	1.1(a)
NASDAQ	3.1(a)
NASDAQ Condition	7.1(f)
Nonqualified Deferred Compensation Plan	4.10(b)(v)
NYSE	1.5(a)
Offer	Recitals
Offer Conditions	1.1(a)
Offer Documents	1.2(a)
Offer Price	3.1(a)
Offer to Purchase	1.2(a)
Outside Date	8.1(b)(i)
Paid Time Off	6.8(d)

Table of Contents

Definition	Location
Parent	Preamble
Parent Applicable Date	5.5(a)
Parent Certificate	6.23(b)
Parent Common Stock	3.1(a)
Parent Disclosure Letter	Article V
Parent Material Adverse Effect	5.1(a)
Parent Plan	6.8(b)
Parent Preferred Stock	5.2(a)
Parent Recent SEC Document	Article V
Parent SEC Documents	5.5(a)
Parent Tax Opinion	Annex I
Parent Trading Price	3.1(a)
PBGC	4.10(b)(iii)
Per Share Cash Consideration	3.1(a)
Per Share Stock Consideration	3.1(a)
Permits	4.9
Permitted Liens	4.16(a)
Person	9.3(g)
Post-Effective Amendment	6.5(a)
Prospectus	1.2(a)
Proxy Statement	4.6
PTO Limit	6.8(d)
PTO Policy	6.8(d)
Recent SEC Documents	Article IV
Registration Condition	7.1(e)
Registration Statement	1.2(a)
Representatives	6.4(a)
Rights	6.13
Rights Agreement	6.13
Sarbanes-Oxley Act of 2002	4.5(f)
Schedule 14D-9	1.3(b)
Schedule TO	1.2(a)
SEC	1.1(b)
Securities Act	4.5(a)
Shares	3.1(a)
Standstill Agreement	9.3(h)
Subsequent Offering Period	1.1(b)
Subsidiary	9.3(i)
Superior Proposal	6.4(g)(ii)
Surviving Corporation	2.1
Tax	4.13(m)
Tax Return	4.13(m)
Taxable	4.13(m)
Taxes	4.13(m)
Taxing Authority	4.13(m)
Termination Condition	Annex I
Termination Fee	8.3(b)
Top-Up Closing	1.5(c)
Top-Up Option	1.5(a)
Top-Up Option Shares	1.5(a)
under common control with	9.3(c)
US\$	9.11
WARN	6.8(c)

Table of Contents

AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER (this *Agreement*), dated as of April 1, 2008, between O Reilly Automotive Inc., a Missouri corporation (*Parent*), OC Acquisition Company, a Delaware corporation and an indirect wholly-owned Subsidiary of Parent (*Merger Sub*), and CSK Auto Corporation, a Delaware corporation (the *Company*).

RECITALS

WHEREAS, it is proposed that Merger Sub shall commence a tender offer (as it may be amended from time to time in accordance with this Agreement, the *Offer*) to acquire all of the outstanding Shares (as defined herein) of the Company s common stock, including the associated Rights (as defined herein), in exchange for the Offer Price (as defined herein).

WHEREAS, it is also proposed that, following the consummation of the Offer, Merger Sub will be merged with and into the Company with the Company surviving as a wholly-owned subsidiary of Parent (the *Merger*), and each Share that is not tendered and accepted pursuant to the Offer (other than Shares held in treasury of the Company or owned by Merger Sub, Parent or any Subsidiary of Parent or the Company immediately prior to the Effective Time, and other than Dissenting Shares) will thereupon be cancelled and converted into the right to receive the Offer Price;

WHEREAS, it is proposed that, following the consummation of the Merger, the Company may be merged with and into OC Holding Company, LLC, a Delaware limited liability company and a direct wholly-owned Subsidiary of Parent (the *LLC*), with the LLC surviving such merger (the *LLC Merger*);

WHEREAS, the Boards of Directors of Parent, Merger Sub and the Company has each approved this Agreement and deems it advisable and in the best interests of their respective companies and stockholders to consummate the Offer, the Merger, and the other transactions contemplated hereby, on the terms and subject to the conditions set forth in this Agreement;

WHEREAS, Parent, Merger Sub and the Company desire to make certain representations, warranties, covenants and agreements in connection with the Offer and the Merger and also to prescribe certain conditions to the Offer and the Merger as specified herein;

WHEREAS, for United States federal income tax purposes, the parties intend that the Offer, the Merger, and the LLC Merger (if any) constitute an integrated transaction that will qualify as a reorganization under the provisions of Section 368(a) of the Code (as defined below), and the parties intend, by executing this Agreement, to adopt a plan of reorganization within the meaning of Treasury Regulations, Section 1.368-2(g); and

NOW, THEREFORE, in consideration of the premises, and of the representations, warranties, covenants and agreements contained herein, and intending to be legally bound hereby, Parent, Merger Sub and the Company hereby agree as follows:

AGREEMENT

ARTICLE I

THE OFFER

Section 1.1 *The Offer*.

(a) Provided that nothing shall have occurred that, had the Offer been commenced, would give rise to a right to terminate the Offer pursuant to any of the conditions set forth in *Annex I*, as promptly as practicable after the date hereof (and in any event no later than ten (10) Business Days after the Company satisfies its obligations in the third sentence of Section 1.2(a)), Merger Sub shall, and Parent shall cause Merger Sub to,

Table of Contents

commence (within the meaning of Rule 14d-2 under the Securities Exchange Act of 1934, as amended (the *Exchange Act*)) the Offer. The Offer and the obligation of Merger Sub to, and of Parent to cause Merger Sub to, accept for payment and pay for any Shares tendered pursuant to the Offer shall be subject to the condition that there shall be validly tendered in accordance with the terms of the Offer, prior to the scheduled expiration of the Offer (as it may be extended hereunder) and not withdrawn, a number of Shares that, together with the Shares then directly or indirectly owned by Parent, represents at least a majority of the sum of (i) the total number of Shares outstanding immediately prior to the expiration of the Offer (as it may be extended in accordance with Section 1.1(b)) and (ii) a number of Shares determined by Parent up to a maximum of the total number of Shares issuable upon the exercise or conversion of all options, warrants, rights and convertible securities (if any) that will be vested by the Outside Date (such sum being the *Fully-Diluted Shares*) (the *Minimum Condition*) and to the other conditions set forth in *Annex I* (together with the Minimum Condition, the *Offer Conditions*). Merger Sub expressly reserves the right (but shall not be obligated) to waive any of the conditions to the Offer and to make any change in the terms of or conditions to the Offer; *provided*, that without the prior written consent of the Company, Merger Sub shall not (i) reduce the Offer Price, (ii) change the form of consideration payable in the Offer (other than adding consideration), (iii) reduce the number of Shares subject to the Offer, (iv) waive or change the Minimum Condition or the Termination Condition, (v) add to the Offer Conditions, (vi) extend the expiration of the Offer except as required or permitted by Section 1.1(b) or (vii) modify any Offer Condition or any term of the Offer set forth in this Agreement in a manner adverse to the holders of Shares.

(b) Subject to the terms and conditions of this Agreement, the Offer shall initially expire at midnight, New York City time, on the date that is 20 Business Days (for this purpose calculated in accordance with Rule 14d-1(g)(3) under the Exchange Act) after the date that the Offer is commenced. Merger Sub shall extend the Offer (1) on one or more occasions for periods determined by Merger Sub of up to 20 Business Days per extension if, at the scheduled or extended expiration date of the Offer, any of the Offer Conditions shall not have been satisfied or waived, from time to time, until the earliest to occur of (x) the satisfaction or waiver of such conditions and the consummation of the Offer or (y) the termination of this Agreement as permitted by Article VIII; and (2) for any period required by any rule, regulation, interpretation or position of the Securities and Exchange Commission (the *SEC*) or the staff thereof applicable to the Offer or any period required by applicable Law; *provided*, that no such extension or extensions shall occur after the earlier to occur of (1) the date on which all of the conditions of the Offer have been satisfied or waived and (2) the Outside Date; *provided, further*, notwithstanding the foregoing, Merger Sub, in its sole discretion, shall extend the Offer if in its reasonable discretion such extension is necessary for Parent to complete the necessary conditions to complete its financing transactions in connection with the Offer for an aggregate period of not more than ten (10) Business Days beyond the last expiration date of the Offer that would otherwise be permitted hereunder (*Financing Extension*) ; *provided, further*, notwithstanding the foregoing, Merger Sub may not extend the Offer pursuant to a Financing Extension if such extension would extend the expiration date of the Offer to a date later than the 30th Business Day after the date that the Offer is commenced. Notwithstanding the foregoing, Merger Sub shall extend the Offer, if required, in accordance with Section 6.23(c). Following expiration of the Offer, Merger Sub may, in its sole discretion, provide one or more subsequent offering periods (each, a *Subsequent Offering Period*) in accordance with Rule 14d-11 of the Exchange Act, if, as of the commencement of each such Subsequent Offering Period, there shall not have been validly tendered and not withdrawn pursuant to the Offer and any prior Subsequent Offering Period that number of Shares necessary to permit the Merger to be effected without a meeting of stockholders of the Company, in accordance with Section 253(a) of the General Corporation Law of the State of Delaware (the *DGCL*).

(c) Subject to the foregoing, including the requirements of Rule 14d-11 of the Exchange Act, and upon the terms and subject to the satisfaction or waiver by Merger Sub of the Offer Conditions as of any scheduled or extended expiration of the Offer, Merger Sub shall, and Parent shall cause Merger Sub to, promptly accept for exchange and exchange all Shares (A) validly tendered and not withdrawn pursuant to the Offer, and (B) validly tendered in any Subsequent Offering Period.

Table of Contents

(d) In the event this Agreement is terminated pursuant to Article VII prior to acceptance of Shares for exchange pursuant to the Offer, Parent and Merger Sub shall promptly terminate the Offer without accepting any Shares previously tendered.

(e) No fraction of a share of Parent Common Stock will be issued by virtue of the Offer, but in lieu thereof each holder of Shares who would otherwise be entitled to a fraction of a share of Parent Common Stock (after aggregating all fractional shares of Parent Common Stock that otherwise would be received by such holder) shall, upon surrender of such holder's Certificate(s), receive from Parent an amount of cash (rounded to the nearest whole cent), without interest, less the amount of any withholding taxes as contemplated by Section 3.4, which are required to be withheld with respect thereto, equal to the product of: (i) such fraction, multiplied by (ii) the Parent Trading Price.

Section 1.2 *Offer Documents.*

(a) As promptly as reasonably practicable on the date of commencement of the Offer, Parent and Merger Sub shall (i) file a Schedule TO (together with all amendments and supplements thereto, and including exhibits thereto, the *Schedule TO*) with respect to the Offer, which shall contain or shall incorporate by reference an offer to purchase (the *Offer to Purchase*) and forms of the related letter transmittal and form of summary advertisement, (ii) file with the SEC a registration statement on Form S-4 (or similar successor form) to register the offer and sale of the Parent Common Stock pursuant to the Offer and the Merger (including amendments or supplements thereto, the *Registration Statement*), which Registration Statement shall include a preliminary prospectus (the *Prospectus*) containing the information required under Rule 14d-4(b) promulgated under the Exchange Act (the Schedule TO, the Offer to Purchase, the Registration Statement, the Prospectus, and such other documents, together with all amendments and supplements thereto, the *Offer Documents*) and (iii) cause the Offer Documents to be disseminated to the Company's stockholders, in each case as and to the extent required by applicable federal securities Laws. Parent shall use its best efforts to have the Registration Statement declared effective under the Securities Act as promptly as practicable after the filing thereof with the SEC and to keep the Registration Statement effective as long as necessary to complete the Offer and the Merger. In cooperation with Parent, the Company shall, as promptly as practicable, furnish to Parent and Merger Sub in writing, for inclusion in the Offer Documents, all information concerning the Company and its Subsidiaries required under the Exchange Act to be included in the Offer Documents. Each of Parent, Merger Sub and the Company agrees to correct, as promptly as practicable, any information provided by it for use in the Offer Documents if and to the extent that such information shall have become false or misleading in any material respect, and each of Parent and Merger Sub further agrees to take all steps necessary to cause the Offer Documents as so corrected to be filed with the SEC and to be disseminated to the Company's stockholders, in each case as and to the extent required by applicable federal securities Laws. The Company and its counsel shall be given a reasonable opportunity to review and comment on the Offer Documents and any amendments and supplements thereto, in each case, prior to the filing thereof with the SEC, and Parent shall give reasonable and good faith consideration to all additions, deletions, changes and other comments suggested by the Company and its counsel. In addition, Parent and Merger Sub shall provide the Company and its counsel with (A) any comments or other communications, whether written or oral, that Parent, Merger Sub or their counsel may receive from time to time from the SEC or its staff with respect to the Offer Documents, as promptly as practicable, after receipt of those comments or other communications, and (B) a reasonable opportunity to participate in the response of Parent and Merger Sub to those comments and to provide comments on that response (to which reasonable and good faith consideration shall be given), including by participating with Parent and Merger Sub or their counsel in any discussions or meetings with the SEC.

Section 1.3 *Company Actions.*

(a) The Company hereby consents to the Offer and, to the extent that no Adverse Recommendation Change shall have occurred in accordance with Section 6.4, to the inclusion in the Offer Documents of the recommendation of the Board of Directors of the Company (the *Company Board*) described in Section 4.3 (the *Board Recommendation*).

Table of Contents

(b) As promptly as reasonably practicable on the date of filing by Parent and Merger Sub of the Offer Documents, the Company shall file with the SEC and disseminate to the Company's stockholders, in each case as and to the extent required by applicable federal securities Laws, a Solicitation/Recommendation Statement on Schedule 14D-9 (such Schedule 14D-9, together with any amendments or supplements thereto, and including exhibits thereto, the *Schedule 14D-9*) that, subject to Section 6.4, shall contain the Board Recommendation. Upon request by the Company, each of Parent and Merger Sub shall, as promptly as practicable, furnish to the Company in writing all information concerning Parent and Merger Sub that may be required by applicable federal securities Laws or reasonably requested by the Company for inclusion in the Schedule 14D-9. Each of the Company, Parent and Merger Sub agrees to correct, as promptly as practicable, any information provided by it for use in the Schedule 14D-9 if and to the extent that such information shall have become false or misleading in any material respect, and the Company further agrees to take all steps necessary to cause the Schedule 14D-9 as so corrected to be filed with the SEC and to be disseminated to the Company's stockholders, in each case, as and to the extent required by applicable federal securities Laws. Parent, Merger Sub and their counsel shall be given a reasonable opportunity to review and comment on the Schedule 14D-9 and any amendments and supplements thereto, in each case, prior to the filing thereof with the SEC, and the Company shall give reasonable and good faith consideration to all additions, deletions, changes or other comments suggested by Parent, Merger Sub and their counsel. In addition, the Company shall promptly provide Parent, Merger Sub and their counsel with (i) any comments or other communications, whether written or oral, that Parent, Merger Sub or their counsel may receive from time to time from the SEC or its staff with respect to the Schedule 14D-9 as promptly as practicable after receipt of those comments or other communications, and (ii) a reasonable opportunity to participate in the Company's response to those comments and to provide comments on that response (to which reasonable and good faith consideration shall be given), including by participating with the Company or its counsel in any discussions or meetings with the SEC.

(c) In connection with the Offer, the Company shall cause its transfer agent promptly to furnish Parent and Merger Sub with mailing labels, security position listings, any non-objecting beneficial owner lists and any available listings or computer files containing the names and addresses of the record holders of Shares as of the most recent practicable date and shall furnish Parent and Merger Sub with such additional available stockholder information (including, but not limited to, periodic updates of such information) as Parent, Merger Sub or their agents may reasonably request. Subject to the requirements of applicable Law, and except to facilitate dissemination of the Offer Documents and to otherwise perform any obligations hereunder, Parent and Merger Sub shall treat the information contained in such labels, listing or files and any additional information referred to in the preceding sentence in accordance with the terms and conditions of the Confidentiality Agreement, dated October 18, 2007, between Parent and the Company (the *Confidentiality Agreement*).

Section 1.4 *Directors*.

(a) Subject to compliance with applicable Law, promptly upon the payment by Merger Sub for Shares tendered pursuant to the Offer representing at least such number of Shares as shall satisfy the Minimum Condition, and from time to time thereafter, Parent shall be entitled to designate the number of directors, rounded up to the next whole number, on the Company Board as is equal to the product of (x) the total number of directors on the Company Board (determined after giving effect to the directors elected pursuant to this Section 1.4(a)) and (y) the percentage that the aggregate number of Shares beneficially owned by Parent and/or its Affiliates (including Merger Sub) at such time (including Shares so accepted for payment) bears to the total number of Shares then outstanding. In furtherance thereof, the Company shall, promptly use commercially reasonable efforts to cause Parent's designees to be elected or appointed to the Company Board, including, without limitation, increasing the size of the Company Board and/or seeking and accepting the resignations of one or more incumbent directors. At such time, the Company shall, also promptly use commercially reasonable efforts to cause individuals designated by Parent to constitute at least the same percentage (rounded up to the next whole number) as is on the Company Board of (i) each committee of the Company Board, other than a committee of the Company Board, if any, established to take

Table of Contents

action with respect to this Agreement or the transactions contemplated hereby and (ii) each board of directors of each Subsidiary of the Company (and each committee thereof). The Company shall use commercially reasonable efforts to ensure that two of the members of the Company Board as of the date hereof, each of whom shall be an independent director as defined under the rules of the New York Stock Exchange, shall remain members of the Company Board until the Effective Time (the *Company Directors*). If the Company Directors are unable to serve for any reason prior to the Effective Time, the remaining Company Director or his or her designee shall be entitled to designate a person (or persons) to fill such vacancy (or vacancies) and such person shall be a Company Director for all purposes hereunder. If at any time the Company Directors deem it necessary to consult legal counsel in connection with their duties as Company Directors or actions taken, being taken or to be taken by the Company, the Company Directors may retain one firm as legal counsel for such purpose in each such instance, and the Company shall pay, at the Company Directors' discretion, the reasonable, documented fees and expenses of any such firm acting as legal counsel incurred in connection herewith.

(b) The Company's obligations to appoint Parent's designees to the Company Board shall be subject to Section 14(f) of the Exchange Act and Rule 14f-1 promulgated thereunder. Subject to Parent's compliance with the final sentence of this Section 1.4(b), the Company shall, as promptly as practicable, take all actions required pursuant to Section 14(f) and Rule 14f-1 in order to fulfill its obligations under this Section 1.4, including mailing to stockholders together with the Schedule 14D-9 the information required under Section 14(f) and Rule 14f-1 as is necessary to enable Merger Sub's designees to be elected or appointed to the Company Board. Parent shall supply to the Company any information with respect to itself and its officers, directors and Affiliates to the extent required by Section 14(f) and Rule 14f-1.

(c) Following the election or appointment of Parent's designees pursuant to this Section 1.4 and prior to the Effective Time, any amendment of this Agreement, any termination of the Agreement by the Company, any extension by the Company of the time for the performance of any of the obligations of Parent or Merger Sub or waiver of any of the Company's rights hereunder or other action adversely affecting the rights of stockholders of the Company (other than Parent or Merger Sub), with respect to the transactions contemplated by this Agreement, will require the concurrence of a majority of the Company Directors; *provided*, that if there shall be no Company Directors as a result of such individuals' deaths, disabilities, resignations or refusal to serve, then such actions may be effected by a majority vote of the Company Board.

Section 1.5 *The Top-Up Option.*

(a) The Company hereby irrevocably grants to Parent and Merger Sub an option (the *Top-Up Option*), exercisable upon the terms and conditions set forth in this Section 1.5, to purchase that number of Shares (the *Top-Up Option Shares*) equal to the lowest number of Shares that, when added to the number of Shares directly or indirectly owned by Parent at the time of such exercise, shall constitute one share more than 90% of the Shares then outstanding (taking into account the issuance of the Top-Up Option Shares) at a price per share equal to the Offer Price; *provided*, that in no event shall the Top-Up Option be exercisable for a number of Shares (i) that would require the Company to obtain stockholder approval under applicable Law or the rules and regulations of the New York Stock Exchange (the *NYSE*), or (ii) in excess of the Company's then authorized and unissued shares of common stock (giving effect to Shares reserved for issuance under the Company Equity Plans and pursuant to the exercise of any other securities convertible into or exchangeable into Shares, if any, as if such Shares were outstanding but not giving effect to Shares reserved for issuance pursuant to the Rights, but including as authorized and unissued shares of Common Stock, for purposes of this Section 1.5, any shares held in the treasury of the Company). Notwithstanding any other provisions to the contrary, the Top-Up Option shall not be exercised in the event that it would prevent the Offer, the Merger and the LLC Merger (if any) from qualifying as a reorganization within the meaning of Section 368(a) of the Code.

(b) Parent or Merger Sub may exercise the Top Up Option, in whole or in part, at any time after the consummation of the Offer and prior to the earlier to occur of (i) the Effective Time and (ii) the termination of this Agreement in accordance with its terms; *provided*, that upon exercise of the Top Up Option, Parent

Table of Contents

will directly or indirectly own one share more than 90% of the Company Shares (after giving effect to the issuance of the Top Up Option Shares).

(c) In the event Parent or Merger Sub wishes to exercise the Top-Up Option, Parent or Merger Sub shall so notify the Company in writing, and shall set forth in such notice (i) the number of Shares that will be owned by Parent and Merger Sub immediately preceding the purchase of the Top-Up Option Shares, (ii) the number of Top Up Shares that Parent or Merger Sub intends to purchase pursuant to the Top Up Option, and (iii) the place and time for the closing of the purchase of the Top-Up Option Shares, which shall not be more than five (5) Business Days after delivery of such notice (the *Top-Up Closing*). The Company shall, as soon as practicable following receipt of such notice, notify Parent and Merger Sub in writing of the number of Shares then outstanding. At the Top-Up Closing, Parent or Merger Sub shall pay the Company the aggregate purchase price required to be paid for the Top-Up Option Shares (calculated by multiplying the number of such Top Up Option Shares by the Offer Price), at Parent's option, through the issuance of a promissory note, bearing simple interest at five percent per annum and due on the first anniversary of the Top Up Closing for the purchase price of such Top Up Option Shares and the Company shall cause to be issued to Parent or Merger Sub a certificate representing such Top-Up Option Shares, which certificate may include any legends required by applicable securities Laws.

(d) Parent and Merger Sub acknowledge that the Shares which Parent or Merger Sub may acquire upon exercise of the Top-Up Option will not be registered under the Securities Act and will be issued in reliance upon an exemption thereunder for transactions not involving a public offering. Parent and Merger Sub represent and warrant to the Company that each of Parent and Merger Sub is, and will be upon the purchase of the Top-Up Option Shares, an accredited investor, as defined in Rule 501 of Regulation D under the Securities Act. Parent and Merger Sub agree that the Top-Up Option and the Top-Up Option Shares to be acquired upon exercise of the Top-Up Option are being and will be acquired by Parent or Merger Sub for the purpose of investment and not with a view to, or for resale in connection with, any distribution thereof (within the meaning of the Securities Act).

Section 1.6 *Short Form Merger*. If, after the consummation of the Offer and any exercise of the Top-Up Option, the number of Shares beneficially owned by Parent, Merger Sub and any other Affiliates of Parent collectively represent at least 90% of the then outstanding Shares, Parent shall cause Merger Sub to, and the Company shall execute and deliver such documents and instruments and take such other actions as Parent or Merger Sub may reasonably request, in order to cause the Merger to be completed as promptly as reasonably practicable as provided in Section 253 of the DGCL, and otherwise as provided in Articles II and III below.

ARTICLE II

THE MERGER

Section 2.1 *The Merger*. Upon the terms and subject to the satisfaction or, to the extent permitted by applicable Law, waiver of the conditions set forth in this Agreement and in accordance with the DGCL, at the Effective Time, Merger Sub shall be merged with and into the Company. Following the Merger, the separate corporate existence of Merger Sub shall cease, and the Company shall continue as the surviving corporation in the Merger (the *Surviving Corporation*) and a wholly-owned subsidiary of Parent.

Section 2.2 *Closing*. The closing of the Merger (the *Closing*) shall take place at 10:00 a.m., local time, as soon as practicable but in no event later than the second Business Day following the satisfaction or, to the extent permitted by applicable Law, waiver of the conditions set forth in Article VII (other than those conditions that by their terms are to be satisfied at the Closing, but subject to the satisfaction or, to the extent permitted by applicable Law, waiver of those conditions), at the principal offices of the Company, unless another date, time or place is agreed to in writing by Parent and the Company. The date on which the Closing occurs is referred to in this Agreement as the *Closing Date*.

Table of Contents

Section 2.3 *Effective Time*. Upon the terms and subject to the provisions of this Agreement, on the Closing Date, the parties shall file a certificate of merger, or if applicable, a certificate of ownership and merger (as applicable, the *Certificate of Merger*), with the Secretary of State of the State of Delaware (the *Delaware Secretary of State*), executed in accordance with the relevant provisions of the DGCL, and, as soon as practicable on or after the Closing Date, shall make any and all other filings or recordings required under the DGCL. The Merger shall become effective at such time as the Certificate of Merger is duly filed with the Delaware Secretary of State or at such other date or time as Parent and the Company shall agree in writing and shall specify in the Certificate of Merger (the time the Merger becomes effective being the *Effective Time*).

Section 2.4 *Effects of the Merger*. The Merger shall have the effects set forth in this Agreement and in the relevant provisions of the DGCL. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, all the property, rights, privileges, powers and franchises of the Company and Merger Sub shall vest in the Surviving Corporation, and all debts, liabilities and duties of the Company and Merger Sub shall become the debts, liabilities and duties of the Surviving Corporation.

Section 2.5 *Certificate of Incorporation; Bylaws*.

(a) The certificate of incorporation of Merger Sub, as in effect immediately prior to the Effective Time, shall be the certificate of incorporation of the Surviving Corporation until thereafter amended in accordance with the provisions thereof and applicable Law, except that Article I thereof shall read as follows: The name of the Corporation is CSK Auto Corporation.

(b) The Bylaws of Merger Sub, as in effect immediately prior to the Effective Time, shall be the Bylaws of the Surviving Corporation until thereafter amended in accordance with the provisions thereof and applicable Law, except that such Bylaws shall be amended to reflect that the name of Surviving Corporation shall be CSK Auto Corporation.

Section 2.6 *Directors*. The directors of Merger Sub immediately prior to the Effective Time shall be the directors of the Surviving Corporation until the earlier of their resignation or removal or until their respective successors are duly elected and qualified.

Section 2.7 *Officers*. The officers of the Company immediately prior to the Effective Time shall be the officers of the Surviving Corporation until the earlier of their resignation or removal or until their respective successors are duly elected and qualified.

Section 2.8 *Tax Consequences*. It is intended by the parties hereto that the Offer, the Merger, and the LLC Merger (if any) shall constitute an integrated transaction that qualifies as a reorganization within the meaning of Section 368(a) of the Code. The parties hereto adopt this Agreement as a plan of reorganization within the meaning of Treasury Regulations, Section 1.368-2(g).

ARTICLE III

EFFECT ON THE CAPITAL STOCK OF THE

CONSTITUENT CORPORATIONS; EXCHANGE OF CERTIFICATES

Section 3.1 *Conversion of Capital Stock*. At the Effective Time, by virtue of the Merger and without any action on the part of the Company, Parent, Merger Sub or the holders of any shares of capital stock of the Company, Parent or Merger Sub:

(a) Each share of common stock, par value \$0.01 per share, of the Company (such shares, collectively, the *Shares*) issued and outstanding immediately prior to the Effective Time (other than (i) Shares to be cancelled in accordance with Section 3.1(b) and (ii) any Dissenting Shares), together with the associated Rights, shall thereupon be cancelled and extinguished and converted automatically into and shall thereafter

Table of Contents

represent the right to receive (x) a fraction of a fully paid and nonassessable share of common stock, par value \$0.01 per share, of Parent (*Parent Common Stock*) equal to the Exchange Ratio (the *Per Share Stock Consideration*) and (y) \$1.00 in cash minus the Adjustment Amount, if any (the *Per Share Cash Consideration*, and together with the Per Share Stock Consideration, the *Offer Price*) (together with any cash paid in respect of fractional shares in accordance with Section 3.3(g), without interest, and subject to deduction for any required withholding Tax) (the *Merger Consideration*). For purposes of this Agreement, *Exchange Ratio* shall equal \$11.00 divided by the Parent Trading Price and rounded to four decimal places; *provided, however*, that if the Parent Trading Price is greater than \$29.95, then the Exchange Ratio shall equal 0.3673, and if the Parent Trading Price is less than \$25.67, then the Exchange Ratio shall equal 0.4285. For purposes of this Agreement, the *Parent Trading Price* means the average of the reported closing sale prices per share of Parent Common Stock on The NASDAQ Stock Market, Inc. (*NASDAQ*) as reported in *The Wall Street Journal* for the five (5) consecutive trading days ending on (and including) the second trading day prior to the consummation of the Offer. For purposes of this Agreement, *Adjustment Amount* shall mean an amount equal to quotient obtained by dividing (1) (x) minus (y) by (2) (z) where (x) equals the sum of any amount paid by the Company or its Subsidiaries to the lenders under the Credit Agreements in connection with obtaining any bank consent, waiver or amendment under the Credit Agreements after the date hereof, (y) equals \$3,000,000 and (z) equals the Fully-Diluted Shares; *provided*, that in the event the quotient is a negative number, the Adjustment Amount shall be zero; *provided, further*, that the Adjustment Amount shall in no event exceed \$1.00; *provided, further*, that for all purposes hereof, the Adjustment Amount shall be rounded down to the nearest 1/10 (one-tenth) of a cent.

(b) Each Share held in the treasury of the Company or owned, directly or indirectly, by Parent or Merger Sub immediately prior to the Effective Time shall automatically be cancelled and retired and shall cease to exist, and no consideration shall be delivered in exchange therefor.

(c) Each share of common stock, par value \$0.01 per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and become one (1) validly issued, fully paid and non-assessable share of common stock, par value \$0.01 per share, of the Surviving Corporation.

(d) If at any time during the period between the date of this Agreement and the Effective Time, any change in the outstanding shares of capital stock of Parent, or securities convertible into or exchangeable into or exercisable for shares of such capital stock, shall occur as a result of any reclassification, recapitalization, stock split (including a reverse stock split) or subdivision or combination, exchange or readjustment of shares, or any stock dividend or stock distribution with a record date during such period (excluding, in each case, normal quarterly cash dividends), merger or other similar transaction, all mechanics of calculating the Exchange Ratio as set forth in Section 3.1(a) shall be equitably adjusted, without duplication, to reflect such change.

Section 3.2 *Treatment of Options and Other Equity-Based Awards.*

(a) At the Effective Time (or such earlier date as Parent may elect on or following consummation of the Offer), each option or similar right (each, a *Company Stock Option*) to purchase Shares granted under any employee or director stock option, stock purchase or equity compensation plan, arrangement or agreement of the Company (the *Company Equity Plans*), whether vested or unvested, that is outstanding immediately prior to the Effective Time (each, an *Assumed Option*) shall be automatically converted into an option to acquire that number of shares of Parent Common Stock equal to the product obtained by multiplying (x) the number of Shares subject to such cancelled Company Stock Option and (y) the Option Exchange Ratio, rounded down to the nearest whole share of Parent Common Stock. Each Assumed Option shall have an exercise price equal to the quotient obtained by dividing the per share exercise price of Shares subject to such Company Stock Option by (y) the Option Exchange Ratio (which price per share shall be rounded up to the nearest cent). After the Effective Time, each Assumed Option shall be subject to the same terms and conditions as were applicable to the related Company Stock Option immediately prior to the Effective Time (but taking into account any changes thereto, including any acceleration or vesting thereof, provided for in the relevant Company Equity Plan, or in the related award document by reason of the Offer, the Merger or

Table of Contents

the transactions contemplated hereby). It is the intention of the parties that each Assumed Option that qualifies as an incentive stock option (as defined in Section 422 of the Code) shall continue to so qualify, to the maximum extent permissible, following the Effective Time and that the foregoing conversion formula shall be adjusted if necessary to comply with Section 409A and 424(a) of the Code. For purposes of this Agreement, Option Exchange Ratio shall be the sum of (x) plus (y), where (x) is the Exchange Ratio and (y) is the number equal to the quotient of the Per Share Cash Consideration divided by the Parent Trading Price.

(b) At the Effective Time, each vested right of any kind, contingent or accrued, to receive Shares or benefits measured by the value of a number of Shares, and each award of any kind consisting of Shares (including restricted stock, restricted stock units, performance units, performance shares and other stock-based awards, other than Company Stock Options (each, a *Company Stock-Based Award*), that is outstanding immediately prior to the Effective Time, shall be converted into the right to receive the Offer Price multiplied by the number of Shares subject to such Company Stock-Based Award in accordance with Section 3.1(a). At the Effective Time, each unvested Company Stock-Based Award that is outstanding immediately prior to the Effective Time shall be converted into the right to receive a comparable right to receive that number of shares of Parent Common Stock equal to the Option Exchange Ratio, as calculated in accordance with Section 3.2(a), multiplied by the number of Shares subject to such Company Stock-Based Award. After the Effective Time, each unvested Company Stock-Based Award shall be subject to the same terms and conditions as were applicable to the related Company Stock-Based Award immediately prior to the Effective Time (but taking into account any changes thereto, including any acceleration or vesting thereof, provided for in the relevant Company Equity Plan, or in the related award document by reason of the Merger or the transactions contemplated hereby).

(c) Prior to the Effective Time, the Company and Parent shall adopt such resolutions and take such appropriate action as may be reasonably required to effectuate the provisions of this Section 3.2, including adopting resolutions of its Compensation Committee and delivering to the other party such documentation of such actions as the other party may reasonably request.

Section 3.3 *Exchange and Payment.*

(a) Prior to the Effective Time, Merger Sub shall enter into an agreement with the Company's transfer agent or other exchange agent selected by Parent and reasonably acceptable to the Company (the *Exchange Agent*) to receive the Merger Consideration to which stockholders of the Company shall become entitled pursuant to this Article III. At or prior to the Effective Time, Parent shall deliver (or cause to be delivered) to the Exchange Agent certificates representing shares of Parent Common Stock and deposit (or cause to be deposited) with the Exchange Agent cash in an amount sufficient to make all payments pursuant to this Article III (such cash being hereinafter referred to as the *Exchange Fund*). The Exchange Fund shall not be used for any purpose other than to fund payments due pursuant to this Article III, except as provided in this Agreement. The Surviving Corporation shall pay all charges and expenses, including those of the Exchange Agent, incurred by it in connection with the exchange of Shares for the Merger Consideration and other amounts contemplated by this Article III. Parent shall have the right to withdraw from the Exchange Fund any amount paid or shares of Parent Common Stock delivered by Parent or the Surviving Corporation with respect to any Dissenting Shares, the amount so withdrawn not to exceed the amount of consideration held in the Exchange Fund with respect to such Dissenting Shares.

(b) As promptly as practicable following the Effective Time and in any event not later than the second Business Day thereafter, the Surviving Corporation shall instruct the Exchange Agent to mail to each holder of record of (i) a certificate or certificates (*Certificates*) that immediately prior to the Effective Time represented outstanding Shares or (ii) uncertificated Shares represented by book-entry (*Book-Entry Shares*) which, in each case, were converted into the right to receive the Merger Consideration with respect thereto pursuant to Section 3.1(a) and any dividends or distributions payable in respect thereof pursuant to Section 3.3(h), (i) a form of letter of transmittal (which shall be in customary form and shall specify that

Table of Contents

delivery shall be effected, and risk of loss and title to the Certificates or Book-Entry Shares held by such Person shall pass, only upon proper delivery of the Certificates to the Exchange Agent or, in the case of Book-Entry Shares, upon adherence to the procedures set forth in the letter of transmittal, together with such letter(s) of transmittal properly completed and duly executed to the Exchange Agent) and (ii) instructions for use in effecting the surrender of Certificates or Book-Entry Shares in exchange for the Merger Consideration payable with respect thereto pursuant to Section 3.1(a) and any dividends or distributions payable in respect thereof pursuant to Section 3.3(h). Upon surrender of a Certificate or Book-Entry Share to the Exchange Agent, together with such letter of transmittal, properly completed and duly executed, and such other documents as the Exchange Agent may reasonably require, the holder of such Certificate or Book-Entry Share shall be entitled to receive in exchange therefor the Merger Consideration for each Share formerly represented by such Certificate or Book-Entry Share (subject to deduction for any required withholding Tax) and any dividends or distributions payable in respect thereof pursuant to Section 3.3(h), and such Certificate or Book-Entry Share shall forthwith be cancelled. No interest shall be paid or shall accrue on any cash payable upon surrender of any Certificate or Book-Entry Share. In the event that the Merger Consideration and any dividends or distributions payable in respect thereof pursuant to Section 3.3(h) are to be paid to a Person other than the Person in whose name any Certificate is registered, it shall be a condition of payment that the Certificate so surrendered shall be properly endorsed or otherwise in proper form for transfer, that the signatures on such Certificate or any related stock power shall be properly guaranteed and that the Person requesting such payment shall pay any transfer or other Taxes required by reason of such payment to a Person other than the registered holder of such Certificate or establish to the satisfaction of the Surviving Corporation that such Taxes have been paid or are not applicable. Until surrendered as contemplated by this Section 3.3, each Certificate or Book-Entry Share shall be deemed at any time after the Effective Time to represent only the right to receive upon such surrender or transfer the Merger Consideration pursuant to Section 3.1(a) and any dividends or distributions payable in respect thereof pursuant to Section 3.3(h) payable in respect of Shares theretofore represented by such Certificate or Book-Entry Shares, as applicable, without any interest thereon.

(c) The delivery of all shares of Parent Common Stock and all cash paid upon the surrender for exchange of Certificates or Book-Entry Shares in accordance with the terms of this Article III shall be deemed to have been delivered and paid in full satisfaction of all rights pertaining to the Shares, together with the associated Rights, formerly represented by such Certificates or Book-Entry Shares. At the Effective Time, the stock transfer books of the Company shall be closed and there shall be no further registration of transfers on the stock transfer books of the Surviving Corporation of the Shares that were outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates are presented to the Surviving Corporation or the Exchange Agent for transfer or transfer is sought for Book-Entry Shares, such Certificates or Book-Entry Shares shall be cancelled and exchanged as provided in this Article III, subject to applicable Law in the case of Dissenting Shares.

(d) The Exchange Agent shall invest any cash included in the Exchange Fund as directed by Parent; provided, however, that no such investment or loss thereon shall affect the amounts payable to holders of Shares. Any interest and other income resulting from such investments shall be the sole and exclusive property of Parent payable to Parent upon its request, and no part of such earnings shall accrue to the benefit of holders of Shares.

(e) At any time following the date that is six (6) months after the Effective Time, the Surviving Corporation shall be entitled to require the Exchange Agent to deliver to it any funds (including any interest received with respect thereto) which have been made available to the Exchange Agent and which have not been disbursed to holders of Certificates or Book-Entry Shares, and thereafter such holders shall be entitled to look to Parent and the Surviving Corporation (subject to abandoned property, escheat or other similar Laws) only as general creditors thereof with respect to the Merger Consideration and any dividends or distributions payable in respect thereof pursuant to Section 3.3(h), without any interest thereon, payable upon due surrender of their Certificate or Book-Entry Shares. Notwithstanding anything herein to the contrary, none of the Company, Parent, Merger Sub, the Surviving Corporation, the Exchange Agent or any

Table of Contents

other person shall be liable to any former holder of Shares, for any amount properly delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law.

(f) If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit, in form and substance reasonably acceptable to Parent, of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if required by Parent or the Exchange Agent, the posting by such Person of a bond in such amount as Parent or the Exchange Agent may determine is reasonably necessary as indemnity against any claim that may be made against it or the Surviving Corporation with respect to such Certificate, the Exchange Agent will deliver in exchange for such lost, stolen or destroyed Certificate the Merger Consideration and any dividends or distributions payable in respect thereof pursuant to Section 3.3(h), without any interest thereon, payable in respect thereof pursuant to this Agreement.

(g) No fraction of a share of Parent Common Stock will be issued by virtue of the Merger, but in lieu thereof each holder of Shares who would otherwise be entitled to a fraction of a share of Parent Common Stock (after aggregating all fractional shares of Parent Common Stock that otherwise would be received by such holder) shall, upon surrender of such holder's Certificate(s), receive from Parent an amount of cash (rounded to the nearest whole cent), without interest, less the amount of any withholding Taxes as contemplated by Section 3.4, which are required to be withheld with respect thereto, equal to the product of: (i) such fraction, multiplied by (ii) the Parent Trading Price.

(h) No dividends or other distributions declared or made after the date hereof with respect to Parent Common Stock with a record date after the Effective Time and no cash payment in lieu of fractional shares pursuant to Section 3.3(g) will be paid to the holders of any unsurrendered Certificates with respect to the shares of Parent Common Stock represented thereby until the holders of record of such Certificates shall surrender such Certificates. Subject to applicable Law, following surrender of any such Certificates, the Exchange Agent shall deliver to the record holders thereof, without any interest thereon (i) promptly after such surrender, the Merger Consideration and the amount of any such dividends or other distributions with a record date after the Effective Time and theretofore paid with respect to such whole shares of Parent Common Stock and (ii) at the appropriate payment date, the amount of dividends or other distributions with a record date after the Effective Time and a payment date subsequent to such surrender payable with respect to such whole shares of Parent Common Stock.

Section 3.4 *Withholding Rights*. Parent, the Surviving Corporation or the Paying Agent shall be entitled to deduct and withhold from the consideration otherwise payable to any holder of Shares, Company Stock Options or otherwise pursuant to this Agreement such amounts as Parent, the Surviving Corporation or the Paying Agent is required to deduct and withhold with respect to the making of such payment under the Internal Revenue Code of 1986, as amended (the *Code*), or any provision of state, local or foreign tax Law. To the extent that amounts are so withheld and paid over to the appropriate taxing authority by Parent, the Surviving Corporation or the Paying Agent, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

Section 3.5 *Dissenting Shares*. Notwithstanding anything in this Agreement to the contrary, Shares issued and outstanding immediately prior to the Effective Time that are held by any holder who has not voted in favor of the Merger and who is entitled to demand and properly demands appraisal of such Shares pursuant to Section 262 of the DGCL (*Dissenting Shares*) shall not be converted into the right to receive the Merger Consideration, unless and until such holder shall have failed to perfect, or shall have effectively withdrawn or lost, such holder's right to appraisal under the DGCL. Dissenting Shares shall be treated in accordance with Section 262 of the DGCL. If any such holder fails to perfect or withdraws or loses any such right to appraisal, each such Share of such holder shall thereupon be converted into and become exchangeable only for the right to receive, as of the later of the Effective Time and the time that such right to appraisal has been irrevocably lost, withdrawn or expired, the Merger Consideration in accordance with Section 3.1(a). The Company shall serve prompt notice to Parent of any demands for appraisal of any Shares, attempted withdrawals of such notices or demands and any other instruments received by the Company relating to rights to appraisal, and Parent shall have

Table of Contents

the right to participate in all negotiations and proceedings with respect to such demands. The Company shall not, without the prior written consent of Parent, make any payment with respect to, or settle or offer to settle, any such demands.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except (i) as disclosed or reflected in the Company's Annual Report on Form 10-K for the fiscal year ended February 4, 2007, the Company's Quarterly Reports on Forms 10-Q for the quarters ended May 6, 2007, August 5, 2007, and November 4, 2007, the Company's Proxy Statement filed on Schedule 14A, dated November 1, 2007, and the Company's Current Reports on Form 8-K filed with the SEC after February 4, 2007 and prior to the date of this Agreement and all amendments to any of the foregoing filed with the SEC prior to the date of this Agreement (collectively the *Recent SEC Documents*) (other than statements in the Risk Factors Sections that do not relate to historical facts and are forward looking in nature); provided that such disclosures shall apply only to the extent that the nature and content of the disclosure in the Recent SEC Documents is reasonably apparent on the face of the text of such disclosure to be applicable to the subject matter of a representation and warranty or (ii) as set forth in the disclosure letter delivered by the Company to Parent prior to the execution of this Agreement (the *Company Disclosure Letter*) (it being agreed that disclosure of any information in a particular section or subsection of the Company Disclosure Letter shall be deemed disclosure with respect to any other section or subsection of this Agreement to which the relevance of such information is reasonably apparent on its face), the Company represents and warrants to Parent and Merger Sub as follows:

Section 4.1 *Organization, Standing and Power.*

(a) Each of the Company and its Subsidiaries (i) is an entity duly organized, validly existing and in good standing (with respect to jurisdictions that recognize such concept) under the Laws of the jurisdiction of its organization, (ii) has all requisite corporate or similar power and authority to own, lease and operate its properties and to carry on its business as now being conducted and (iii) is duly qualified or licensed to do business and is in good standing (with respect to jurisdictions that recognize such concept) in each jurisdiction in which the nature of its business or the ownership, leasing or operation of its properties makes such qualification or licensing necessary, except for any such failures to have such power and authority or to be so qualified or licensed or in good standing as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. For purposes of this Agreement, *Material Adverse Effect* means any fact, circumstance, event, change, effect, development, or occurrence that, either individually or in the aggregate, is materially adverse to (A) the business, assets, liabilities, condition (financial or otherwise) or results of operations of the Company and its Subsidiaries, taken as a whole or (B) the ability of the Company to perform, in all material respects, its obligations under this Agreement or to consummate the transactions contemplated hereby; *provided, however*, that *Material Adverse Effect* shall not include the effect of any fact, circumstance, event, change, effect, development, or occurrence arising out of or attributable to any of the following, either alone or in combination: (1) the industry and markets in which the Company and its Subsidiaries operate generally (that do not materially disproportionately affect the Company and its Subsidiaries, taken as a whole), (2) general economic, business, regulatory or political conditions (including those affecting the securities or financial markets) (that do not materially disproportionately affect the Company and its Subsidiaries, taken as a whole), (3) gasoline prices in the United States, (4) the matters set forth on Section 4.1(a) of the Company Disclosure Letter, (5) any actions required under this Agreement to obtain any approval or authorization under applicable antitrust or competition Laws for the consummation of the Offer or the Merger, (6) the public announcement or pendency of this Agreement or the consummation of the transactions contemplated hereby (including any loss of employees or labor disputes or employee strikes, slowdowns, job actions or work stoppages or labor union activities or any termination or reduction or similar negative impact on relationships, contractual or otherwise, with any customers, suppliers or distributors), (7) acts of war (whether or not declared), sabotage

Table of Contents

or terrorism, military actions or the escalation thereof or other force majeure events (such as natural disasters or acts of God) occurring after the date hereof (other than any of the foregoing that causes material damage or destruction to a material number of stores of the Company or any of its Subsidiaries, taking into account the proceeds of any applicable insurance policies), (8) any changes in applicable Laws or applicable accounting regulations or principles or interpretations thereof, or (9) the taking of any action contemplated by or arising from this Agreement or consented to or requested by Parent or Merger Sub; *provided, further*, that, for the avoidance of doubt, the existence of any potential default or event of default under any of the Debt Instruments not resulting in any of the events described in subclauses (A) through (E) of Section 8.1(d)(iv) shall not be deemed in and of itself to constitute a Material Adverse Effect.

(b) The Company has previously furnished or otherwise made available to Parent a true and complete copy of the Company's certificate of incorporation (the *Company Charter*) and a true and complete copy of the Company's bylaws (the *Company Bylaws*) and true and complete copies of the organizational or governing documents of each Subsidiary of the Company, in each case as amended to the date of this Agreement, and each as so delivered is in full force and effect. The Company is not in violation of any provision of the Company Charter or Company Bylaws, and no Subsidiary of the Company is in violation of any provision of its organizational or governing documents. The minute books of the Company and each of its Subsidiaries contain accurate records of all corporate actions taken by the directors and stockholders or equivalents of such entity, and, subject to Section 4.1(b) of the Company Disclosure Letter, true and correct copies of such minute books from and after January 1, 2006 have been made available to Parent.

Section 4.2 *Capital Stock*.

(a) The authorized capital stock of the Company consists of 90,000,000 Shares of common stock, par value \$0.01 per share (the *Common Stock*). As of March 21, 2008 (A) 44,032,133 Shares were issued and outstanding, all of which were validly issued, fully paid and nonassessable and were free of preemptive rights; (B) no Shares were held in treasury; (C) an aggregate of 4,102,988 Shares were subject to or otherwise deliverable in connection with outstanding equity-based awards or the exercise of outstanding Company Stock Options issued pursuant to (1) the CSK Auto Corporation 2004 Stock and Incentive Plan, (2) the 1999 Employee Stock Option Plan, (3) the 1996 Associate Stock Option Plan, (4) the 1996 Executive Stock Option Plan, (5) the CSK Auto Corporation Directors Stock Plan, (6) the Nonqualified Stock Option Contracts between the Company and Lawrence N. Mondry dated June 13, 2007 and October 20, 2007, and (7) the Restricted Stock Unit Agreement between the Company and Lawrence N. Mondry dated June 13, 2007; and (D) an aggregate of up to 6,060,610 Shares were subject to or otherwise deliverable in connection with the Company's outstanding 6¼% Senior Exchangeable Notes due 2025. Except as set forth in this Section 4.2 and except for changes since March 21, 2008 resulting from the exercise of Company Stock Options outstanding on such date, as of the date of this Agreement, (A) there are not outstanding or authorized any (1) shares of capital stock or other equity interests of the Company or any of its Subsidiaries, (2) securities of the Company or any of its Subsidiaries convertible into or exchangeable for shares of capital stock or other equity interests of the Company or any of its Subsidiaries or (3) options or other rights to acquire from the Company or any of its Subsidiaries, and no obligation of the Company or any of its Subsidiaries to issue, any capital stock, other equity interests or securities convertible into or exchangeable for capital stock or other equity interests of the Company or any of its Subsidiaries, (B) there are no outstanding obligations of the Company or any of its Subsidiaries to repurchase, redeem or otherwise acquire any capital stock, other equity interests or securities convertible into or exchangeable for capital stock or other equity interests of the Company or any of its Subsidiaries and (C) there are no other options, calls, warrants or other rights, agreements, arrangements or commitments of any character relating to the issued or unissued capital stock of the Company or any of its Subsidiaries to which the Company or any of its Subsidiaries is a party. Except as set forth in this Section 4.2 or in Section 4.2(a) of the Company Disclosure Letter, there are no outstanding or authorized stock appreciation, phantom stock, profit participation, or other similar rights with respect to the Company or any of its Subsidiaries. Each of the outstanding shares of capital stock of each of the Company's Subsidiaries is duly authorized, validly issued,

Table of Contents

fully paid and nonassessable and free of preemptive or similar rights, all such shares are owned by the Company or another wholly-owned Subsidiary of the Company and are owned free and clear of all security interests, liens, claims, mortgages, pledges, agreements, limitations in voting rights, charges or other encumbrances (collectively, *Liens*) of any nature whatsoever.

(b) All Company Stock Options are evidenced by stock option agreements, restricted stock agreements or other award agreements in the forms set forth on Section 4.2(b)-1 of the Company Disclosure Letter and no stock option agreement, restricted stock purchase agreement or other award agreement contains terms that are inconsistent with such forms. Section 4.2(b)-2 of the Company Disclosure Letter sets forth a true, complete and correct list of all persons who, as of March 21, 2008, hold outstanding Company Stock Options indicating, with respect to each Company Stock Option then outstanding, the number of shares of Common Stock subject to such Company Stock Option, and the exercise price, date of grant, vesting schedule and expiration date thereof. Section 4.2(b)-3 of the Company Disclosure Letter sets forth a true, complete and correct list of all persons who, as of March 21, 2008, hold outstanding restricted stock, indicating the number of shares of restricted stock held by such person, date of grant and vesting schedule.

(c) Except as set forth in subsection (a) above, neither the Company nor any of its Subsidiaries has outstanding bonds, debentures, notes or other obligations, the holders of which have the right to vote (or which are convertible into or exercisable for securities having the right to vote) with the shareholders of the Company on any matter.

(d) There are no shareholder agreements, voting trusts or other agreements or understandings to which the Company or any of its Subsidiaries is a party with respect to the voting, transfer or registration of the capital stock or other equity interests of the Company or any of its Subsidiaries.

(e) Section 4.2(e) of the Company Disclosure Letter sets forth the name, jurisdiction of incorporation or organization, authorized and outstanding capital of each Subsidiary of the Company and the name of each of its shareholder(s) or owner(s) and the capital stock or other equity interests held by each such person. Other than with respect to the Subsidiaries of the Company and as set forth in Section 4.2(e) of the Company Disclosure Letter, the Company does not own, directly or indirectly, any capital stock or other equity securities of any person or have any direct or indirect equity or ownership interest in any person or business other than an investment in publicly traded securities constituting three percent (3%) or less of the outstanding securities of any entity.

Section 4.3 *Authority*. The Company has all necessary corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder and, subject, if required by applicable Law, to the adoption and approval of this Agreement by the holders of at least a majority in voting power of the outstanding Shares, if necessary (the *Company Stockholder Approval*), to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement by the Company and the consummation by the Company of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Company and no other corporate proceedings on the part of the Company are necessary to approve this Agreement or to consummate the transactions contemplated hereby, subject, in the case of the consummation of the Merger and if required by applicable Law, to obtaining the Company Stockholder Approval and to the filing of the Certificate of Merger with the Secretary of State of the State of Delaware as required by the DGCL. This Agreement has been duly executed and delivered by the Company and, assuming the due authorization, execution and delivery by Parent and Merger Sub, constitutes a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms (except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or similar Laws affecting the enforcement of creditors' rights generally or by general principles of equity). As of the date hereof, the Company Board has acted in accordance with Section 251 of the DGCL and has approved and declared advisable this Agreement and the transactions contemplated hereby and, subject to Section 6.4, has resolved to recommend that the Company's stockholders approve this Agreement and the transactions contemplated hereby and such resolutions have not been rescinded or modified. The Company Stockholder Approval, if required by applicable

Table of Contents

Law, is the only vote or consent of the holders of any class or series of capital stock of the Company necessary to approve this Agreement or the Merger or the other transactions contemplated hereby.

Section 4.4 No Conflict; Consents and Approvals.

(a) The execution, delivery and performance of this Agreement by the Company, and the consummation by the Company of the transactions contemplated hereby, do not and will not (i) conflict with or violate the Company Charter or Company Bylaws or the equivalent organizational documents of any of the Company's Subsidiaries, (ii) assuming that all consents, approvals and authorizations contemplated by clauses (i) through (v) of subsection (b) below have been obtained and all filings described in such clauses have been made, conflict with or violate any law, rule, regulation, order, judgment or decree (collectively, "Law") applicable to the Company or any of its Subsidiaries or by which any of their respective properties are bound or (iii) subject to obtaining the consents listed on Section 4.4(a)(iii) of the Company Disclosure Letter, result in any breach or violation of, or constitute a default (or an event which with notice or lapse of time or both would become a default), impair the Company's or any of its Subsidiaries' rights or alter the rights or obligations of any third party under, or result in the loss of a benefit under, or give rise to any right of termination, cancellation, amendment or acceleration of, or result in the creation of a Lien on any of the properties or assets of the Company or any of its Subsidiaries under, any Material Contract to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries or any of their respective properties are bound, except, in the case of clauses (ii) and (iii), for any such conflict, breach, violation, default, loss, right or other occurrence that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) The execution, delivery and performance of this Agreement by the Company, and the consummation by the Company of the transactions contemplated hereby, do not and will not require any consent, approval, authorization or permit of, action by, filing with or notification to, any governmental or regulatory (including stock exchange) authority, agency, court commission, or other governmental body or arbitral tribunal (each, a "Governmental Entity") by the Company, except for (i) such filings as required under applicable requirements of the Exchange Act and the rules and regulations promulgated thereunder, and under state securities and "blue sky" laws, (ii) the filings required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), (iii) such filings as necessary to comply with the applicable requirements of the NYSE, (iv) the filing with the Secretary of State of the State of Delaware of the Certificate of Merger as required by the DGCL and (v) any such consent, approval, authorization, permit, action, filing or notification with a Governmental Entity the failure of which to make or obtain would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 4.5 SEC Reports; Financial Statements.

(a) Except as set forth on Section 4.5 of the Company Disclosure Letter, the Company has timely filed or otherwise transmitted all forms, reports, statements, certifications and other documents (including all exhibits, amendments and supplements thereto) required to be filed by it with the SEC since January 30, 2006 (all such forms, reports, statements, certificates and other documents filed since January 30, 2006 and prior to the date hereof and those filed subsequent to the date hereof including any amendments, collectively, the "Company SEC Documents"). As of their respective dates, or, if amended, as of the date of the last such amendment, each of the Company SEC Documents complied or, if not yet filed, will comply in all material respects with the applicable requirements of the Securities Act of 1933, as amended (the "Securities Act") and the Exchange Act, and the applicable rules and regulations promulgated thereunder, as the case may be, each as in effect on the date so filed. Except to the extent that information in any Company SEC Document has been revised or superseded by a subsequently filed Company SEC Document, none of the Company SEC Documents contains (or if not yet filed will not contain) any untrue statement of a material fact or omits to state a material fact required to be stated or incorporated by reference therein or necessary in order to make the statements therein, in the light of the circumstances under which they were

Table of Contents

made, not misleading. For purposes of clarification, amendments filed after the date of this Agreement to Company SEC Documents that were filed prior to the date of this Agreement shall not be taken into account for purposes of determining compliance with this Section 4.5(a).

(b) The audited consolidated financial statements of the Company (including any related notes thereto) included in the Company's Annual Report on Form 10-K for the fiscal year ended February 4, 2007 filed with the SEC have been prepared in accordance with United States generally accepted accounting principles (GAAP) applied on a consistent basis throughout the periods involved (except as may be indicated in the notes thereto) and fairly present in all material respects the consolidated financial position of the Company and its Subsidiaries at the respective dates thereof and the results of their operations and cash flows for the periods indicated. The unaudited consolidated financial statements of the Company (including any related notes thereto) included in the Company's Quarterly Reports on Form 10-Q filed with the SEC since November 4, 2007 have been (and any subsequently filed financial statements will be) prepared in accordance with GAAP applied on a consistent basis throughout the periods involved (except as may be indicated in the notes thereto or may be permitted by the SEC under the Exchange Act) and fairly present in all material respects the consolidated financial position of the Company and its Subsidiaries as of the respective dates thereof and the results of their operations and cash flows for the periods indicated (subject to normal period-end adjustments).

(c) The Company has designed disclosure controls and procedures to ensure that material information relating to the Company, including its Subsidiaries, is made known to the chief executive officer and the chief financial officer of the Company by others within those entities.

(d) The Company has disclosed, based on its most recent evaluation prior to the date hereof, to the Company's auditors and the audit committee of the Company Board (i) any significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect in any material respect the Company's ability to record, process, summarize and report financial information and (ii) any fraud, whether or not material, that involves management or other employees who have a significant roles in the Company's internal controls over financial reporting.

(e) The Company maintains a system of internal control over financial reporting (within the meaning of Rules 13a-15(f) and 15d-15(f) of the Exchange Act) designed to provide reasonable assurances regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP. The Company maintains disclosure controls and procedures (within the meaning of Rules 13a-15(e) and 15d-15(c) of the Exchange Act) designed to ensure that information required to be disclosed by the Company in the reports that it files and submits under the Exchange Act is recorded, processed, summarized and reported within the times periods specified in the SEC's rules and forms, including that information required to be disclosed by the Company in the reports that it files and submits under the Exchange Act is accumulated and communicated to management of the Company as appropriate to allow timely decisions regarding required disclosure.

(f) Except as set forth on Section 4.5(f) of the Company Disclosure Letter, since July 9, 2007 through the date of this Agreement, (x) neither the Company nor any of its Subsidiaries has received any material complaint regarding accounting, internal accounting controls or auditing matters of the Company or any of its Subsidiaries and (y) no attorney representing the Company or any of its Subsidiaries, whether or not employed by the Company or any of its Subsidiaries, has reported evidence of a violation of securities laws, breach of fiduciary duty or similar violation by the Company or any of its officers, directors, employees or agents to the Company Board or any committee thereof or to the general counsel or chief executive officer of the Company pursuant to the rules of the SEC adopted under Section 307 of the Sarbanes-Oxley Act of 2002 (the *Sarbanes-Oxley Act of 2002*).

(g) Since July 9, 2007, the Company has complied in all material respects with the rules and regulations of the New York Stock Exchange that are applicable to the Company.

Table of Contents

(h) Except (i) as reflected or reserved against in the Company's consolidated balance sheets (or the notes thereto) included in the Company's Quarterly Report on Form 10-Q filed with the SEC since November 4, 2007; (ii) for liabilities and obligations incurred in the ordinary and usual course of business consistent with past practice since November 4, 2007; (iii) as would not individually or in the aggregate have a Material Adverse Effect; (iv) for liabilities and obligations arising under this Agreement; (v) liabilities and obligations disclosed in this Agreement or the Company Disclosure Letter, neither the Company nor any Subsidiary of the Company has any liabilities or obligation of any nature, whether or not accrued, contingent or otherwise, whether known or unknown and whether due or to become due.

(i) Section 4.5(i) of the Company Disclosure Letter sets forth, as of the dates indicated on Section 4.5(i) of the Company Disclosure Letter, the amount of the principal and unpaid interest outstanding under each instrument evidencing any Indebtedness of the Company or any of its Subsidiaries. *Indebtedness* shall mean any indebtedness for borrowed money and any indebtedness evidenced by notes, bonds, debentures or similar instruments. The Company and its Subsidiaries have not guaranteed any Indebtedness of any Person other than Indebtedness of the Company or any of its Subsidiaries, as the case may be.

Section 4.6 *Certain Information*. None of the documents required to be filed by the Company with the SEC or required to be distributed or otherwise disseminated to the Company's stockholders by the Company in connection with the transactions contemplated by this Agreement (the *Company Disclosure Documents*), including the Schedule 14D-9, the proxy or information statement of the Company (the *Proxy Statement*), if any, to be filed with the SEC for use in connection with the solicitation of proxies from the Company's stockholders in connection with the Merger and the Company Stockholders Meeting, if any, and any amendments or supplements thereto, when filed, distributed or disseminated, and at the Effective Time, as applicable, will contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading. The Company Disclosure Documents will comply in all material respects with the requirements of the Exchange Act and the rules and regulations promulgated thereunder. Notwithstanding the foregoing, the Company makes no representation or warranty with respect to any information supplied by Parent or Merger Sub or any of their respective Representatives for inclusion or incorporation by reference in the Company Disclosure Documents.

The information with respect to the Company or any of its Subsidiaries that the Company furnishes to Parent in writing specifically for use in the Offer Documents, at the time of the filing of the Schedule TO, at the time of the Registration Statement becomes effective under the Securities Act, at the time of any distribution or dissemination of the Offer Documents and at the time of the consummation of the Offer, will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

Section 4.7 *Absence of Certain Changes or Events*. Except as set forth in the Company Disclosure Letter or elsewhere in this Agreement, since November 4, 2007, except as otherwise contemplated or permitted by this Agreement, (i) the businesses of the Company and its Subsidiaries have been conducted in the ordinary course of business consistent with past practice, (ii) there has not been any fact, event, change, effect, or occurrence that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect, and (iii) neither the Company nor any of its Subsidiaries have taken any action which, if taken after the date hereof, would violate the provisions of Sections 6.1(b)(i)-(iv) (inclusive), 6.1(b)(vi)(A), 6.1(b)(vi)(C), 6.1(b)(x), 6.1(b)(xi), 6.1(b)(xiii) and 6.1(b)(xiv).

Section 4.8 *Absence of Litigation*. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (a) there is no suit, claim, action, proceeding, arbitration, mediation or investigation (each, an *Action*) pending or, to the knowledge of the Company, threatened against the Company or any of its Subsidiaries or any of their respective properties by or before any Governmental Entity

Table of Contents

and (b) neither the Company nor any of its Subsidiaries nor any of their respective properties is or are subject to any judgment, order, injunction, rule or decree of any Governmental Entity.

Section 4.9 *Compliance with Laws*. Except with respect to the Securities Act and the Exchange Act, ERISA, Environmental Laws and Laws with respect to Taxes, which are the subject of Sections 4.5, 4.10, 4.12 and 4.13 respectively, the Company and each of its Subsidiaries are in compliance with all Laws applicable to them or by which any of their respective properties are bound, except where any non-compliance would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as would not reasonably be expected to have a Material Adverse Effect, no notice, charge, claim, action or assertion has been received by the Company or any of its Subsidiaries or has been filed, commenced or, to the knowledge of the Company, threatened against the Company or any of its Subsidiaries alleging any violation of any applicable Law. Except with respect to Environmental Laws (which are the subject of Section 4.12), the Company and its Subsidiaries have in effect all permits, licenses, exemptions, authorizations, franchises, orders, clearances, commissions, consents, certificates, grants and approvals of all Governmental Entities (collectively, *Permits*) necessary for them to own, lease or operate their properties and to carry on their businesses as now conducted, except for any Permits the absence of which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. All Permits are in full force and effect, except where the failure to be in full force and effect would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No event or condition has occurred or exists which would result in a violation of, breach, default or loss of a benefit under, or acceleration of an obligation of the Company or any of its Subsidiaries under, any material Permit (in each case, with or without notice or lapse of time or both), except where any violation, default, loss or acceleration would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 4.10 *Benefit Plans*.

(a) Section 4.10(a) of the Company Disclosure Letter sets forth a true and complete list of each employee benefit plan (within the meaning of section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (*ERISA*)), multiemployer plans (within the meaning of ERISA section 3(37)), and all stock purchase, stock option, severance, employment (excluding offer letters made to employees other than senior executives in the ordinary course of business), change-in-control, material fringe benefit, bonus, incentive, deferred compensation and all other employee benefit plans, agreements, programs, policies or other arrangements, whether or not subject to ERISA (including any funding mechanism therefor now in effect or required in the future as a result of the transactions contemplated by this Agreement or otherwise), whether formal or informal, written, legally binding or not, under which any employee or director or former employee or director of the Company or any ERISA Affiliate has any present or future right to benefits or the Company or any ERISA Affiliate has any present or future liability. All such plans, agreements, programs, policies and arrangements shall be collectively referred to as the *Company Plans*. With respect to each Company Plan, the Company has furnished or made available to Parent a current, accurate and complete copy thereof and, to the extent applicable: (i) any related trust agreement or other funding instrument, (ii) the most recent determination letter of the Internal Revenue Service (the *IRS*), if applicable, (iii) any summary plan description and other equivalent written communications by the Company or its Subsidiaries to their employees concerning the extent of the benefits provided under a Company Plan and (iv) if applicable, for the two most recent years (A) the Form 5500 and attached schedules, (B) audited financial statements, (C) actuarial valuation reports and (D) attorney's response to an auditor's request for information. *ERISA Affiliate* shall mean any trade or business, whether or not incorporated, that together with the Company would be deemed a single employer within the meaning of Section 4001(b) of ERISA.

Table of Contents

(b) With respect to the Company Plans, except to the extent that the inaccuracy of any of the representations set forth in this Section 4.10 would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect:

(i) each Company Plan subject to ERISA has been established and administered in accordance with its terms and in compliance with the applicable provisions of ERISA and the Code, and no prohibited transaction, as described in Section 406 of ERISA or Section 4975 of the Code, or accumulated funding deficiency, as defined in Section 302 of ERISA and 412 of the Code, has occurred with respect to any Company Plan, and all contributions required to be made under the terms of any Company Plan have been timely made;

(ii) each Company Plan intended to be qualified under Section 401(a) of the Code has received a favorable determination, advisory and/or opinion letter, as applicable, from the IRS that it is so qualified and nothing has occurred since the date of such letter that would reasonably be expected to cause the loss of such qualified status of such Company Plan;

(iii) there is no Action (including any investigation, audit or other administrative proceeding) by the Department of Labor, the Pension Benefit Guaranty Corporation (the *PBGC*), the IRS or any other Governmental Entity or by any plan participant or beneficiary pending, or to the knowledge of the Company, threatened, relating to the Company Plans, any fiduciaries thereof with respect to their duties to the Company Plans or the assets of any of the trusts under any of the Company Plans (other than an IRS application for a favorable determination letter and routine claims for benefits) nor are there facts or circumstances that exist that would reasonably be expected to give rise to any such Actions;

(iv) the Company and its Subsidiaries do not maintain any Company Plan that is a group health plan (as such term is defined in Section 5000(b)(1) of the Code) that has not been administered and operated in compliance with the applicable requirements of Section 601 of ERISA and Section 4980B(b) of the Code, and the Company and its Subsidiaries are not subject to any material liability, including additional contributions, fines, penalties or loss of tax deduction as a result of such administration and operation;

(v) each Company Plan that is a nonqualified deferred compensation plan within the meaning of Section 409A(d)(1) of the Code (a *Nonqualified Deferred Compensation Plan*) subject to Section 409A of the Code has been operated in good faith, reasonable compliance with Section 409A of the Code since January 31, 2005, based upon a good faith, reasonable interpretation of (A) Section 409A of the Code and (B) the regulations and guidance issued thereunder (clause (A) and (B), together, the *409A Authorities*); and

(vi) no liability under Title IV or Section 302 of ERISA has been incurred by the Company or any ERISA Affiliate that has not been satisfied in full, and no condition exists that presents a material risk to the Company or any ERISA Affiliate of incurring any such liability. Neither the Company nor any ERISA Affiliate has made or suffered a complete withdrawal or a partial withdrawal, as such terms are respectively defined in sections 4203 and 4205 of ERISA (or any liability resulting therefrom has been satisfied in full). No event has occurred that presents a material risk of a partial withdrawal. Neither the Company nor any ERISA Affiliate has any contingent liability under section 4204 of ERISA.

(c) Except as provided herein or as set forth on Section 4.10(c) of the Company Disclosure Letter, the consummation of the transactions contemplated by this Agreement will not, either alone or in combination with another event, (i) entitle any current or former employee or officer of the Company or any ERISA Affiliate to severance pay, unemployment compensation or any other payment, except as expressly provided in this Agreement, or (ii) accelerate the time of payment or vesting, or increase the amount of compensation due any such employee or officer. Except as set forth on Section 4.10(c) of the Company Disclosure Letter, no amounts payable under the Company Plans will fail to be deductible for federal income tax purposes by virtue of Section 280G of the Code.

Table of Contents

(d) The treatment of Company Stock Options set forth in Section 3.2 of this Agreement is permitted under the terms of the applicable Company Equity Plans.

(e) The parties acknowledge that certain payments have been made or are to be made and certain benefits have been granted or are to be granted according to employment, compensation, severance and other employee benefit plans of the Company and its Subsidiaries, including the Company Plans (collectively, the *Arrangements*) to certain holders of Shares and other securities of the Company (the *Covered Securityholders*). The Company represents and warrants that all such amounts payable under the Arrangements (i) are being paid or granted as compensation for past services performed, future services to be performed, or future services to be refrained from performing, by the Covered Securityholders (and matters incidental thereto) and (ii) are not calculated based on the number of Shares tendered or to be tendered into the Offer by the applicable Covered Securityholder. The Company also represents and warrants that (A) the adoption, approval, amendment or modification of each Arrangement since the discussions relating to the transactions contemplated hereby between the Company and the Buyer began has been approved as an employment compensation, severance or other employee benefit arrangement solely by independent directors of the Company in accordance with the requirements of Rule 14d-10(d)(2) under the Exchange Act and the instructions thereto and (B) the safe harbor provided pursuant to Rule 14d-10(d)(2) under the Exchange Act is otherwise applicable thereto as a result of the taking prior to the execution of this Agreement of all necessary actions by the Company Board, the Compensation Committee of the Company Board or its independent directors. A true and complete copy of any resolutions of any committee of the Company Board reflecting any approvals and actions referred to in the preceding sentence and taken prior to the date of this Agreement has been provided to Parent prior to the execution of this Agreement.

(f) Section 4.10(f) of the Company Disclosure Letter sets forth each Company Plan (excluding any written agreements with employees, such as employment agreements, option agreements, etc.) that, by its terms, prohibits or restricts amendments, modifications or termination of such Company Plan following the consummation of the transactions contemplated by this Agreement.

Section 4.11 *Labor Matters.*

(a) Neither the Company nor any of its Subsidiaries is a party to, or is bound by, any collective bargaining agreement or other labor-related agreement or arrangement with any labor union or labor organization, and no employees of the Company or any of its Subsidiaries are represented by any labor union or labor organization with respect to their employment with the Company or its Subsidiaries. The Company and its Subsidiaries have not committed any material unfair labor practice as defined in the National Labor Relations Act.

(b) No labor union, labor organization or group of employees of the Company or any of its Subsidiaries has made a pending demand for recognition or certification, and there are no representation or certification proceedings or petitions seeking a representation proceeding presently pending or threatened in writing to be brought or filed with the National Labor Relations Board or any other labor relations tribunal or authority. The Company and its Subsidiaries have no knowledge of any labor union organizing activities with respect to any employees of the Company or its Subsidiaries.

(c) From January 30, 2006 to the date of this Agreement, there has been no labor dispute, strike, work stoppage or lockout, or, to the knowledge of the Company, threat thereof, by or with respect to any employees of the Company or any of its Subsidiaries.

Section 4.12 *Environmental Matters.*

(a) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect: (i) the Company and each of its Subsidiaries are in compliance with all applicable Environmental Laws, and possess and are in compliance with all applicable Environmental Permits required under such Environmental Laws to operate as they presently operate; (ii) there are no Materials of Environmental Concern at any property currently or, to the knowledge of the Company, formerly owned or

Table of Contents

operated by the Company or any of its Subsidiaries, except under circumstances that are not reasonably likely to result in liability of the Company or any of its Subsidiaries under any applicable Environmental Law; (iii) neither the Company nor any of its Subsidiaries has received any written notification alleging that it is liable for, or request for information pursuant to section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act or similar state statute, concerning any release or threatened release of Materials of Environmental Concern at any location except, with respect to any such notification or request for information concerning any such release or threatened release, to the extent such matter has been resolved with the appropriate foreign, federal, state or local regulatory authority or otherwise; (iv) neither the Company nor any of its Subsidiaries has received any written claim or complaint or any threatened claim or complaint, or is presently subject to any proceeding, relating to noncompliance with Environmental Laws or any other liabilities pursuant to Environmental Laws, and to the knowledge of the Company, no such matter has been threatened in writing; and (v) to the knowledge of the Company, there are no past or present actions, activities, circumstances, conditions, events or incidents, including, without limitation, the release, threatened release or presence of any Materials of Environmental Concern which could form the basis of any liability under Environmental Laws against the Company, any of its Subsidiaries, or against any person or entity whose liability for such matters the Company or any Subsidiary has or may have retained or assumed either contractually or by operation of law.

(b) The Company has delivered or otherwise made available for inspection to Parent true, complete and correct copies and results of any reports, studies, analysis, tests or monitoring possessed by the Company or any Subsidiary pertaining to Materials of Environmental Concern in, on, beneath or adjacent to any property currently or formerly owned, operated or leased by the Company or any Subsidiary, or regarding the company's or any Subsidiary's compliance with applicable Environmental Laws.

(c) For purposes of this Agreement, the following terms shall have the meanings assigned below:

Environmental Laws means all foreign, federal, state, or local statutes, regulations, ordinances, codes, or decrees (including common law) protecting human health, the environment or the quality of the ambient air, soil, surface water or groundwater.

Environmental Permits means all permits, licenses, registrations, and other authorizations required under applicable Environmental Laws.

Materials of Environmental Concern means any hazardous, acutely hazardous, or toxic substance, contaminant, pollutant, or waste defined and regulated as such under applicable Environmental Laws, including the federal Comprehensive Environmental Response, Compensation and Liability Act or the federal Resource Conservation and Recovery Act.

Section 4.13 *Taxes*. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect:

(a) All Tax Returns required by applicable Law to be filed by or on behalf of the Company or any of its Subsidiaries have been timely filed in accordance with all applicable Laws (after giving effect to any extensions of time in which to make such filings), and all such Tax Returns are true, correct and complete.

(b) Neither the Company nor any of its Subsidiaries is delinquent in the payment of any Tax, except with respect to Taxes contested in good faith and for which adequate reserves have been established on the financial statements of the Company and its Subsidiaries included in the most recent Company SEC Documents in accordance with GAAP.

(c) No Liens for Taxes exist with respect to any assets or properties of the Company or any of its Subsidiaries, except for statutory Liens for Taxes not yet delinquent.

(d) As of the date of this Agreement, there are no audits or other proceedings now pending or threatened in writing against or with respect to the Company or any of its Subsidiaries with respect to any material Tax.

Table of Contents

(e) The financial statements included in the most recent Company SEC Documents reflect, in accordance with GAAP, an adequate reserve for all material Taxes payable by the Company and its Subsidiaries for all taxable periods and portions thereof through the date of such financial statements and neither the Company nor any of its Subsidiaries has incurred any material liability for Taxes subsequent to the date of such most recent financial statements other than in the ordinary course of the Company's or such Subsidiary's business.

(f)(i) all Taxes which the Company or any of its Subsidiaries are required by Law to withhold or to collect for payment have been duly withheld and collected and any such amounts that are required to be remitted to any Taxing Authority have been duly remitted, except with respect to matters contested in good faith and for which adequate reserves have been established on the financial statements of the Company and its Subsidiaries included in the most recent Company SEC Documents in accordance with GAAP; and (ii) no unresolved claim has been made against the Company or any of its Subsidiaries by any Taxing Authority in a jurisdiction where the Company or any of its Subsidiaries does not file Tax Returns that the Company or any of its Subsidiaries is or may be subject to taxation in that jurisdiction.

(g) None of the Company or any of its Subsidiaries (i) has been a member of an affiliated group filing a consolidated federal income Tax Return (other than a group the common parent of which was the Company), (ii) is a party to or bound by any Tax allocation, sharing or indemnification agreement or other similar arrangement with any person other than the Company and its Subsidiaries or (iii) has any liability for the Taxes of any person (other than any of the Company or its Subsidiaries) under Treas. Reg. §1.1502-6 (or any similar provision of Law), as a transferee or successor, by contract, or otherwise (except, in each case, agreements among the Company and its Subsidiaries and customary Tax indemnifications contained in credit or other commercial lending agreements, stock or asset purchase agreements, or arrangements with landlords, lessors, customers and vendors).

(h) Neither the Company nor any of its Subsidiaries has constituted a distributing corporation or a controlled corporation in a distribution of stock purported to or intended to be governed by Section 355 or Section 361 of the Code.

(i) Neither the Company nor any of its Subsidiaries has participated in, or is currently participating in, a listed transaction within the meaning of Treas. Reg. § 1.6011-4(b)(2) or similar provision of state or local Law.

(j) The Company is not a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code and has not been (and will not be) such a United States real property holding corporation during the five (5) year period ending on the Closing Date.

(k) Neither the Company nor any of its Subsidiaries will be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Effective Time because of Section 481(a) of the Code (or an analogous provision of state, local, or foreign Law), by reason of a change in accounting method made prior to the Effective Time.

(l) Neither the Company nor, to the Company's knowledge, any of its Affiliates has taken or agreed to take action that would prevent the Offer, the Merger, and the LLC Merger (if any) together from qualifying as a reorganization under the provisions of Section 368(a) of the Code.

(m) As used in this Agreement, (i) *Tax* (and, with correlative meaning, *Taxes* and *Taxable*) means (A) any income, alternative or add-on minimum tax, gross income, estimated, gross receipts, sales, use, ad valorem, value added, transfer, franchise, capital stock, profits, license, registration, withholding, payroll, social security (or equivalent), employment, unemployment, disability, excise, severance, stamp, occupation, premium, property (real, tangible or intangible), environmental or windfall profit, or other tax, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or any penalty, addition to tax or additional amount (whether disputed or not) imposed by any governmental entity responsible for the imposition of any such tax (domestic or foreign) (each, a *Taxing Authority*), (B) any liability for the payment of any amounts of the type described in clause (A) of this sentence as a

Table of Contents

result of being a member of an affiliated, consolidated, combined, unitary or aggregate group for any taxable period and (C) any liability for the payment of any amounts of the type described in clause (A) or (B) of this sentence as a result of being a transferee of or successor to any person or as a result of any express or implied obligation to assume such Taxes or to indemnify any other person, and (ii) *Tax Return* shall mean any return, statement, report, form or other document (including estimated Tax returns and reports, withholding Tax returns and reports, any schedule or attachment, information returns and reports and any amendment to any of the foregoing) filed or required to be filed with a Taxing Authority with respect to Taxes.

Section 4.14 *Contracts*. Section 4.14 of the Company Disclosure Letter lists, as of the date hereof, each note, bond, mortgage, indenture, contract, agreement, lease, license, permit or other instrument (each, a *Contract*) of the following types that are currently in effect and by which the Company or any of its Subsidiaries is currently bound:

- (i) any consulting agreement that is not terminable at will without a penalty in excess of \$5,000 in the aggregate;
- (ii) any Contract restricting the right of the Company to conduct its business as it is presently conducted (other than customary provisions in Leases, Contracts described in Section 4.10 of the Company Disclosure Letter, or Contracts listed on Section 4.4(a)(iii) of the Company Disclosure Letter);
- (iii) any exclusive supplier agreements not terminable at will without a penalty in excess of \$100,000 in the aggregate;
- (iv) any partnership, joint venture or similar agreement;
- (v) any Contract that is material to the Company with a change in control provision (excluding Leases and employee contracts and plans);
- (vi) any agreement involving the acquisition or disposition by the Company of an amount of assets in excess of \$150,000 in the aggregate, outside the ordinary course of business; and
- (vii) any Contract that would be required to be filed by the Company as a material contract pursuant to Item 601(b)(10) of Regulation S-K under the Securities Act (each such Contract as described in this Section 4.14, a *Material Contract*).

Each Material Contract is valid and binding on the Company and each of its Subsidiaries party thereto and, to the knowledge of the Company, any other party thereto, except for such failures to be valid and binding or to be in full force and effect that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, there is no default under any Material Contract by the Company or any of its Subsidiaries party thereto or, to the knowledge of the Company, any other party thereto, and no event has occurred that with the lapse of time or the giving of notice or both would constitute a default thereunder by the Company or any of its Subsidiaries party thereto or, to the knowledge of the Company, any other party thereto.

Section 4.15 *Insurance*. of the Company Disclosure Letter sets forth an accurate and complete list of all policies of liability, director and officer, workmen's compensation and other forms of insurance owned or held by the Company or any of its Subsidiaries. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (a) all premiums due and payable under such policies have been paid, (b) all material insurance policies of the Company and its Subsidiaries are in full force and effect, and (c) neither the Company nor any of its Subsidiaries is in breach or default, and neither the Company nor any of its Subsidiaries has taken any action or failed to take any action which, with notice or the lapse of time, would constitute such a breach or default, or permit termination or modification of, any of such insurance policies. As of the date hereof, the Company has no knowledge of any threatened early termination of any such policy. Except as set forth on Section 4.15 of the Company Disclosure Letter, none of the Company or any of its Subsidiaries has any disputed claim or claims aggregating \$100,000 or more with any insurance provider relating to any claim for insurance coverage under any policy of insurance maintained by the Company or any of its Subsidiaries.

Table of Contents

Section 4.16 *Properties.*

(a) Except as set forth on Section 4.16(a) of the Company Disclosure Letter, the Company or one of its Subsidiaries has good and valid title to all the properties and assets reflected in the audited balance sheet of the Company as at February 4, 2007 included in the Company SEC Documents as being owned by the Company or one of its Subsidiaries and to all properties and assets acquired after the date thereof (except properties sold or otherwise disposed of since the date thereof in the ordinary course of business), in each case free and clear of all Liens, except for (i) mechanics , carriers , workmen s, warehousemen s, repairmen s or other like Liens imposed by applicable Law arising or incurred in the ordinary course of business for amounts not overdue, or for an amount or the validity of which is being contested in good faith, (ii) Liens for taxes, assessments and other governmental charges and levies that are not due and payable or that may thereafter be paid without interest or penalty or that the amount or validity of which is being contested in good faith, (iii) zoning, building and other similar codes and regulations, (iv) Liens arising in the ordinary course of business under worker s compensation, unemployment insurance, social security, retirement and similar legislation, (v) purchase money liens and liens securing rental payments under capital lease arrangements, (vi) mortgages, deeds of trust, security interests or other Liens that secure or are related to, or are permitted by applicable loan agreements with respect to, indebtedness reflected in the Company SEC Documents, (vii) any conditions that are matters of public record or that would be disclosed by a current, accurate survey, a railroad valuation map or physical inspection of the assets to which they relate and (viii) any Liens (other than Liens that secure or are related to indebtedness not reflected in the Company SEC Documents) that have not had and reasonably would not be expected to materially impair the use, value or operation of any such properties and assets (collectively, *Permitted Liens*).

(b) The Company or one of its Subsidiaries is the lessee of and has a good and valid leasehold interest in all leasehold estates reflected in the audited balance sheet of the Company as at February 4, 2007 included in the Company SEC Documents or acquired after the date thereof that are material to the Company s business on a consolidated basis (except for leases that have expired by their terms since the date thereof or been assigned, terminated or otherwise disposed of in the ordinary course of business consistent with past practice) (each such lease, a *Lease* and collectively, the *Leases*) and is in possession of the properties purported to be leased thereunder. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, each Lease is valid and binding on the Company and each of its Subsidiaries party thereto and enforceable against the Company or its Subsidiaries party thereto in accordance with its terms and, to the knowledge of the Company, is valid and binding on the applicable lessor, and there is no breach of or default under any of the Leases by the Company or any of its Subsidiaries party thereto or, to the knowledge of the Company, the applicable lessor, and no event has occurred that with the lapse of time or the giving of notice or both would constitute a breach thereof or a default thereunder by the Company or any of its Subsidiaries party thereto or, to the knowledge of the Company, the applicable lessor. Copies of all Leases have made available to Parent, in each case as appropriately redacted to protect against the disclosure of competitively-sensitive information.

Section 4.17 *Intellectual Property.*

(a) Section 4.17(a) of the Company Disclosure Letter sets forth a true and complete list of all registered trademarks, service marks or tradenames and applications therefor, patents, patent applications, registered copyrights, applications to register copyright, and domain names owned by the Company or any of its Subsidiaries on the date hereof and that are material to the businesses of the Company and its Subsidiaries, taken as a whole (collectively, *Company Registered IP*). No Company Registered IP is involved in any interference, reissue, reexamination, opposition, cancellation or similar proceeding and, to the knowledge of the Company, no such action is or has been threatened with respect to any of the Company Registered IP. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, all Company Registered IP is owned, beneficially and of record, by the Company or one its Subsidiaries free and clear of all Liens and all such Company Registered IP is subsisting and, to the knowledge of the Company, valid and enforceable. Neither the Company nor any of its Subsidiaries has

Table of Contents

received any written notice or claim in the year prior to the date hereof challenging the validity or enforceability of any Company Registered IP that remains pending or unresolved.

(b) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, each of the Company and its Subsidiaries has taken commercially reasonable steps to maintain the confidentiality of all information of the Company or its Subsidiaries that derives economic value (actual or potential) from not being generally known to other persons who can obtain economic value from its disclosure or use, including taking commercially reasonable steps to safeguard any such information that is accessible through computer systems or networks.

(c) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) the Company and its Subsidiaries are not infringing upon, or otherwise violating misappropriating any patents, copyrights, trademarks, trade secrets, rights to personal information, or other intellectual property (*Intellectual Property*) of any third party in connection with the conduct of their respective businesses, and neither the Company nor any of its Subsidiaries has received in the two (2) years prior to the date hereof any written notice or claim asserting that any such infringement, misappropriation or other violation is occurring, which notice or claim remains pending or unresolved, (ii) to the knowledge of the Company, no third party is misappropriating or infringing any Intellectual Property owned by the Company or any of its Subsidiaries and (iii) no Intellectual Property owned by the Company or any of its Subsidiaries is subject to any outstanding order, judgment, or, decree settlement, coexistence agreement or stipulation restricting or limiting in any material respect the use or licensing thereof by the Company or any of its Subsidiaries.

Section 4.18 *Rights Plan*. The Company Board has resolved to, and the Company simultaneously with the execution of this Agreement will, take all action necessary, (a) to render the Rights Agreement inapplicable to the transactions contemplated by this Agreement and (b) cause the Rights to expire immediately prior to the Effective Time.

Section 4.19 *Related Party Transactions*. No executive officer or director of the Company or any Person owning 5% or more of the Shares is a party to any Contract with or binding upon the Company or any of its Subsidiaries or any of their respective properties or assets or has any interest in any property owned by the Company or any of its Subsidiaries or has engaged in any transaction with any of the foregoing within the last twelve (12) months, in each case, that is of a type that would be required to be disclosed in the Company SEC Reports pursuant Item 404 of Regulation S-K that has not been so disclosed.

Section 4.20 *Brokers*. No broker, investment banker, financial advisor or other Person, other than J.P. Morgan Securities Inc. and Houlihan Lokey Howard & Zukin Financial Advisors, Inc., is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company or any of its Subsidiaries.

Section 4.21 *Opinion of Financial Advisor*. Houlihan Lokey Howard & Zukin Financial Advisors, Inc. has delivered to the Company Board its written opinion (or oral opinion to be confirmed in writing), dated the date of this Agreement, to the effect that, as of such date and subject to the assumptions, limitations and qualifications reflected therein, the Per Share Stock Consideration and the Per Share Cash Consideration, taken together, is fair, from a financial point of view, to the holders of Shares (other than Parent, Merger Sub, and their respective Affiliates).

Section 4.22 *Takeover Statute*. Assuming the accuracy of Parent's representations in Article V, the Company has taken all action necessary to exempt the Offer, the Merger, this Agreement and the transactions contemplated hereby and thereby from the provisions of Section 203 of the DGCL, and such action is effective as of the date hereof and thereafter.

Table of Contents

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF

PARENT AND MERGER SUB

Except (i) as disclosed or reflected in Parent's Annual Report on Form 10-K for the fiscal year ended December 31, 2007 (the *Parent Recent SEC Document*) (other than statements in the Risk Factors Sections that do not relate to historical facts and are forward looking in nature); *provided*, that such disclosures shall apply only to the extent that the nature and content of the disclosure in the Parent Recent SEC Document is reasonably apparent on the face of the text of such disclosure to be applicable to the subject matter of a representation and warranty or (ii) as set forth in the disclosure letter delivered by Parent to the Company prior to the execution of this Agreement (the *Parent Disclosure Letter*) (it being agreed that disclosure of any information in a particular section or subsection of the Parent Disclosure Letter shall be deemed disclosure with respect to any other section or subsection of this Agreement to which the relevance of such information is reasonably apparent on its face), Parent and the Merger Sub, jointly and severally, represent and warrant to the Company as follows:

Section 5.1 Organization, Standing and Power.

(a) Each of Parent and Merger Sub (i) is a corporation duly organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation, (ii) has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as now being conducted and (iii) is duly qualified or licensed to do business and is in good standing (with respect to jurisdictions that recognize such concept) in each jurisdiction in which the nature of its business or the ownership, leasing or operation of its properties makes such qualification or licensing necessary, except for any such failures to have such power and authority or to be so qualified or licensed or in good standing as would not, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect. For purposes of this Agreement, *Parent Material Adverse Effect* means any fact, circumstance, event, change, effect, development or occurrence that, either individually or in the aggregate is materially adverse to (A) the business, assets, liabilities, condition (financial or otherwise) or results of operations of Parent and its Subsidiaries, taken as a whole or (B) the ability of Parent or Merger Sub to perform, in all material respects, its obligations under this Agreement or to consummate the transactions contemplated hereby; provided, however, that *Parent Material Adverse Effect* shall not include the effect of any fact, circumstance, event, change, effect, development, or occurrence arising out of or attributable to any of the following, either alone or in combination: (1) the industry and markets in which Parent and its Subsidiaries operate generally (that do not materially disproportionately affect Parent and its Subsidiaries, taken as a whole); (2) general economic, business, regulatory or political conditions (including those affecting the securities or financial markets) (that do not materially disproportionately affect Parent and its Subsidiaries, taken as a whole); (3) gasoline prices in the United States; (4) any actions required under this Agreement to obtain any approval or authorization under applicable antitrust or competition Laws for the consummation of the Offer or the Merger; (5) the public announcement or pendency of this Agreement or the consummation of the transactions contemplated hereby (including any loss of employees or labor disputes or employee strikes, slowdowns, job actions or work stoppages or labor union activities or any termination or reduction or similar negative impact on relationships, contractual or otherwise, with any customers, suppliers or distributors); (6) acts of war (whether or not declared), sabotage or terrorism, military actions or the escalation thereof or other force majeure events (such as natural disasters or acts of God) occurring after the date hereof (other than any of the foregoing that causes material damage or destruction to a material number of stores of Parent or any of its Subsidiaries, taking into account the proceeds of any applicable insurance policies); (7) any changes in applicable Laws or applicable accounting regulations or principles or interpretations thereof; or (8) the taking of any action contemplated by or arising from this Agreement or consented to or requested by the Company.

(b) Parent has previously furnished or otherwise made available to the Company a true and complete copy of the certificate of incorporation and bylaws of each of Parent and Merger Sub, in each case as amended to the date of this Agreement, and each as so delivered is in full force and effect. Neither Parent

Table of Contents

nor Merger Sub is in violation of any provision of its certificate of incorporation or bylaws. The minute books of Parent and each of its Subsidiaries contain accurate records of all corporate actions taken by the directors and stockholders or equivalents of such entity, and, subject to Section 5.1(b) of the Parent Disclosure Letter, true and correct copies of such minute books from and after January 1, 2007 have been made available to the Company.

Section 5.2 *Capital Stock.*

(a) The authorized capital stock of Parent consists of 245,000,000 shares of Parent Common Stock and 5,000,000 shares of preferred stock, par value \$.01 per share (*Parent Preferred Stock*). As of December 31, 2007, (A) 115,260,564 shares of Parent Common Stock were issued and outstanding, including 15,123 shares of unvested restricted stock, all of which were validly issued, fully paid and nonassessable and were free of preemptive rights; (B) no Shares were held in treasury; (C) no shares of Parent Preferred Stock were issued and outstanding; (D) an aggregate of 4,404,403 shares of Parent Common Stock were subject to or otherwise deliverable in connection with outstanding stock options under the O Reilly Automotive, Inc. 1993 Stock Option Plan, as amended; and (E) an aggregate of 215,000 shares of Parent Common Stock were subject to or otherwise deliverable in connection with outstanding stock options under the O Reilly Automotive, Inc. Director Stock Option Plan, as amended. No shares of Parent Common Stock are owned or held by any Subsidiary of Parent. All of the outstanding shares of Parent Common Stock, and all shares of Common Stock reserved for issuance as noted in clauses (D) and (E), when issued in accordance with the respective terms thereof, are duly authorized, validly issued, fully paid and non-assessable and free of preemptive or similar rights and issued in compliance with applicable securities Laws.

Except as set forth in this Section 5.2, except as set forth on Section 5.2 of the Parent Disclosure Letter and except for changes since December 31, 2007 resulting from the exercise of stock options for Parent Common Stock outstanding on such date, as of the date of this Agreement, (A) there are not outstanding or authorized any (1) shares of capital stock or other equity interests of Parent or any of its Subsidiaries, (2) securities of Parent or any of its Subsidiaries convertible into or exchangeable for shares of capital stock or other equity interests of Parent or any of its Subsidiaries or (3) options or other rights to acquire from Parent or any of its Subsidiaries, and no obligation of Parent or any of its Subsidiaries to issue, any capital stock or other equity interests, securities convertible into or exchangeable for capital stock or other equity interests of Parent or any of its Subsidiaries, (B) there are no outstanding obligations of Parent or any of its Subsidiaries to repurchase, redeem or otherwise acquire any capital stock or other equity interests or securities convertible into or exchangeable for capital stock or other equity interests of Parent or any of its Subsidiaries and (C) there are no other options, calls, warrants or other rights, agreements, arrangements or commitments of any character relating to the issued or unissued capital stock of Parent or any of its Subsidiaries to which Parent or any of its Subsidiaries is a party. There are no outstanding or authorized stock appreciation, phantom stock, profit participation or other similar rights with respect to Parent or any of its Subsidiaries.

(b) Except as set forth in subsection (a) above, neither Parent nor any of its Subsidiaries has outstanding bonds, debentures, notes or other obligations, the holders of which have the right to vote (or which are convertible into or exercisable for securities having the right to vote) with the shareholders of Parent on any matter.

(c) There are no shareholder agreements, voting trusts or other agreements or understandings to which Parent or any of its Subsidiaries is a party with respect to the voting, transfer or registration of the capital stock or other equity interests of Parent or any of its Subsidiaries.

(d) Each of the outstanding shares of capital stock of each of Parent's Subsidiaries is duly authorized, validly issued, fully paid and nonassessable and free of preemptive or similar rights, all such shares are owned by Parent or another wholly-owned Subsidiary of Parent and are owned free and clear of all Liens of any nature whatsoever.

Table of Contents

(e) Section 5.2(e) of the Parent Disclosure Letter sets forth the name, jurisdiction of incorporation or organization, authorized and outstanding capital of each Subsidiary of Parent and the name of each of its shareholder(s) or owner(s) and the capital stock or other equity interests held by each such person. Other than with respect to the Subsidiaries of Parent set forth in Section 5.2(e) of the Parent Disclosure Letter, Parent does not own, directly or indirectly, any capital stock or other equity securities of any person or have any direct or indirect equity or ownership interest in any person or business other than an investment in publicly traded securities constituting three percent (3%) or less of the outstanding securities of any entity.

Section 5.3 *Authority*. Each of Parent and Merger Sub has all necessary corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement by Parent and Merger Sub and the consummation by Parent and Merger Sub of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of each by the Boards of Directors of Parent and Merger Sub, and no other corporate proceedings on the part of Parent or Merger Sub are necessary to approve this Agreement or to consummate the transactions contemplated hereby, subject in the case of the consummation of the Merger, to the filing of the Certificate of Merger with the Secretary of State of the State of Delaware as required by the DGCL. This Agreement has been duly executed and delivered by Parent and Merger Sub and, assuming the due authorization, execution and delivery by the Company, constitutes a valid and binding obligation of Parent and Merger Sub, enforceable against each of them in accordance with its terms (except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or similar Laws affecting the enforcement of creditors' rights generally or by general principles of equity).

Section 5.4 *No Conflict; Consents and Approvals*.

(a) The execution, delivery and performance of this Agreement by Parent and Merger Sub, and the consummation by Parent and Merger Sub of the transactions contemplated hereby, do not and will not (i) conflict with or violate the certificate of incorporation or bylaws of Parent or Merger Sub, (ii) assuming that all consents, approvals and authorizations contemplated by clauses (i) through (v) of subsection (b) below have been obtained and all filings described in such clauses have been made, conflict with or violate any Law applicable to Parent or Merger Sub or by which any of their respective properties are bound or (iii) except as set forth on Section 5.4 of the Parent Disclosure Letter, result in any breach or violation of, or constitute a default (or an event which with notice or lapse of time or both would become a default), impair Parent's or any Subsidiary's rights or alter the rights or obligations of any third party under, or result in the loss of a benefit under, or give rise to any right of termination, cancellation, amendment or acceleration of, or result in the creation of a Lien on any of the properties or assets of Parent or any of its Subsidiaries under, any Contract to which Parent or Merger Sub is a party or by which Parent or Merger Sub or any of their respective properties are bound, except, in the case of clauses (ii) and (iii), for any such conflict, breach, violation, default, loss, right or other occurrence that would not, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect.

(b) The execution, delivery and performance of this Agreement by Parent and Merger Sub, and the consummation by Parent and Merger Sub of the transactions contemplated hereby, do not and will not require any consent, approval, authorization or permit of, action by, filing with or notification to, any Governmental Entity by Parent or Merger Sub, except for (i) such filings as required under applicable requirements of the Exchange Act and the rules and regulations promulgated thereunder, and under state securities and blue sky laws, (ii) the filings required under the HSR Act, (iii) such filings as necessary to comply with the applicable requirements of NASDAQ, (iv) the filing with the Secretary of State of the State of Delaware of the Certificate of Merger as required by the DGCL and (v) any such consent, approval, authorization, permit, action, filing or notification with a Governmental Entity the failure of which to make or obtain would not, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect.

Table of Contents

Section 5.5 *SEC Reports; Financials Statements.*

(a) Except as set forth on Section 5.5 of the Company Disclosure Letter, Parent has timely filed or otherwise transmitted all forms, reports, statements, certifications and other documents (including all exhibits, amendments and supplements thereto) required to be filed by it with the SEC since January 1, 2006 (all such forms, reports, statements, certificates and other documents filed since January 1, 2006 (the *Parent Applicable Date*) and prior to the date hereof and those filed subsequent to the date hereof including any amendments, collectively, the *Parent SEC Documents*). As of their respective dates, or, if amended, as of the date of the last such amendment, each of the Parent SEC Documents complied (or, if not yet filed, will comply) in all material respects with the applicable requirements of the Securities Act and the Exchange Act, and the applicable rules and regulations promulgated thereunder, as the case may be, each as in effect on the date so filed. Except to the extent that information in any Parent SEC Document has been revised or superseded by a subsequently filed Parent SEC Document, none of the Parent SEC Documents contains (or, if not yet filed, will not contain) any untrue statement of a material fact or omits to state a material fact required to be stated or incorporated by reference therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. For purposes of clarification, amendments filed after the date of this Agreement to Parent SEC Documents that were filed prior to the date of this Agreement shall not be taken into account for purposes of determining compliance with this Section 5.5(a).

(b) The audited consolidated financial statements of Parent (including any related notes thereto) included in Parent's Annual Report on Form 10-K for the fiscal year ended December 31, 2007 filed with the SEC have been prepared in accordance with GAAP applied on a consistent basis throughout the periods involved (except as may be indicated in the notes thereto) and fairly present in all material respects the consolidated financial position of the Company and its Subsidiaries at the respective dates thereof and the results of their operations and cash flows for the periods indicated. The unaudited consolidated financial statements of Parent (including any related notes thereto) included in Parent's Quarterly Reports on Form 10-Q filed with the SEC after the date hereof will be prepared in accordance with GAAP applied on a consistent basis throughout the periods involved (except as may be indicated in the notes thereto or may be permitted by the SEC under the Exchange Act) and fairly present in all material respects the consolidated financial position of Parent and its Subsidiaries as of the respective dates thereof and the results of their operations and cash flows for the periods indicated (subject to normal period-end adjustments).

(c) Parent has designed disclosure controls and procedures to ensure that material information relating to Parent, including its Subsidiaries, is made known to the chief executive officer and the chief financial officer of Parent by others within those entities. Parent's management has completed assessment of the effectiveness of Parent's internal control over financial reporting in compliance with the requirements of Section 404 of the Sarbanes-Oxley Act of 2002 for the year ended December 31, 2007, and such assessment concluded that such controls were effective.

(d) Parent has disclosed, based on its most recent evaluation prior to the date hereof, to Parent's auditors and the audit committee of Parent Board (i) any significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect in any material respect Parent's ability to record, process, summarize and report financial information and (ii) any fraud, whether or not material, that involves management or other employees who have a significant roles in Parent's internal controls over financial reporting.

(e) Parent maintains a system of internal control over financial reporting (within the meaning of Rules 13a-15(f) and 15d-15(f) of the Exchange Act) designed to provide reasonable assurances regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP. Parent maintains disclosure controls and procedures (within the meaning of Rules 13a-15(e) and 15d-15(c) of the Exchange Act) designed to ensure that information required to be disclosed by Parent in the reports that it files and submits under the Exchange Act is recorded, processed, summarized and reported within the times periods specified in the SEC's rules and forms, including that information

Table of Contents

required to be disclosed by Parent in the reports that it files and submits under the Exchange Act is accumulated and communicated to management of Parent as appropriate to allow timely decisions regarding required disclosure.

(f) Since the Parent Applicable Date through the date of this Agreement, (x) neither Parent nor any of its Subsidiaries has received any material complaint regarding accounting, internal accounting controls or auditing matters of Parent or any of its Subsidiaries and (y) no attorney representing Parent or any of its Subsidiaries, whether or not employed by Parent or any of its Subsidiaries, has reported evidence of a violation of securities laws, breach of fiduciary duty or similar violation by Parent or any of its officers, directors, employees or agents to Parent Board or any committee thereof or to the general counsel or chief executive officer of Parent pursuant to the rules of the SEC adopted under Section 307 of the Sarbanes-Oxley Act of 2002.

(g) Since the Parent Applicable Date, Parent has complied in all material respects with the provisions of the Sarbanes-Oxley Act of 2002 and the rules and regulations of NASDAQ that are applicable to Parent. Since the Parent Applicable Date, Parent's auditors and chief executive officer and chief financial officer have given all certifications, attestations and reports required pursuant to the rules and regulations adopted pursuant to Section 404 of the Sarbanes Oxley Act of 2002.

(h) Except (i) as reflected or reserved against in Parent's consolidated balance sheets (or the notes thereto) included in Parent's Annual Report on Form 10-K filed with the SEC since December 31, 2007; (ii) for liabilities and obligations incurred in the ordinary and usual course of business consistent with past practice since December 31, 2007; (iii) as would not individually or in the aggregate have a Parent Material Adverse Effect; (iv) for liabilities and obligations arising under this Agreement; (v) liabilities and obligations disclosed in this Agreement or the Parent Disclosure Letter, neither Parent nor any Subsidiary of Parent has any liabilities or obligation of any nature, whether or not accrued, contingent or otherwise, whether known or unknown and whether due or to become due.

Section 5.6 Certain Information.

(a) None of the information supplied or to be supplied by Parent or Merger Sub with respect to Parent and any of its Subsidiaries that Parent furnishes to the Company in writing specifically for use in any Company Disclosure Document will contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading (i) in the case of the Proxy Statement, as supplemented or amended, if applicable, at the time such Proxy Statement or any amendment or supplement thereto is first mailed to stockholders of the Company and at the time such stockholders vote on adoption of this Agreement, and (ii) in the case of any Company Disclosure Document other than the Proxy Statement, at the time of the filing of such Company Disclosure Document or any supplement or amendment thereto and at the time of any distribution or dissemination thereof and at the consummation of the Offer.

(b) The Schedule TO, when filed, and the Offer Documents, when distributed or disseminated, will comply as to form and substance in all material respects with the applicable requirements of the Exchange Act and, at the time of such filing, at the time of such distribution or dissemination and at the time of consummation of the Offer, will not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading; provided, that this representation and warranty will not apply to statements or omissions included in the Schedule TO and the Offer Documents based upon information furnished to Parent or Merger Subsidiary in writing by the Company specifically for use therein contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading.

Table of Contents

Section 5.7 *Absence of Certain Changes or Events*. Since December 31, 2007, except as otherwise contemplated or permitted by this Agreement (i) the businesses of Parent and its Subsidiaries have been conducted in the ordinary course of business consistent with past practice (ii) there has not been any fact, event, change, effect, or occurrence, that, individually or in the aggregate, would reasonably be expected to have a Parent Material Adverse Effect and (iii) neither Parent nor any of its Subsidiaries have taken any action that, if taken after the date hereof, would violate the provisions of Section 6.2(b).

Section 5.8 *Absence of Litigation*. Except as would not, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect, (a) there is no Action pending or, to the knowledge of Parent, threatened against Parent or any of its Subsidiaries or any of their respective properties by or before any Governmental Entity and (b) neither Parent nor any of its Subsidiaries nor any of their respective properties is or are subject to any judgment, order, injunction, rule or decree of any Governmental Entity.

Section 5.9 *Compliance with Laws*. Except with respect to the Securities Act and Exchange Act and Laws with respect to Taxes, which are the subject of Sections 5.5 and 5.16, Parent and each of its Subsidiaries are in compliance with all Laws applicable to them or by which any of their respective properties are bound, except where any non-compliance would not, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect. Except as would not reasonably be expected to have Parent Material Adverse Effect, no notice, charge, claim, action or assertion has been received by Parent or any of its Subsidiaries or has been filed, commenced or, to the knowledge of Parent, threatened against Parent or any of its Subsidiaries alleging any violation of any applicable Law. Parent and its Subsidiaries have in effect all Permits necessary for them to own, lease or operate their properties and to carry on their businesses as now conducted, except for any Permits the absence of which would not, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect. All Permits are in full force and effect, except where the failure to be in full force and effect would not, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect. No event or condition has occurred or exists which would result in a violation of, breach, default or loss of a benefit under, or acceleration of an obligation of Parent or any of its Subsidiaries under, any material Permit (in each case, with or without notice or lapse of time or both), except where any violation, default, loss or acceleration would not, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect.

Section 5.10 *Ownership and Operations of Merger Sub*. Merger Sub has been formed solely for the purpose of engaging in the transactions contemplated hereby and prior to the Effective Time will have engaged in no other business activities and will have incurred no liabilities or obligations other than as contemplated herein. The authorized capital stock of Merger Sub consists of 1,000 shares of common stock, par value \$0.01 per share, all of which are validly issued and outstanding. All of the issued and outstanding capital stock of Merger Sub is, and at the Effective Time will be, owned directly or indirectly by Parent.

Section 5.11 *Financing*. Parent has and will have at the consummation of the Offer and at the Effective Time access to sufficient funds to consummate the Offer and the Merger and the other transactions contemplated hereby on the terms and subject to the conditions set forth herein.

Section 5.12 *Vote/Approval Required*. No vote or consent of the holders of any class or series of capital stock of Parent is necessary to approve this Agreement or the Merger or the other transactions contemplated hereby. The vote or consent of LLC as the sole stockholder of Merger Sub (which shall have occurred prior to the Effective Time) is the only vote or consent of the holders of any class or series of capital stock of Merger Sub necessary to approve this Agreement, the Offer, the Merger, or the other transactions contemplated hereby.

Section 5.13 *Ownership of Shares*. Except as set forth in Section 5.13 of the Parent Disclosure Letter, neither Parent nor Merger Sub nor any of Parent's Affiliates owns (directly or indirectly, beneficially or of record) any Shares or holds any rights to acquire or vote any Shares except pursuant to this Agreement.

Section 5.14 *No Other Representations or Warranties*. Parent and Merger Sub each acknowledges and agrees that neither the Company nor any other Person is making any representation or warranty of any kind or

Table of Contents

nature whatsoever, oral or written, express or implied, relating to the Company or any of its Subsidiaries, except as expressly set forth in Article IV, and that the Company hereby specifically disclaims any such other representations or warranties.

Section 5.15 *Access to Information*. Parent and Merger Sub each acknowledges and agrees that it (a) has had an opportunity to discuss and ask questions regarding the business of the Company and its Subsidiaries with the management of the Company and (b) has conducted its own independent investigation of the Company and its Subsidiaries and the transactions contemplated hereby, and has not relied on an representation or warranty by any Person regarding the Company and its Subsidiaries, except as expressly set forth in Article IV.

Section 5.16 *Taxes*. Except as would not, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect:

(a) All Tax Returns required by applicable Law to be filed by or on behalf of Parent or any of its Subsidiaries have been timely filed in accordance with all applicable Laws (after giving effect to any extensions of time in which to make such filings), and all such Tax Returns are true, correct and complete.

(b) Neither Parent nor any of its Subsidiaries is delinquent in the payment of any Tax, except with respect to Taxes contested in good faith and for which adequate reserves have been established on the financial statements of Parent and its Subsidiaries included in the most recent Parent SEC Documents in accordance with GAAP.

(c) No Liens for Taxes exist with respect to any assets or properties of Parent or any of its Subsidiaries, except for statutory Liens for Taxes not yet delinquent.

(d) As of the date of this Agreement, there are no audits or other proceedings now pending or threatened in writing against or with respect to Parent or any of its Subsidiaries with respect to any material Tax.

(e) The financial statements included in the most recent Parent SEC Documents reflect, in accordance with GAAP, an adequate reserve for all material Taxes payable by Parent and its Subsidiaries for all taxable periods and portions thereof through the date of such financial statements and neither Parent nor any of its Subsidiaries has incurred any material liability for Taxes subsequent to the date of such most recent financial statements other than in the ordinary course of Parent's or such Subsidiary's business.

(f)(i) all Taxes which Parent or any of its Subsidiaries are required by Law to withhold or to collect for payment have been duly withheld and collected and any such amounts that are required to be remitted to any Taxing Authority have been duly remitted, except with respect to matters contested in good faith and for which adequate reserves have been established on the financial statements of Parent and its Subsidiaries included in the most recent Parent SEC Documents in accordance with GAAP; and (ii) no unresolved claim has been made against Parent or any of its Subsidiaries by any Taxing Authority in a jurisdiction where Parent or any of its Subsidiaries does not file Tax Returns that Parent or any of its Subsidiaries is or may be subject to taxation in that jurisdiction;

(g) None of Parent or any of its Subsidiaries (i) has been a member of an affiliated group filing a consolidated federal income Tax Return (other than a group the common parent of which was Parent), (ii) is a party to or bound by any Tax allocation, sharing or indemnification agreement or other similar arrangement with any person other than Parent and its Subsidiaries or (iii) has any liability for the Taxes of any person (other than any of Parent or its Subsidiaries) under Treas. Reg. §1.1502-6 (or any similar provision of Law), as a transferee or successor, by contract, or otherwise (except, in each case, agreements among Parent and its Subsidiaries and customary Tax indemnifications contained in credit or other commercial lending agreements, stock or asset purchase agreements, or arrangements with landlords, lessors, customers and vendors).

(h) Neither Parent nor any of its Subsidiaries has constituted a distributing corporation or a controlled corporation in a distribution of stock purported to or intended to be governed by Section 355 or Section 361 of the Code.

Table of Contents

(i) Neither Parent nor any of its Subsidiaries has participated in, or is currently participating in, a listed transaction within the meaning of Treas. Reg. § 1.6011-4(b)(2) or similar provision of state or local Law.

(j) Neither Parent nor any of its Subsidiaries will be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Effective Time because of Section 481(a) of the Code (or an analogous provision of state, local, or foreign Law), by reason of a change in accounting method made prior to the Effective Time.

(k) The LLC is a disregarded entity whose assets, liabilities, income, gain, loss, deduction and credit are treated as assets, liabilities, income, gain, loss, deduction and credit of Parent in accordance with Treasury Regulation Section 301.7701-3(b)(1)(ii).

(l) Parent is not a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code and has not been (and will not be) such a United States real property holding corporation during the five (5) year period ending on the Closing Date.

(m) Neither Parent nor, to Parent's knowledge, any of its Affiliates has taken or agreed to take action that would prevent the Offer, the Merger, and the LLC Merger (if any) together from qualifying as a reorganization under the provisions of Section 368(a) of the Code.

Section 5.17 *Brokers*. No broker, investment banker, financial advisor or other Person, other than Lehman Brothers, Inc., is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Parent or Merger Sub.

Section 5.18 *Takeover Statute*. Prior to the Company Board approving this Agreement, the Merger, and the other transactions contemplated hereby for purposes of the applicable provisions of the DGCL, neither Parent nor Merger Sub, alone or together with any other person, was at any time, or became, an interested stockholder thereunder or has taken any action that would cause any anti-takeover statute under the DGCL or other applicable state Law to be applicable to this Agreement, the Merger, or any of the transactions contemplated hereby.

ARTICLE VI

COVENANTS

Section 6.1 *Conduct of Business of the Company*.

(a) The Company covenants and agrees that, during the period from the date hereof until the Effective Time, except (i) as contemplated or permitted by this Agreement, (ii) as disclosed in Section 6.1 of the Company Disclosure Letter, (iii) as required by applicable Law or (iv) unless Parent shall otherwise consent in writing (which consent shall not be unreasonably withheld or delayed), the Company shall, and shall cause each of its Subsidiaries to use reasonable efforts to conduct its business in the ordinary course of business consistent with past practice, to preserve substantially intact its business organization and to preserve its present relationships with customers, suppliers, employees and other Persons with which it has material business relations; *provided, however*, that no action by the Company or its Subsidiaries with respect to matters specifically addressed by any provision of Section 6.1(b) shall be deemed a breach of this sentence unless such action constitutes a breach of such provision of Section 6.1(b).

(b) Between the date of this Agreement and the Effective Time, except (i) as contemplated or permitted by this Agreement, (ii) as disclosed in Section 6.1 of the Company Disclosure Letter, (iii) as required by applicable Law, or (iv) unless Parent shall otherwise consent in writing, neither the Company nor any of its Subsidiaries shall:

(i) amend or otherwise change its certificate of incorporation or bylaws or any similar governing instruments;

Table of Contents

- (ii) adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization;
- (iii) issue, deliver, sell, pledge, dispose of or encumber any shares of capital stock or any securities convertible or exchangeable into shares of capital stock or other equity interests, or subscriptions, rights, warrants or options to acquire any shares of capital stock or other equity interests or any securities convertible or exchangeable into shares of capital stock or other equity interests, or enter into other agreements or commitments of any character obligating it to issue any such securities or rights, grant to any Person any right to acquire any shares of its capital stock, except (A) pursuant to the exercise of Company Stock Options or settlement of other stock based awards outstanding as of the date hereof and in accordance with the terms of such instruments, (B) issuances in accordance with the Rights Agreement, or (C) pursuant to the current terms of the 6^{3/4}% Senior Exchangeable Notes due 2025;
- (iv) declare, set aside, make or pay any dividend or other distribution, payable in cash, stock, property or otherwise, with respect to any of its capital stock (except for any dividend or distribution by a Subsidiary of the Company to the Company or to other Subsidiaries);
- (v) adjust, split, combine, redeem, repurchase or otherwise acquire any shares of capital stock of the Company (except in connection with the cashless exercises or similar transactions pursuant to the exercise of Company Stock Options or settlement of other awards or obligations outstanding as of the date hereof), or reclassify, combine, split, subdivide or otherwise amend the terms of its capital stock;
- (vi) (A) acquire (whether by merger, consolidation or acquisition of stock or assets or otherwise) any corporation, partnership or other business organization or division thereof, (B) acquire any assets in excess of \$150,000 individually or \$1,500,000 in the aggregate (other (i) than purchases of inventory and other assets in the ordinary course of business, or (ii) capital expenditures permitted hereunder), in which case consent by Parent shall not be unreasonably withheld or delayed; (C) sell or otherwise dispose of (whether by merger, consolidation or acquisition of stock or assets or otherwise) any corporation, partnership or other business organization or division thereof; or (D) sell or otherwise dispose of or any assets in excess of \$150,000 individually or \$1,500,000 in the aggregate (other than sales or dispositions of inventory and other assets in the ordinary course of business), in which case consent by Parent shall not be unreasonably withheld or delayed;
- (vii) other than in the ordinary course of business consistent with past practice, enter into, materially amend, fail to enforce, or terminate any Material Contract, in which case consent by Parent shall not be unreasonably withheld or delayed;
- (viii) other than in the ordinary course of business consistent with past practice, grant to or acquire from any Person, or abandon, dispose of or permit to lapse any rights to, any material Intellectual Property, in which case consent by Parent shall not be unreasonably withheld or delayed;
- (ix) authorize any material new capital expenditures that are in excess of the sum of (i) \$500,000 and (ii) the Company's capital expenditure budget set forth on Section 6.1(b)(ix) of the Company Disclosure Letter;
- (x) (A) make any loans, advances (other than to employees in the ordinary course of business) or capital contributions to, or investments in, any other Person (other than a Subsidiary of the Company), (B) incur any indebtedness for borrowed money or issue any debt securities other than borrowings under the existing Credit Agreements, (C) make any modification or amendment to, or solicit or obtain any waiver with respect to, the Debt Instruments, or (D) assume, guarantee, endorse or otherwise become liable or responsible for the indebtedness or other obligations of another Person (other than a guaranty by the Company on behalf of its Subsidiaries), in the case of each of subclauses (A), (B), (C) or (D), which consent by Parent shall not be unreasonably withheld or delayed; *provided, however*, in no event shall the aggregate amount of indebtedness for borrowed money under the existing Credit Agreements at the consummation of the Offer exceed \$475,000,000;

Table of Contents

(xi) except to the extent either required by applicable Law (including Section 409A of the Code), any arrangement in effect as of the date hereof and set forth on Section 6.1(b)(xi) of the Company Disclosure Letter, and as contemplated by Sections 3.1, 3.2, or 6.8, (A) increase the total compensation or benefits of any director or vice president or higher-level position of the Company, or (B) except as set forth on Section 6.1(b)(xi) of the Company Disclosure Letter, terminate, amend or adopt any compensation or benefit plan including any pension, retirement, profit-sharing, bonus or other employee benefit or welfare benefit plan (other than any such adoption or amendment that does not materially increase the cost to the Company or any of its Subsidiaries of maintaining the applicable compensation or benefit plan) with or for the benefit or its employees or directors, in which case consent by Parent shall not be unreasonably withheld or delayed;

(xii) enter into any closing agreement with respect to material Taxes; settle or compromise any material liability for Taxes (except with respect to any Tax liability, for an amount that is not materially in excess of the amount reserved therefor on the financial statements of the Company and its Subsidiaries included in the Company SEC Documents); make, revoke, or change any material Tax election; knowingly surrender any claim for a material refund of Taxes; execute or consent to any waivers extending the statutory period of limitations with respect to the collection or assessment of material Taxes (except for extensions routinely granted during the course of an examination or audit); file any material amended Tax return involving a material amount of additional Taxes (except as required by Law); or obtain any material Tax ruling;

(xiii) implement or adopt any material change in its methods of accounting, except as may be appropriate to conform to changes in statutory or regulatory accounting rules or GAAP or regulatory requirements with respect thereto;

(xiv) compromise, settle or agree to settle any Action (including any Action relating to this Agreement or the transactions contemplated hereby), or consent to the same, other than compromises, settlements or agreements in the ordinary course of business consistent with past practice than involve only the payment of money damages (A) (1) not in excess of \$2,000,000 in the aggregate during the 90 day period following the date of this Agreement or (2) not in excess of \$4,000,000 in the aggregate during the 180 day period following the date of this Agreement or (B) consistent with the reserves reflected in the Company's balance sheet at November 4, 2007, in the case of each of subclauses (A) and (B), which consent by Parent shall not be unreasonably withheld or delayed;

(xv) (A) take any action other than as provided herein that would cause any material insurance policy to be cancelled or terminated other than in accordance with its terms or (B) fail to use commercially reasonable efforts to renew, or replace with substantially equivalent policies, any expiring policies on commercially reasonable terms consistent with past practices, in the case of each of subclauses (A) and (B), which consent by Parent shall not be unreasonably withheld or delayed;

(xvi) enter into, materially amend, fail to enforce, or terminate any collective bargaining agreement; or

(xvii) agree to take any of the actions described in Sections 6.1(b)(i) through 6.1(b)(xvi).

Section 6.2 Conduct of Business of Parent and Merger Sub Pending the Merger.

(a) From and after the date hereof and prior to the Effective Time, and except as may otherwise required by applicable Law, each of Parent and Merger Sub agree that it shall not, directly or indirectly, take any action that is intended to or that would reasonably be expected to (a) materially adversely affect or materially delay the ability of Parent or Merger Sub to obtain any necessary approvals of any Governmental Entity necessary for the consummation of the transactions contemplated hereby in accordance with the terms of Section 6.7, (b) performing its covenants or agreements hereunder, (c) cause any of its representations and warranties set forth in Article V to be untrue in any material respect, or (d) otherwise, individually or in the aggregate, have a Parent Material Adverse Effect. Parent covenants and agrees that,

Table of Contents

during the period from the date hereof until the Effective Time, except (i) as contemplated or permitted by this Agreement, (ii) as disclosed in Section 6.2 of the Parent Disclosure Letter, (iii) as required by applicable Law or (iv) unless the Company shall otherwise consent in writing (which consent shall not be unreasonably withheld or delayed), Parent shall, and shall cause each of its Subsidiaries to use reasonable efforts to conduct its business in the ordinary course of business consistent with past practice, to preserve substantially intact its business organization and to preserve its present relationships with customers, suppliers and other Persons with which it has material business relations.

(b) Between the date of this Agreement and the Effective Time, except (i) as contemplated or permitted by this Agreement, (ii) as disclosed in Section 6.2 of the Parent Disclosure Letter, (iii) as required by applicable Law, or (iv) unless Company shall otherwise consent in writing, neither Parent nor any of its Subsidiaries shall:

(i) amend or otherwise change its certificate of incorporation or bylaws or any similar governing instruments;

(ii) adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization;

(iii) declare, set aside, make or pay any dividend or other distribution, payable in cash, stock, property or otherwise, with respect to any of its capital stock (except for any dividend or distribution by a Subsidiary of Parent to Parent or to other Subsidiaries); or

(iv) adjust, split, combine, redeem, repurchase or otherwise acquire any shares of capital stock of Parent (except in connection with the cashless exercises or similar transactions pursuant to the exercise of Parent Stock Options or settlement of other awards or obligations outstanding as of the date hereof), or reclassify, combine, split, subdivide or otherwise amend the terms of its capital stock.

Section 6.3 *No Control of Other Party's Business*. Nothing contained in this Agreement shall give Parent, directly or indirectly, the right to control or direct the Company's or its Subsidiaries' operations prior to the consummation of the Offer, and nothing contained in this Agreement shall give the Company, directly or indirectly, the right to control or direct Parent's or its Subsidiaries' operations prior to the Effective Time; *provided*, that nothing contained in this Section 6.3 shall be deemed to mitigate Parent's consent rights as set forth in Section 6.1 or the Company's consent rights as set forth in Section 6.2. Prior to the consummation of the Offer, in the case of the Company, and the Effective Time, in the case of Parent, each of the Company and Parent shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its and its Subsidiaries' respective operations.

Section 6.4 *Acquisition Proposals*.

(a) Subject to Sections 6.4(b)-(f), the Company agrees that neither it nor any of its Subsidiaries shall, and that it shall direct its and their respective officers, directors, employees, agents and representatives, including any investment banker, attorney or accountant retained by the Company or any of its Subsidiaries (collectively, *Representatives*) not to, directly or indirectly, (i) initiate, solicit or knowingly encourage (including by providing information) or intentionally take any action to facilitate any inquiries, proposals or offers with respect to, or the making or completion of, an Acquisition Proposal, (ii) engage or participate in any negotiations, discussions, or communications (other than to state that they are not permitted to have discussions) concerning, or provide or cause to be provided any non-public information or data relating to the Company or any of its Subsidiaries in connection with, an Acquisition Proposal, (iii) approve, endorse or recommend any Acquisition Proposal, (iv) approve, endorse or recommend, or execute or enter into any letter of intent, agreement in principle, merger agreement, acquisition agreement or other similar agreement relating to an Acquisition Proposal; or, (v) (A) amend, grant any waiver or release under, or fail to enforce, any standstill or similar agreement with respect to the Company or any of its Subsidiaries, (B) approve any transaction under, or any other person becoming an interested stockholder under, Section 203 of the DGCL, or (C) amend or grant any waiver or release or approve any transaction or redeem any rights under

Table of Contents

the Rights Agreement, except in connection with the transactions contemplated by this Agreement; *provided, however*, it is understood and agreed that any determination or action by the Company Board permitted under Sections 6.4(b), (c) or (d) or Section 8.1(c)(ii) shall not be deemed to be a breach of this Section 6.4(a). The Company agrees that it will immediately cease and cause to be terminated all existing activities, communications, discussions or negotiations with any Persons conducted heretofore with respect to any Acquisition Proposal and will request the return or destruction of any confidential information about the Company from any person who participated in the due diligence process within two (2) days of the date of this Agreement.

(b) Notwithstanding anything to the contrary in Section 6.4(a), at any time following the date of this Agreement and prior to the consummation of the Offer, the Company may, in response to an unsolicited bona fide written Acquisition Proposal that did not result from a breach of Section 6.4(a) and that the Company Board determines in good faith (after consultation with the Company's outside legal counsel and financial advisors) constitutes or may reasonably be expected to lead to a Superior Proposal, (i) furnish information with respect to the Company and its Subsidiaries to the Person making such Acquisition Proposal pursuant to a confidentiality and standstill agreement on terms no less favorable to the Company than to those contained in the Confidentiality Agreement and the Standstill Agreement (except for such changes specifically necessary in order for the Company to be able to comply with its obligations under this Agreement), a copy of which shall promptly be provided to Parent; *provided, however*, that any material non-public information provided to such Person has previously been provided to Parent or is provided to Parent contemporaneously as it is provided to such Person and (ii) participate in discussions or negotiations with such Person and its Representatives regarding such Acquisition Proposal.

(c) Neither the Company Board nor any committee thereof shall (i) withdraw, modify or qualify in a manner adverse to Parent or Merger Sub its approval or recommendation of this Agreement or the Merger (an *Adverse Recommendation Change*), (ii) approve or recommend, or cause or permit the Company to enter into, any letter of intent, memorandum of understanding, acquisition agreement or other similar agreement constituting or relating to any Acquisition Proposal or (iii) resolve or publicly propose to take any such actions. Notwithstanding anything to the contrary in this Section 6.4, if, prior to consummation of the Offer, (A) the Company Board determines in good faith (after consultation with the Company's outside legal counsel) that the failure to do so would be inconsistent with the Company Board's exercise of its fiduciary duties, the Company Board or any committee thereof may effect an Adverse Recommendation Change or (B) the Company receives an Acquisition Proposal that the Company Board determines in good faith (after consultation with the Company's outside legal counsel and financial advisors) constitutes a Superior Proposal, the Company may terminate this Agreement pursuant to Section 8.1(c)(ii) to enter into a definitive agreement with respect to such Superior Proposal, subject to compliance with Section 6.4(d).

(d) At any time prior to the consummation of the Offer, the Company may terminate this Agreement and enter into an Acquisition Agreement with respect to a Superior Proposal if (i) the Company has provided Parent written notice that it intends to terminate this Agreement pursuant to Section 8.1(c)(ii), identifying the Superior Proposal then determined to be more favorable and including a copy of the definitive acquisition agreement for such Superior Proposal in the form to be entered into, (ii) within a period of five (5) Business Days following the delivery of the notice referred to in clause (i) above, Parent does not propose adjustments in the terms and conditions of this Agreement, that the Company Board determines in good faith (after consultation with the Company's financial advisors) to be as favorable to the Company's stockholders from a financial point of view as such Superior Proposal (the Company having caused its financial and legal advisors to negotiate with Parent in good faith during such five (5) Business Day period any adjustments in the terms and conditions of this Agreement proposed by Parent), and (iii) at least five (5) Business Days after the Company has provided the notice referred to in clause (i) above, the Company simultaneously delivers to Parent (A) an irrevocable written notice of termination of this Agreement pursuant to Section 8.1(c)(ii) and (B) a wire transfer of same day funds in the amount of the Termination Fee.

Table of Contents

(e) The Company promptly (and in any event within 48 hours) shall advise Parent orally and in writing of (i) any inquiries, proposals or offers regarding any Acquisition Proposal, (ii) any request for non-public information relating to the Company or its Subsidiaries, other than requests for information not reasonably expected to be related to an Acquisition Proposal and (iii) any inquiry or request for discussion or negotiation regarding an Acquisition Proposal, including in each case the identity of the person making any such Acquisition Proposal, inquiry, proposal or offer and the material terms of any such Acquisition Proposal, inquiry, proposal or offer. The Company shall keep Parent reasonably informed on a reasonably current basis of the status (including any material change to the terms thereof) of any such Acquisition Proposal, inquiry, proposal or offer.

(f) Nothing set forth in this Agreement shall prevent the Company or the Company Board from (i) taking and disclosing to its shareholders a position contemplated by Rule 14d-9 and Rule 14e-2(a) promulgated under the Exchange Act (or any similar communication to shareholders in connection with the making or amendment of a tender offer or exchange offer) or from (ii) making any required disclosure to the Company's stockholders if, in the judgment of the Company Board (after consultation with outside legal counsel), failure to disclose such information would reasonably be expected to violate its obligations under applicable Law.

(g) As used in this Agreement:

(i) *Acquisition Proposal* means any inquiry, proposal or offer from any Person or group of Persons other than Parent or one of its Subsidiaries for (A) a merger, reorganization, consolidation, share exchange, business combination, joint venture recapitalization, liquidation, dissolution or similar transaction involving an acquisition of the Company (or any Subsidiary or Subsidiaries of the Company whose business constitutes 10% or more of the net revenues, net income or assets of the Company and its Subsidiaries, taken as a whole) or (B) the acquisition in any manner, directly or indirectly, of over 10% of the equity securities or consolidated total assets of the Company and its Subsidiaries, in each case other than the Offer or the Merger.

(ii) *Superior Proposal* means a bona fide written Acquisition Proposal, which proposal was not the result of a breach of this Section 6.4, that (a) is not conditioned upon obtaining financing or any regulatory approvals or consents beyond or in addition to those regulatory approvals and consents required in connection with the transactions contemplated by this Agreement, (b) is reasonably likely to be consummated (taking into account, among other things, all legal, financial, regulatory and other aspects of such Acquisition Proposal and the identity of the person submitting such an Acquisition Proposal) and (c) the Company Board determines in good faith (after consultation with the Company's outside counsel and the Company's financial advisors) is more favorable from a financial point of view to the Company's stockholders than the transactions contemplated by this Agreement, taking into account all the terms and conditions of such Acquisition Proposal and this Agreement (including any changes proposed by Parent to the terms of this Agreement in response to the Superior Proposal); *provided*, that for the purposes of this definition of *Superior Proposal*, the term Acquisition Proposal shall have the meaning assigned to such term in Section 6.4(g)(i), except that the reference to 10% shall be deemed to be a reference to 80%.

Section 6.5 *Prospectus/Proxy Statement; Registration Statement; Stockholders Meeting.*

(a) In the event that Section 253 of the DGCL is unavailable and inapplicable to effectuate the Merger, as promptly as reasonably practicable following the consummation of the Offer, the Company shall, with the assistance and approval (not to be unreasonably withheld or delayed) of Parent, prepare the Proxy Statement, and Parent shall, with the assistance and approval (not to be unreasonably withheld or delayed) of the Company, prepare a post-effective amendment to the Registration Statement (the *Post-Effective Amendment*) for the offer and sale of the Parent Common Stock pursuant to the Merger and in which the Proxy Statement will be included as a prospectus. Each of the Company and Parent shall use all reasonable best efforts to have the Post-Effective Amendment declared effective under the Securities Act as promptly

Table of Contents

as practicable after such filing. The Company will use all reasonable efforts to cause the Proxy Statement to be mailed to the Company's stockholders as promptly as practicable after the Post-Effective Amendment is declared effective under the Securities Act. Parent shall also take any action (other than qualifying to do business in any jurisdiction in which it is not now so qualified or to file a general consent to service of process) required to be taken under any applicable state securities laws in connection with the issuance of Parent Common Stock in the Merger and the Company shall furnish all information concerning the Company and the holders of capital stock of the Company as may be reasonably requested in connection with any such action and the preparation, filing and distribution of the Proxy Statement. No filing of, or amendment or supplement to, or correspondence to the SEC or its staff with respect to, the Post-Effective Amendment will be made by Parent, or with respect to the Proxy Statement will be made by the Company, without providing the other party a reasonable opportunity to review and comment thereon. Parent will advise the Company, promptly after it receives notice thereof, of the time when the Post-Effective Amendment has become effective or any supplement or amendment has been filed, the issuance of any stop order, the suspension of the qualification of the Parent Common Stock issuable in connection with the Merger for offering or sale in any jurisdiction, or any request by the SEC for amendment of the Post-Effective Amendment or comments thereon and responses thereto or requests by the SEC for additional information. The Company will advise Parent, promptly after it receives notice thereof, of any request by the SEC for the amendment of the Proxy Statement or comments thereon and responses thereto or requests by the SEC for additional information. If at any time prior to the Effective Time any information relating to the Company or Parent, or any of their respective affiliates, officers or directors, should be discovered by the Company or Parent that should be set forth in an amendment or supplement to either of the Post-Effective Amendment or the Proxy Statement, so that any of such documents would not include any misstatement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the party which discovers such information shall promptly notify the other parties hereto and an appropriate amendment or supplement describing such information shall be promptly filed with the SEC and, to the extent required by Law, disseminated to the stockholders of the Company. Each of the parties hereto shall cause the Proxy Statement to comply as to form and substance to such party in all material respects with the applicable requirements of (i) the Exchange Act, (ii) the Securities Act, and (iii) the rules and regulations of the New York Stock Exchange.

(b) In the event that Section 253 of the DGCL is unavailable and inapplicable to effectuate the Merger, as promptly as reasonably practicable following the clearance of the Proxy Statement by the SEC, the Company, acting through the Company Board, shall (i) take all action necessary to duly call, give notice of, convene and hold a meeting of its stockholders for the purpose of obtaining the Company Stockholder Approval (the *Company Stockholders Meeting*) and (ii) except to the extent that the Company Board shall have effected an Adverse Recommendation Change in accordance with Section 6.4, include in the Proxy Statement the recommendation of the Company Board that the stockholders of the Company vote in favor of the adoption and approval of this Agreement and the Merger.

Section 6.6 *Access to Information: Confidentiality.*

(a) From the date hereof to the Effective Time or the earlier termination of this Agreement, upon reasonable prior written notice, the Company shall, and shall use its reasonable best efforts to cause its Subsidiaries, officers, directors and representative to, afford to Parent and its Representatives reasonable access during normal business hours, consistent with applicable Law, to its officers, employees, properties, offices, other facilities and books and records, and shall furnish Parent with all financial, operating and other data and information as Parent shall reasonably request. Notwithstanding the foregoing, any such investigation or consultation shall be conducted in such a manner as not to interfere unreasonably with the business or operations of the Company or its Subsidiaries or otherwise result in any significant interference with the prompt and timely discharge by the employees of the Company or its Subsidiaries of their normal duties. Neither the Company nor any of its Subsidiaries shall be required to provide access to or to disclose information where such access or disclosure would (i) breach any agreement with any third-party,

Table of Contents

(ii) constitute a waiver of the attorney-client or other privilege held by the Company or (iii) otherwise violate any applicable Law.

(b) Each of Parent and Merger Sub will hold and treat and will cause its Representatives to hold and treat in confidence all documents and information concerning the Company and its Subsidiaries furnished to Parent or Merger Sub in connection with the transactions contemplated by this Agreement in accordance with the Confidentiality Agreement, which Confidentiality Agreement shall remain in full force and effect in accordance with its terms.

(c) To the extent permitted by applicable Law, Parent shall afford to the Company and its Representatives reasonable access to Parent's personnel and records (i) on a basis consistent with Parent's access to such personnel and records prior to the date hereof in connection with Parent's due diligence review of the Company and its Subsidiaries in connection with the transactions contemplated hereby and (ii) to the extent reasonably necessary for the Company to determine whether the conditions set forth in Section 6.23, Section 7.1 or *Annex I* have been satisfied.

Section 6.7 Further Action; Efforts.

(a) Subject to the terms and conditions of this Agreement, including Section 6.7(c), each party will use its reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under applicable Law to consummate the Offer and the Merger and the other transactions contemplated by this Agreement, and no party hereto shall take or cause to be taken any action that would reasonably be expected to prevent, impede or delay the consummation of the Offer or the Merger and the other transactions contemplated hereby. In furtherance and not in limitation of the foregoing, each party hereto agrees to make appropriate filings under any Antitrust Law, including an appropriate filing of a Notification and Report Form pursuant to the HSR Act with respect to the transactions contemplated hereby as promptly as practicable and in any event within five (5) Business Days of the date hereof and to supply as promptly as reasonably practicable any additional information and documentary material that may be requested pursuant to the HSR Act and to take all other actions necessary, proper or advisable to cause the expiration or termination of the applicable waiting periods under the HSR Act as soon as practicable, including by requesting early termination of the waiting period provided for in the HSR Act. Parent shall pay all filing fees and other charges for the filings required under the HSR Act by the Company and Parent.

(b) Each of Parent and Merger Sub, on the one hand, and the Company, on the other hand, shall, in connection with the efforts referenced in Sections 6.7(a) and (c) to obtain all requisite approvals and authorizations for the transactions contemplated by this Agreement under the HSR Act or any other Antitrust Law, use its reasonable best efforts to (i) cooperate in all respects with each other in connection with any filing or submission and in connection with any investigation or other inquiry, including any proceeding initiated by a private party, (ii) keep the other party reasonably informed of any communication received by such party from, or given by such party to, the Federal Trade Commission (the *FTC*), the Antitrust Division of the Department of Justice (the *DOJ*) or any other U.S. or foreign Governmental Entity and of any communication received or given in connection with any proceeding by a private party, in each case regarding any of the transactions contemplated hereby and (iii) permit the other party to review any communication given by it to, and consult with each other in advance of any meeting or conference with, the FTC, the DOJ or any other Governmental Entity or, in connection with any proceeding by a private party, with any other Person, and to the extent permitted by the FTC, the DOJ or such other applicable Governmental Entity or other Person, give the other party the opportunity to attend and participate in such meetings and conferences.

(c) In furtherance and not in limitation of the covenants of the parties contained in Sections 6.7(a) and (b), if any objections are asserted with respect to the transactions contemplated hereby under any Antitrust Law or if any suit is instituted (or threatened to be instituted) by the FTC, the DOJ or any other applicable Governmental Entity or any private party challenging any of the transactions contemplated hereby as violative of any Antitrust Law or which would otherwise prevent, materially impede or materially delay the consummation of the transactions contemplated hereby, Parent and Merger Sub shall be strictly obligated to

Table of Contents

resolve any such objections or suits necessary to permit consummation of the transactions contemplated by this Agreement, including in order to resolve such objections or suits which, in any case if not resolved, could reasonably be expected to prevent, materially impede or materially delay the consummation of the Offer, the Merger, or the other transactions contemplated hereby, including, without limitation, (i) proposing, negotiating, committing to and effecting, by consent decree, hold separate order or otherwise, the sale, divestiture or disposition of any assets or business of Parent or its Subsidiaries or Affiliates or of the Company or its Subsidiaries and (ii) otherwise taking or committing to take any actions that after the Closing would limit the freedom of Parent or its Subsidiaries (including the Surviving Corporation s) or Affiliates freedom of action with respect to, or its ability to retain, one or more of its or its Subsidiaries (including the Surviving Corporation s) or Affiliates businesses, product lines or assets, in each case as may be required in order to resolve such objections or suits; provided, however, that Parent nor any of its Subsidiaries or Affiliates shall be obligated to, become subject to, or consent or agree to or otherwise take any action with respect to, any requirement, condition, understanding, agreement or order of a Governmental Entity to sell, hold separate, dispose of any assets or conduct or change its business unless such requirement, condition, understanding, agreement or order is binding on Parent or any of its Subsidiaries or Affiliates, as the case may be, only in the event the Closing occurs.

(d) Subject to the obligations under Section 6.7(c), in the event that any administrative or judicial Action is instituted (or threatened to be instituted) by a Governmental Entity or private party challenging the Offer, the Merger, or any other transaction contemplated by this Agreement, or any other agreement contemplated hereby, (i) each of Parent, Merger Sub and the Company shall cooperate in all respects with each other; (ii) Parent and Merger Sub shall be obligated to contest and resist any such Action and to have vacated, lifted, reversed or overturned any decree, judgment, injunction or other order, whether temporary, preliminary or permanent, that is in effect and that prohibits, prevents or restricts consummation of the transactions contemplated by this Agreement; and (iii) Parent and Merger Sub must defend, at their cost and expense, any Action or Actions, whether judicial or administrative, in connection with the transactions contemplated by this Agreement.

(e) For purposes of this Agreement, *Antitrust Law* means the Sherman Act, as amended, the Clayton Act, as amended, the HSR Act, the Federal Trade Commission Act, as amended, and all other Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition through merger or acquisition.

Section 6.8 Employment and Employee Benefits Matters; Other Plans.

(a) Without limiting the provisions of Section 6.1 hereof, if the Company or any of its Subsidiaries enters into, adopts, amends, modifies or terminates any Arrangements to Covered Securityholders, all such amounts payable under such Arrangements shall (a) be paid or granted as compensation for past services performed, future services to be performed, or future services to be refrained from performing, by the Covered Securityholders (and matters incidental thereto) and (b) shall not be calculated based on the number of Shares tendered or to be tendered into the Offer by the applicable Covered Securityholder. Moreover, the Company (acting through the Compensation Committee of the Company Board) shall take such steps as may be required so that, prior to the conclusion of the Offer: (i) the adoption, approval, amendment or modification of each such Arrangement shall be approved as an employment, compensation, severance or other employee benefit arrangement solely by independent directors of the Company in accordance with the requirements of Rule 14d-10(d)(2) under the Exchange Act and the instructions thereto and (ii) the safe harbor provided pursuant to Rule 14d-10(d)(2) under the Exchange Act is otherwise applicable thereto as a result of the taking prior to the consummation of the Offer all necessary actions by the Company Board, the Compensation Committee of the Company Board or its independent directors. Furthermore, to the extent the Company has failed to comply with the terms of this Section 6.8(a), the Company shall use all reasonable best efforts to cure such noncompliance as promptly as practicable.

(b) As of and after the Effective Time, Parent will, or will cause its Subsidiaries and the Surviving Corporation to, give those employees of Parent and employees of the Surviving Corporation as of the

Table of Contents

Effective Time who shall have been employees of the Company immediately prior to the Effective Time (*Company Employees*) full credit for purposes of eligibility and vesting and benefit accruals (but not for purposes of benefit accruals under any defined benefit pension plans other than any such plans maintained by the Company or its Subsidiaries prior to the Effective Time), under any employee compensation, incentive, and benefit (including vacation, paid time off, severance, and retiree medical) plans, programs, policies and arrangements maintained for the benefit of Company Employees as of and after the Effective Time by Parent, its Subsidiaries or the Surviving Corporation for the Company Employees service with the Company, its Subsidiaries and their predecessor entities (each, a *Parent Plan*) to the same extent recognized by the Company immediately prior to the Effective Time, except to the extent such recognition would result in duplication of benefits. With respect to each Parent Plan that is a welfare benefit plan (as defined in Section 3(1) of ERISA), Parent and its Subsidiaries shall (i) provide for immediate eligibility and coverage, (ii) cause there to be waived any waiting periods, pre-existing condition, evidence of insurability, good health, actively at work, or other eligibility limitations in each case to the extent waived, satisfied or inapplicable under the corresponding Company Plan and (iii) give effect, in determining any deductible and maximum out-of-pocket limitations, to claims incurred and amounts paid by, and amounts reimbursed to, Company Employees during the plan year in progress as of the Effective Time under similar plans maintained by the Company and its Subsidiaries immediately prior to the Effective Time.

(c) Parent shall cause the Surviving Corporation and each of its Subsidiaries, for a period commencing at the Effective Time and ending ninety (90) days thereafter, not to effectuate a plant closing or mass layoff as those terms are defined in the Worker Adjustment and Retraining Notification Act of 1988 (together with any similar state or local Law, *WARN*) affecting in whole or in part any site of employment, facility, operating unit or Company Employee, and shall cause the Surviving Corporation and each of its Subsidiaries not to take any such action after such ninety (90) day period without complying with all provisions of WARN, or any similar provision of applicable foreign Law.

(d) Subject to the provisions of this Section 6.8(d), Parent shall, or shall cause the Surviving Corporation to, assume, honor, and be responsible for any accrued or unused vacation, sick and personal leave, (collectively, *Paid Time Off*) to which any Company Employee is entitled pursuant to the paid time-off policy applicable to such Company Employee immediately prior to the Effective Time (the *PTO Policy*). In addition to the assumption of past Paid Time Off accruals as described above, Parent or the Surviving Corporation shall continue to provide Paid Time Off benefits (including new paid time off accruals) to Company Employees for service with Parent or its Subsidiaries after the Effective Time through December 31, 2008, which Paid Time Off Benefits shall be at least equal to the Paid Time Off benefits provided to Company Employees under the PTO Policy prior to the Effective Time (counting both pre- and post-Effective Time service for purposes of entitlement to such Paid Time Off benefits). Parent shall, or shall cause the Surviving Corporation to allow such Company Employee to use such accrued and unused Paid Time Off in accordance with the terms of the PTO Policy prior to December 31, 2009. To the extent any of the Paid Time Off described in the first two sentences of this Section 6.8(d) is not used on or prior to December 31, 2009, Parent shall, or shall cause the Surviving Corporation to, pay in cash to each Company Employee an amount equal to any such unused Paid Time Off in excess of the amount of Paid Time Off allowed to be accrued under Parent's applicable policies (the *PTO Limit*), but only to the extent that such unused Paid Time Off as of December 31, 2009 is attributable to vacation or, with respect to employees in California or states that require such pay by Law, personal days, it being understood that there shall be no payout of such Paid Time Off with respect to sick days. Company Employees will no longer be entitled to any Paid Time Off in excess of the PTO Limit following December 31, 2009. With respect to Company Employees who experience a termination of employment, Parent shall, or shall cause the Surviving Corporation to honor the provisions of the PTO Policy with respect to payments in respect of Paid Time Off on termination of employment (including any limitations on the obligation to make such payments in the event of a for cause or similar termination, consistent with applicable Law); provided, however, that with respect to Paid Time Off Benefits accrued following December 31, 2008, any limitations with respect to payments in respect of Paid Time Off on termination of employment shall be determined (consistent with applicable Law) shall be determined based on the Paid Time Off policy determined by Parent. Following

Table of Contents

December 31, 2009, Parent and its Subsidiaries may implement any Paid Time Off or similar policy as Parent may determine in its discretion.

Section 6.9 *Takeover Laws*. If any Takeover Law is or becomes applicable to this Agreement, the Offer, the Merger, or any of the other transactions contemplated hereby, each of the Company and Parent and their respective Boards of Directors shall use all reasonable best efforts to ensure that the Offer or the Merger and the other transactions contemplated hereby may be consummated as promptly as practicable on the terms contemplated by this Agreement and otherwise to eliminate or minimize the effect of such Takeover Law on this Agreement, the Offer or the Merger and the other transactions contemplated hereby.

Section 6.10 *Notification of Certain Matters*. The Company and Parent shall promptly notify each other in writing of (a) any notice or other communication received by such party from any Governmental Entity in connection with the Offer, the Merger or the other transactions contemplated hereby or from any Person alleging that the consent of such Person is or may be required in connection with the Offer, the Merger or the other transactions contemplated hereby, if the subject matter of such communication could be material to the Company, the Surviving Corporation or Parent, (b) any Action commenced or, to such party's knowledge, threatened against, relating to or involving or otherwise affecting such party or any of its Subsidiaries that relates to the Offer, the Merger, or the other transactions contemplated hereby, or (c) the discovery of any fact or circumstance that, or the occurrence or non-occurrence of any event the occurrence or non-occurrence of which, would cause or result in (i) any of the conditions to the Merger set forth in Article VII or (ii) the conditions to the Offer set forth in Section 6.23 or *Annex I* not being satisfied or satisfaction of those conditions being materially delayed in violation of any provision of this Agreement; *provided, however*, that the delivery of any notice pursuant to this Section 6.10 shall not (i) cure any breach of, or non-compliance with, any other provision of this Agreement or (ii) limit the remedies available to the party receiving such notice; *provided further*, that failure to give prompt notice pursuant to clause (c) shall not constitute a failure of a condition to the Merger set forth in Article VII or the conditions to the Offer set forth in *Annex I* and Section 6.23 (so long as such failure was not the result of an intentional or willful breach of this Section 6.10) except to the extent that the underlying fact or circumstance not so notified would standing alone constitute such a failure.

Section 6.11 *Indemnification, Exculpation and Insurance*.

(a) Without limiting any additional rights that any employee may have under any agreement or Company Plan, from the Effective Time through the sixth anniversary of the date on which the Effective Time occurs, Parent shall, or shall cause the Surviving Corporation to, indemnify and hold harmless each present (as of the Effective Time) and former officer, director or employee of the Company and its Subsidiaries (the *Indemnified Parties*), against all claims, losses, liabilities, damages, judgments, inquiries, fines and reasonable fees, costs and expenses, including attorneys' fees and disbursements (collectively, *Costs*), incurred in connection with any Action, whether civil, criminal, administrative or investigative, arising out of or pertaining to (i) the fact that the Indemnified Party is or was an officer, director, employee, fiduciary or agent of the Company or any of its Subsidiaries or (ii) matters existing or occurring at or prior to the Effective Time (including this Agreement and the transactions and actions contemplated hereby), whether asserted or claimed prior to, at or after the Effective Time, to the fullest extent permitted under applicable Law and the Company Charter and Company Bylaws as at the date hereof. In the event of any such Action, each Indemnified Party shall be entitled to advancement of expenses incurred in the defense of any Action from Parent or the Surviving Corporation to the fullest extent permitted under applicable Law and the Company Charter and Company Bylaws as at the date hereof within ten (10) Business Days of receipt by Parent or the Surviving Corporation from the Indemnified Party of a request therefor; *provided* that any Person to whom expenses are advanced provides an undertaking, if and only to the extent required by DGCL or the Company Charter or Company Bylaws, to repay such advances if it is ultimately determined that such Person is not entitled to indemnification; *provided further*, that neither Parent nor the Surviving Corporation shall be required to indemnify or advance expenses to any Indemnified Party in connection with an Action (or part thereof) initiated by such Indemnified Party unless such Action (or part thereof) was authorized by the Board of Directors.

Table of Contents

(b) Except as may be required by applicable Law, Parent and the Company agree that all rights to indemnification and exculpation from liabilities for acts or omissions occurring at or prior to the Effective Time and rights to advancement of expenses relating thereto now existing in favor of any Indemnified Party as provided in the certificate of incorporation or bylaws (or comparable organizational documents) of the Company and its Subsidiaries or in any indemnification agreement between such Indemnified Party and the Company or any of its Subsidiaries shall survive the Merger and continue in full force and effect, and shall not be amended, repealed or otherwise modified in any manner that would adversely affect any right thereunder of any such Indemnified Party for a period of six (6) years from the Effective Time.

(c) For a period of six (6) years from the Effective Time, Parent shall either cause to be maintained in effect the current policies of directors and officers liability insurance and fiduciary liability insurance maintained by the Company and its Subsidiaries or cause to be provided substitute policies or purchase or cause the Surviving Corporation to purchase, a tail policy, in either case of at least the same coverage and amounts containing terms and conditions that are not less advantageous in the aggregate than such policy with respect to matters arising on or before the Effective Time; *provided, however*, that after the Effective Time, Parent shall not be required to pay with respect to such insurance policies in respect of any one policy year annual premiums in excess of 250% of the last annual premium paid by the Company prior to the date hereof in respect of the coverage required to be obtained pursuant hereto, but in such case shall purchase as much coverage as reasonably practicable for such amount; *provided further*, that if the Surviving Corporation purchases a tail policy and the coverage thereunder costs more than 250% of such last annual premium, the Surviving Corporation shall purchase the maximum amount of coverage that can be obtained for 250% of such last annual premium. In lieu of the foregoing sentence, at the Company's option, after consultation with Parent, the Company may purchase, in accordance with the cost constraints set forth above, prior to the Effective Time, a six-year prepaid tail policy on terms and conditions (in both amount and scope) providing substantially equivalent benefits as the current policies of directors and officers liability insurance and fiduciary liability insurance maintained by the Company and its Subsidiaries with respect to matters arising on or before the Effective Time, covering without limitation the transactions contemplated hereby. If such tail prepaid policy has been obtained by the Company prior to the Effective Time, Parent shall cause such policy to be maintained in full force and effect, for its full term, and cause all obligations thereunder to be honored by the Surviving Corporation.

(d) Notwithstanding anything herein to the contrary, if any Action (whether arising before, at or after the Effective Time) is instituted against any Indemnified Party on or prior to the sixth anniversary of the Effective Time, the provisions of this Section 6.11 shall continue in effect until the final disposition of such Action.

(e) The indemnification provided for herein shall not be deemed exclusive of any other rights to which an Indemnified Party is entitled, whether pursuant to Law, Contract or otherwise. The provisions of this Section 6.11 shall survive the consummation of the Merger and, notwithstanding any other provision of this Agreement that may be to the contrary, expressly are intended to benefit, and shall be enforceable by, each of the Indemnified Parties and their respective heirs and legal representatives.

(f) In the event that the Surviving Corporation or Parent or any of their respective successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers or conveys all or a majority of its properties and assets to any person, then, and in each such case, proper provision shall be made so that the successors and assigns of the Surviving Corporation or Parent, as the case may be, shall succeed to the obligations set forth in this Section 6.11.

Section 6.12 *Financing*. At the sole cost and expense of Parent, the Company shall use, and shall cause its Subsidiaries to use, reasonable efforts to cooperate and assist Parent with respect to the arrangement of Parent's financing (the *Financing*). The Company agrees to provide, and shall cause its Subsidiaries and its and their Representatives to provide on a timely basis, all reasonable cooperation in connection with the arrangement of the Financing as may be reasonably requested by Parent (provided, that such requested cooperation does not

Table of Contents

unreasonably interfere with the ongoing operations of the Company and its Subsidiaries), including (i) participation in meetings, drafting sessions and due diligence sessions led by Parent, (ii) furnishing Parent and its financing sources with financial and other pertinent information regarding the Company as may be reasonably requested by Parent, including without limitation all financial statements and financial data of the type required by Regulation S-X and Regulation S-K under the Securities Act as well as of the type and form customarily included in private placements under Rule 144A of the Securities Act, (iii) assisting Parent and its financing sources and counsel in the preparation by Parent of (A) an offering document for any of the Financing and (B) materials for rating agency presentations, (iv) reasonably cooperating with the marketing efforts and related roadshow activities of Parent and its financing sources for any of the Financing, (v) providing and executing documents as may be reasonably requested by Parent, and assisting Parent in obtaining comfort letters of the Company's accountants, consents of the Company's accountants for use of their reports in any materials relating to the Financing, legal opinions of the Company's counsel and surveys and title insurance with respect to the Real Property; (vi) coordinating and making the Real Property available for appraisal and inspection, (vii) making senior officers and representatives of the Company reasonably available for presentations to ratings agencies and roadshow presentations, and (viii) reasonably facilitating the pledge of the Surviving Corporation's collateral; *provided*, that none of the Company or any of its Subsidiaries shall be required to pay any commitment or other similar fee or incur any other liability in connection with the Financing prior to the Effective Time; *provided, further*, that neither the Company nor any of its Subsidiaries shall be required to provide access to or to disclose information where such access or disclosure would (i) breach any agreement with any third-party, (ii) constitute a waiver of the attorney-client or other privilege held by the Company or (iii) otherwise violate any applicable Law. Parent shall keep the Company reasonably informed on a current basis and in reasonable detail of the status of its effort to arrange the Financing and shall make available to the Company copies of documents related to the Financing (other than any ancillary documents subject to confidentiality agreements, including fee letters and engagement letters).

Section 6.13 *Rights Agreement*. The Company covenants and agrees that, prior to the valid termination of this Agreement in accordance with Article VIII hereto, it will not (A) redeem the rights (the *Rights*) distributed to the holders of Shares pursuant to the Rights Agreement, dated as of February 4, 2008 (as amended, the *Rights Agreement*), between the Company and Mellon Investor Services LLC, as Rights Agent, (B) amend the Rights Agreement or (C) take any action which would allow any Person (as defined in the Rights Agreement) other than Parent, Merger Sub or any of their respective Subsidiaries to Beneficially Own (for purposes of this Section 6.13, as defined in the Rights Agreement) ten percent (10%) or more of the Shares without causing a Distribution Date or a Triggering Event (as each such term is defined in the Rights Agreement) to occur.

Section 6.14 *Treatment of Exchangeable Notes*. The Company shall use, and shall cause its Subsidiaries to use, reasonable efforts to cooperate and assist Parent with respect to Parent's assumption (the *Assumption*) of the Company's 4% Senior Exchangeable Notes due 2025 (the *Exchangeable Notes*) as a successor under the Indenture dated as of December 19, 2005 (as amended) (the *Indenture*). The Company agrees to provide, and shall cause its Subsidiaries and its and their Representatives to provide on a timely basis, all reasonable cooperation in connection with the Assumption as may be reasonably requested by Parent (provided, that such requested cooperation does not unreasonably interfere with the ongoing operations of the Company and its Subsidiaries), including (i) requiring the Company Directors to appoint the directors Parent is entitled to designate pursuant to Section 1.4(a); (ii) assisting Parent and its counsel in the preparation by Parent of a supplemental indenture with respect to the assumption by Parent of the Exchangeable Notes; and (iii) promptly notifying Parent of (A) any fact, circumstance or event that constitutes, or that would constitute with the passage of time and/or the providing of notice, an Event of Default (as such term is defined in the Indenture), (B) any correspondence with or to the Trustee (as such term is defined in the Indenture) and (C) any action taken by the holders of the Exchangeable Notes under the terms of the Indenture. The Company further agrees not to, and shall cause its Subsidiaries not to, directly or indirectly, take any actions under the Indenture that would (i) cause the Exchangeable Notes to become exchangeable into Shares pursuant to the terms of the Indenture at a time when they would not otherwise be exchangeable, (ii) result in a Fundamental Change (as such term is defined in the Indenture) or (iii) amend the Indenture.

Table of Contents

Section 6.15 *Rule 16b-3*. Prior to the Effective Time, the Company shall be permitted to take such steps as may be reasonably necessary or advisable hereto to cause dispositions of Company equity securities (including derivative securities) pursuant to the transactions contemplated by this Agreement by each individual who is a director or officer of the Company to be exempt under Rule 16b-3 promulgated under the Exchange Act.

Section 6.16 *Public Announcements*. Each of Parent and Merger Sub, on the one hand, and the Company, on the other hand, shall, to the extent reasonably practicable, consult with each other before issuing, and give each other a reasonable opportunity to review and comment upon, any press release or other public statements with respect to this Agreement, the Offer or the Merger and the other transactions contemplated hereby and shall not issue any such press release or make any public announcement without the prior consent of the other party, which consent shall not be unreasonably withheld, except as may be required by applicable Law, court process or by obligations pursuant to any listing agreement with any national securities exchange or national securities quotation system.

Section 6.17 *Form S-8*. Parent agrees to file with the SEC as soon as practicable but no later than twenty (20) business days following the Effective Time a registration statement on Form S-8 under the Securities Act covering, to the extent applicable, the shares of Parent Common Stock to be issued upon the exercise of Assumed Options and converted Company Stock-Based Awards.

Section 6.18 *NASDAQ Listing*. Prior to the earlier of the consummation of the Offer and the Effective Time, Parent agrees to use its best efforts to authorize for listing on NASDAQ, the shares of Parent Common Stock issuable, and those required to be reserved for issuance, in connection with the Offer and the Merger, subject to official notice of issuance. Parent agrees to promptly make such other additional filings with NASDAQ as may be required in connection with the consummation of the transactions contemplated by this Agreement.

Section 6.19 *Accountants*. Parent and the Company will each use best efforts to cause to be delivered to each other (i) consents from their respective independent auditors and (ii) letters from their respective independent accountants, dated a date within two Business Days before the date of Registration Statement, in each case, in form reasonably satisfactory to the recipient and customary in scope and substance for consents delivered by independent public accountants in connection with registration statements on Form S-4 under the Securities Act.

Section 6.20 *Tax Treatment*. Each of Parent, Merger Sub, the LLC, and the Company shall provide to Skadden, Arps, Slate, Meagher & Flom LLP (or such other counsel that has been selected to render the Parent Tax Opinion) and Gibson, Dunn & Crutcher LLP (or such other counsel that has been selected to render the Company Tax Opinion) a certificate containing representations reasonably requested by such counsel in connection with rendering the Parent Tax Opinion or Company Tax Opinion, as the case may be. Each of Parent, Merger Sub, the LLC and the Company agrees to use reasonable best efforts to cause the Offer and the Merger to qualify as a reorganization under Section 368(a) of the Code, to obtain the Parent Tax Opinion or the Company Tax Opinion, as the case may be, and to cause the satisfaction of the conditions relating to the receipt of such opinions that are set forth in *Annex I* and Section 6.23. Such efforts shall include, without limitation, (i) causing the LLC Merger to occur immediately after the Merger in the event that the Company's tax counsel or Parent's tax counsel determines that such merger is necessary in order to cause the Offer, the Merger and the LLC Merger together to qualify as a reorganization within the meaning of Section 368(a) of the Code (and such merger shall be effectuated in a manner that is consistent with the representations pertaining thereto contained letters of representation underlying the Parent Tax Opinion and the Company Tax Opinion) and (ii) upon Parent's or the Company's reasonable request, cooperating and negotiating in good faith to agree to an alternate structure that will qualify as a reorganization within the meaning of Section 368(a) of the Code. No party shall take any action, cause or permit any action to be taken, or fail to take any action, that would reasonably be expected to cause the Offer, the Merger, and the LLC Merger (if any) to fail to qualify as a reorganization within the meaning of Section 368(a) of the Code.

Table of Contents

Section 6.21 *Transfer Taxes*. If the Effective Time occurs, all stock transfer, real estate transfer, documentary, stamp, recording and other similar taxes (including interest, penalties and additions to any such taxes) incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Surviving Corporation.

Section 6.22 *SOX Compliance*.

The Company's management shall complete an assessment of the effectiveness of the Company's internal control over financial reporting in compliance with the requirements of Section 404 of the Sarbanes-Oxley Act of 2002 for the year ended February 3, 2008, and the results thereof shall be included in the Company's Annual Report on Form 10-K for the fiscal year ended February 3, 2008.

Section 6.23 *Consummation of the Offer*.

(a) Except as may be waived by the Company, Parent agrees not to, and shall cause Merger Sub not to, consummate the Offer if, immediately prior to the acceptance of Shares for payment in the Offer, any of the following conditions exist:

(i) other than the representations and warranties in Sections 5.2 and 5.3, the representations and warranties of Parent contained in this Agreement (disregarding any limitation as to materiality, Parent Material Adverse Effect or similar qualifiers set forth herein), shall not be true and correct in all respects, as of the date of the Agreement or at the consummation of the Offer as if made at and as of such time (except for any representation or warranty that is made only as of a specified date, which need only to be true as of such specified date), except where the failure to be so true and correct has not had and would not reasonably be expected to have, either individually or in the aggregate, a Parent Material Adverse Effect and such breach shall not have been cured; or (ii) any of the representations and warranties in Sections 5.2 or 5.3 shall not be true and correct in all material respects as of the date of the Agreement and at the consummation of the Offer as if made at and as of such time and such breach shall not have been cured;

(ii) Parent shall have materially breached any of its obligations under the Agreement and such breach or failure to perform shall not have been cured;

(iii) any event, change or development shall have occurred following the date of the Agreement that has had, or would reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect and such Parent Material Adverse Effect shall not have been cured;

(iv) the Registration Condition shall not have been satisfied;

(v) the NASDAQ Condition shall not have been satisfied; or

(vi) the Company shall not have received, prior to first date on which Merger Sub accepts for payment all Shares validly tendered and not withdrawn pursuant to the Offer, a written opinion of Gibson, Dunn & Crutcher LLP (or other nationally recognized tax counsel reasonably acceptable to the Company) in form and substance reasonably satisfactory to the Company to the effect that the Offer, the Merger and the LLC Merger (if any) together will constitute a reorganization within the meaning of Section 368(a) of the Code (the *Company Tax Opinion*) (which opinion may rely on such assumptions and representations as such counsel reasonably deems appropriate), such Company Tax Opinion shall have been withdrawn or an event shall have occurred that prevents Company from relying on such Company Tax Opinion; (the *Company Tax Opinion Condition*).

(b) Approximately 24 hours prior to the expiration of the Offer, Parent shall deliver to the Company a certificate executed on behalf of Parent by the Chief Executive Officer and Chief Financial Officer of Parent certifying that the conditions set forth in Section 6.23(a)(i), (ii) and (iii) are satisfied as of such time and date (the *Parent Certificate*).

(c) The Company shall acknowledge the receipt of such Parent Certificate in writing within 12 hours of receipt and shall indicate to Parent whether the Company intends to exercise its right, if any, to cause

Table of Contents

Merger Sub to extend the Offer pursuant to the following sentence. Unless waived by the Company, if Parent shall fail to deliver the Parent Certificate or delivers a Parent Certificate that is qualified in any respect, the Company shall have the right to cause Merger Sub to extend the Offer for a period of not less than five (5) Business Days.

Section 6.24 *Debt Instruments*.

The Company shall use, and shall cause its Subsidiaries to use, reasonable best efforts to (a) avoid a going concern qualification being issued in connection with the audited consolidated financial statements of the Company included in the Company's Annual Report on Form 10-K for the fiscal year ended February 3, 2008 and (b) if requested by Parent, obtain the appropriate waivers under the Credit Agreements in the event such going concern qualification is issued. In addition, the Company will, within one (1) Business Day after learning of any default or event of default under the Debt Instruments, notify Parent of such default or event of default and, at Parent's request, will use reasonable best efforts to obtain a waiver, consent or amendment to remedy any such default or event of default within ten (10) Business Days.

ARTICLE VII

CONDITIONS PRECEDENT

Section 7.1 *Conditions to Each Party's Obligation to Effect the Merger*. The obligation of each party to effect the Merger is subject to the satisfaction at or prior to the Effective Time of the following conditions:

- (a) *Stockholder Approval*. The Company Stockholder Approval (if required by applicable Law) shall have been obtained.
- (b) *No Injunctions or Legal Restraints; Illegality*. No temporary restraining order, preliminary or permanent injunction or other judgment, order or decree issued by any court of competent jurisdiction or other legal restraint or prohibition shall be in effect, and no Law shall have been enacted, entered, promulgated, enforced or deemed applicable by any Governmental Entity that, in any case, prohibits or makes illegal the consummation of the Merger.
- (c) *HSR Act; Antitrust*. Any waiting period (and any extension thereof) applicable to the Merger under the HSR Act shall have expired, been terminated, or no longer restrict the consummation of the Merger.
- (d) *Purchase of Shares in the Offer*. Merger Sub shall have purchased all Shares validly tendered (and not withdrawn) pursuant to the Offer.
- (e) *Registration Statement Effective; Prospectus/Proxy Statement*. The SEC shall have declared the Registration Statement, or the Post-Effective Amendment, as the case may be, effective. No stop order suspending the effectiveness of the Registration Statement, or the Post-Effective Amendment, as the case may be, or any part thereof shall have been issued and no proceeding for that purpose shall have been initiated or threatened in writing by the SEC (the *Registration Condition*).
- (f) *NASDAQ Listing*. The shares of Parent Common Stock issuable, and those required to be reserved for issuance, in connection with the Offer and the Merger shall have been authorized for listing on NASDAQ (the *NASDAQ Condition*).
- (g) *Tax Opinions*. Neither the Parent Tax Opinion nor the Company Tax Opinion shall have been withdrawn and no event shall have occurred that would prevent Parent from relying on the Parent Tax Opinion or the Company from relying on the Company Tax Opinion; provided that this condition may be waived by Parent solely with respect to the Parent Tax Opinion or by the Company solely with respect to the Company Tax Opinion.

Section 7.2 *Frustration of Closing Conditions*. None of Parent, Merger Sub or the Company may rely on the failure of any condition set forth in this Article VII to be satisfied if such failure was caused by such party's breach of this Agreement.

Table of Contents

ARTICLE VIII

TERMINATION, AMENDMENT AND WAIVER

Section 8.1 *Termination*. This Agreement may be terminated and the Offer and the Merger may be abandoned at any time prior to the Effective Time, notwithstanding approval thereof by the stockholders of the Company (with any termination by Parent also being an effective termination by Merger Sub):

(a) by mutual written consent of Parent and the Company;

(b) by either Parent or the Company:

(i) if the Offer has not been consummated on or before the date that is 180 days after the date of this Agreement (the *Outside Date*); *provided*, that neither party shall have the right to terminate this Agreement pursuant to this Section 8.1(b)(i) if any action of such party or failure of such party to perform or comply with the covenants and agreements of such party set forth in this Agreement shall have been the cause of, or resulted in, the failure of the Offer to be consummated by the Outside Date and such action or failure to perform constitutes a breach of this Agreement; or

(ii) on or after the Outside Date, if any court of competent jurisdiction or other Governmental Entity shall have issued a judgment, order, injunction, rule or decree, or taken any other action restraining, enjoining or otherwise prohibiting any of the transactions contemplated by this Agreement, including the acceptance for payment of, and payment for, the Shares pursuant to the Offer, and such judgment, order, injunction, rule, decree or other action shall have become final and nonappealable; *provided*, that no party shall have the right to terminate this Agreement pursuant to this Section 8.1(b)(ii) unless such party shall have in all respects complied with its obligations to contest, appeal and remove such judgment, order, injunction, rule, decree, ruling or take other action in accordance with Section 6.7.

(c) by the Company prior to the consummation of the Offer:

(i) if Parent or Merger Sub shall have breached or failed to perform any of its representations, warranties, covenants or agreements set forth in this Agreement, which breach or failure to perform (A) would result in the failure of a condition set forth in Section 6.23, Section 7.1 or *Annex I* and (B) cannot be cured by the Outside Date; *provided* that the Company shall have given Parent written notice, delivered at least thirty (30) days prior to such termination, stating the Company's intention to terminate this Agreement pursuant to this Section 8.1(c)(i) and the basis for such termination; *provided, further*, that the Company shall not have the right to terminate this Agreement pursuant to this Section 8.1(c)(i) if it is then in material breach of any of its covenants or agreements set forth in this Agreement;

(ii) in order to enter into a transaction that is a Superior Proposal, if the Company has complied with Section 6.4;

(iii) if any event has occurred or circumstance has arisen, either individually or in the aggregate, since the date hereof that has had, or would reasonably be expected to have, a Parent Material Adverse Effect and such Parent Material Adverse Effect is not capable of being cured prior to the Outside Date (it being understood that the Company shall not have the right to terminate this Agreement pursuant to this subsection (iii) if it is then in material breach of any of its covenants or agreements set forth in this Agreement or if such Parent Material Adverse Effect is cured); or

(iv) if the Parent Trading Price is less than or equal to \$21.00; *provided, however*, that no right of termination shall arise under this Section 8.1(c)(iv) if Parent elects, no later than the date of determination of the Parent Trading Price, to increase the number of shares of Parent Common Stock or cash included in the Offer Price such that the value of the Offer Price (with shares of Parent Common Stock valued at the Parent Trading Price) per Share is at least equal to \$10.00 (minus the Adjustment Amount, if any); *provided, further*, that Parent may not increase the amount of cash to be included in

Table of Contents

the Offer Price pursuant to this Section 8.1(c)(iv) to the extent and in an amount that would prevent the Offer, the Merger, and the LLC Merger (if any) from qualifying as a reorganization within the meaning of Section 368(a) of the Code.

(d) by Parent:

(i) if the Company shall have breached or failed to perform any of its representations, warranties, covenants or agreements set forth in this Agreement, which breach or failure to perform (A) would result in the failure of a condition set forth in Section 7.1 or *Annex I* and (B) cannot be cured by the Outside Date; *provided*, that Parent shall have given the Company written notice, delivered at least thirty (30) days prior to such termination, stating Parent's intention to terminate this Agreement pursuant to this Section 8.1(d)(i) and the basis for such termination; *provided further*, that Parent shall not have the right to terminate this Agreement pursuant to this Section 8.1(d)(i) if Parent or Merger Sub is then in material breach of any of its covenants or agreements set forth in this Agreement;

(ii) if, after the date hereof, the Company Board or any committee thereof shall have (A) effected an Adverse Recommendation Change, (B) approved, endorsed or recommended to the Company's stockholders an Acquisition Proposal other than the Offer or the Merger, or (C) failed to publicly reaffirm its recommendation of this Agreement within seven (7) Business Days following receipt of a written request by Parent to provide such reaffirmation following the public announcement of an Acquisition Proposal;

(iii) if any event has occurred or circumstance has arisen, either individually or in the aggregate, since the date hereof that has had, or would reasonably be expected to have, a Material Adverse Effect and such Material Adverse Effect is not capable of being cured prior to the Outside Date (it being understood that Parent shall not have the right to terminate this Agreement pursuant to this subsection (iii) if Parent or Merger Sub is then in material breach of any of its covenants or agreements set forth in this Agreement or if such Material Adverse Effect is cured);

(iv) if any of the following events occur (A) the filing of a case by the Company or its Subsidiaries under the United States Bankruptcy Code or under any other applicable insolvency Law; or (B) the acceleration of the time for payment of the principal, interest or other material amounts under any of the Debt Instruments, or (C) the failure of the Company or its Subsidiaries to make any payment (whether principal, interest or other material amounts) when due (after the expiration of any applicable cure period) under any of the Debt Instruments, or (D) the lenders under any of the Debt Instruments ceasing (whether by virtue of (1) the existence of any default, or event or condition that constitutes an event of default or that upon, notice, lapse of time or both would, unless cured or waived, become an event of default, or (2) the failure of the Company or any of its Subsidiaries to satisfy any condition precedent to its right to borrow under any of the Debt Instruments or (3) for any other reason) to make loans, advances and otherwise extend credit to the Company and its Subsidiaries, which cessation continues for five (5) Business Days, or (E) the occurrence of any other action undertaken by the lenders under any of the Debt Instruments and after the occurrence of a default or event of default thereunder that remains uncured and that reduces, limits or otherwise impairs, in any material respect, the availability of loans and other credit extensions to the Company and its Subsidiaries, which reduction, limitation or impairment continues for ten (10) Business Days; or

(v) if the Company shall have received an audit report with respect to the audited financial statements for its fiscal year ended February 3, 2008 that (A) contains an adverse opinion, or (B) is qualified (1) as to the scope of the audit, (2) as a result of such financial statements not utilizing generally accepted accounting principles in the United States of America, or (3) as a result of the Company's financial statements containing fraudulent or materially and intentionally misleading information or presenting the financial condition of the Company in a manner that is fraudulent or materially and intentionally misleading. For the avoidance of doubt, the audit report with respect to the Company's financial statements may include, and Parent shall not have the right to terminate this Agreement pursuant to any provision of this Agreement solely for the reason that the Company's

Table of Contents

financial statements include, (x) those certain qualifications contained in the opinion of PricewaterhouseCoopers LLC dated July 6, 2007 relating to the consolidated financial statements of the Company for the fiscal years ending February 4, 2007, January 29, 2006 and January 30, 2005 and/or (y) with respect to the fiscal year ended February 3, 2008 only, a going concern qualification.

Section 8.2 *Effect of Termination*. In the event of termination of the Agreement, this Agreement shall forthwith become void and have no effect, without any liability or obligation on the part of Parent, Merger Sub or the Company, except that the Confidentiality Agreement and the provisions of Section 1.1(d), Section 4.20 and 5.17 (Brokers), Section 6.13 (Public Announcements), this Section 8.2, Section 8.3 (Fees and Expenses), Section 8.4 (Amendment or Supplement), Section 8.5 (Extension of Time; Waiver) and Article IX (General Provisions) of this Agreement shall survive the termination hereof. Notwithstanding the foregoing, to the extent that such termination results from the willful and material breach by a party of any representation or warranty set forth in this Agreement or from the material breach by a party of any covenant or agreement set forth in this Agreement, then such party shall be liable for any damages incurred or suffered by the other party as a result of such breach.

Section 8.3 *Fees and Expenses*.

(a) Except as otherwise provided in Sections 8.2 or 8.3, all fees and expenses incurred in connection with this Agreement, the Offer, the Merger and the LLC Merger (if any) and the other transactions contemplated hereby shall be paid by the party incurring such fees or expenses, whether or not the Offer, the Merger or the LLC Merger (if any) is consummated.

(b) In the event that:

(i) this Agreement is terminated by Parent pursuant to Section 8.1(d)(i) or by Parent or the Company pursuant to Section 8.1(b)(i) and (A) at any time after the date of this Agreement and prior to termination of this Agreement, an Acquisition Proposal shall have been communicated to the senior management of the Company or the Company Board or shall have been publicly announced or publicly made known to the stockholders of the Company, and (B) within twelve (12) months after such termination, the Company shall have entered into a definitive agreement with respect to, or shall have consummated, an Acquisition Proposal; *provided*, that, solely for purposes of this Section 8.3(b)(i), all references to 10% in the definition of Acquisition Proposal shall be deemed to be 35% ;

(ii) this Agreement is terminated by the Company pursuant to Section 8.1(c)(ii); or

(iii) this Agreement is terminated by Parent pursuant to Section 8.1(d)(ii)

then, in any such case, the Company shall pay Parent a termination fee of \$22,000,000 (the *Termination Fee*), it being understood that in no event shall the Company be required to pay the Termination Fee on more than one occasion. Notwithstanding anything in this Agreement to the contrary, the payment of the Termination Fee shall be the exclusive remedy of Parent and Merger Sub with respect to a termination of this Agreement described in Sections 8.3(b)(i)-(iii).

(c) In the event that this Agreement is terminated by Parent pursuant to Section 8.1(d)(iv) or Section 8.1(d)(v), then the Company shall pay to Parent (by wire transfer of same day funds to the account or accounts designated by Parent) promptly (and in no event later than two (2) Business Days after receipt of statement(s) therefor) an amount equal to Parent's actual documented reasonable out-of-pocket expenses in connection with the negotiation, execution and delivery of this Agreement (including due diligence), compliance with the obligations of Parent hereunder, and actions taken in furtherance of the consummation of the transactions contemplated hereby.

(d) Payment of the Termination Fee shall be made by wire transfer of same day funds to the account or accounts designated by Parent (i) on the earlier of the execution of a definitive agreement with respect to or consummation of, any transaction contemplated by an Acquisition Proposal (as such term is defined for

Table of Contents

purposes of Section 8.3(b)(i)), as applicable (and, in any event, within two (2) Business Days after delivery to the Company of a demand for payment), in the case of a Termination Fee payable pursuant to Section 8.3(b)(i), (ii) simultaneously with, and as a condition to the effectiveness of, termination, in the case of a termination by the Company pursuant to Section 8.1(c)(ii), or (iii) as promptly as reasonably practicable after termination (and, in any event, within two (2) Business Days after delivery to the Company of a demand for payment), in the case of termination by Parent pursuant to Section 8.1(d)(ii).

(e) The Company acknowledges that the agreements contained in this Section 8.3 are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, Parent and Merger Sub would not enter into this Agreement; accordingly, if the Company fails promptly to pay any amounts due pursuant to this Section 8.3, and, in order to obtain such payment, Parent commences a suit that results in a judgment against the Company, for the amounts set forth in this Section 8.3, the Company shall pay to Parent its costs and expenses (including reasonable attorneys' fees and expenses) in connection with such suit, together with interest on the amounts set forth in this Section 8.3 from the date of termination of this Agreement at a rate per annum equal to the prime rate of Bank of America in effect on the date such payment was required to be paid.

Section 8.4 Amendment or Supplement. This Agreement may be amended, modified or supplemented by the parties by action taken or authorized by their respective Boards of Directors at any time prior to the Effective Time, whether before or after the Company Stockholder Approval has been obtained; *provided, however*, that after the Company Stockholder Approval has been obtained, no amendment may be made that pursuant to applicable Law requires further approval or adoption by the stockholders of the Company without such further approval or adoption. This Agreement may not be amended, modified or supplemented in any manner, whether by course of conduct or otherwise, except by an instrument in writing signed on behalf of each of the parties in interest at the time of the amendment.

Section 8.5 Extension of Time; Waiver. At any time prior to the Effective Time, the parties may, by action taken or authorized by their respective Boards of Directors, to the extent permitted by applicable Law, (a) extend the time for the performance of any of the obligations or acts of the other party, (b) waive any inaccuracies in the representations and warranties of the other parties set forth in this Agreement or any document delivered pursuant hereto or (c) subject to applicable Law, waive compliance with any of the agreements or conditions of the other parties contained herein; *provided, however*, that after the Company Stockholder Approval (if required by applicable Law) has been obtained, no waiver may be made that pursuant to applicable Law requires further approval or adoption by the stockholders of the Company without such further approval or adoption. Any agreement on the part of a party to any such waiver shall be valid only if set forth in a written instrument executed and delivered by a duly authorized officer on behalf of such party. No failure or delay of any party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, or any course of conduct, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the parties hereunder are cumulative and are not exclusive of any rights or remedies which they would otherwise have hereunder.

ARTICLE IX

GENERAL PROVISIONS

Section 9.1 Nonsurvival of Representations and Warranties. None of the representations, warranties, covenants or agreements in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Effective Time, other than those covenants or agreements of the parties which by their terms apply, or are to be performed in whole or in part, after the Effective Time.

Section 9.2 Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly given (a) on the date of delivery if delivered personally, or if by facsimile, upon written

Table of Contents

confirmation of receipt by facsimile, (provided that any notice received by facsimile transmission or otherwise at addressee's location not on a Business Day or on any Business Day after 5:00 P.M. (addressee's local time) shall be deemed to have been received at 9:00 A.M. (addressee's local time) on the next Business Day), (b) on the first Business Day following the date of dispatch if delivered utilizing a next-day service by a recognized next-day courier or (c) on the earlier of confirmed receipt or the fifth Business Day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. All notices hereunder shall be delivered to the addresses set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice:

(a) if to Parent, Merger Sub or the Surviving Corporation, to:

O Reilly Automotive, Inc.

233 South Patterson

Springfield, Missouri 65802

Attention: Greg Henslee, Chief Executive Officer

Facsimile: (417) 829-5861

with a copy (which shall not constitute notice) to:

Skadden, Arps, Slate, Meagher and Flom LLP

333 West Wacker Drive, Suite 1900

Chicago, Illinois 60606

Attention: Peter C. Krupp, Esq.

Kimberly A. deBeers, Esq.

Facsimile: (312) 407-0411

(b) if to Company, to:

CSK Auto Corporation

645 E. Missouri Ave., Suite 400

Phoenix, Arizona 85012

Attention: Chief Executive Officer; General Counsel

Facsimile: (602) 294-7139

with a copy (which shall not constitute notice) to:

Gibson, Dunn & Crutcher LLP

1801 California Street, Suite 4200

Denver, Colorado 80202

Edgar Filing: O REILLY AUTOMOTIVE INC - Form S-4/A

Attention: Richard M. Russo

Facsimile: (303) 298-5310

Section 9.3 *Certain Definitions*. For purposes of this Agreement:

- (a) *Affiliate* of any Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person;
- (b) *Business Day* means any day other than a Saturday, a Sunday or a day on which banks in New York, New York are authorized by Law or executed order to be closed;
- (c) *control* (including the terms *controlled*, *controlled by* and *under common control with*) means the possession, directly or indirectly or as trustee or executor, of the power to direct or cause the direction of the management policies of a Person, whether through the ownership of stock, as trustee or executor, by contract or credit arrangement or otherwise;
- (d) *Credit Agreements* means (i) the Second Amended and Restated Credit Agreement, dated as of July 25, 2005, among CSK Auto, Inc., the lenders party thereto, JPMorgan Chase Bank, N.A., as administrative agent, and J.P. Morgan Securities, Inc., as sole bookrunner and sole lead arranger, as the

A-53

Table of Contents

same has been, and may be, amended or supplemented from time to time, and (ii) the Term Credit Agreement, dated as of June 30, 2006, among CSK Auto, Inc., the Lenders party thereto, JPMorgan Chase Bank, N.A., as Administrative Agent, and Lehman Commercial Paper Inc. and Wachovia Bank, N.A., as Co-Syndication Agents, as the same has been, and may be, amended or supplemented from time to time.

(e) *Debt Instruments* means, collectively, the Credit Agreements and the Company^{3/4%}~~4%~~ Senior Exchangeable Notes due 2025.

(f) *knowledge* (i) of the Company means the actual knowledge of the individuals listed on Section 9.3(f) of the Company Disclosure Letter and (ii) of Parent means the actual knowledge of the individuals listed on Section 9.3(f) of the Parent Disclosure Letter ;

(g) *Person* means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including any Governmental Entity; and

(h) *Standstill Agreement* means that certain standstill agreement, dated February 6, 2008, by and between Parent and the Company; and

(i) *Subsidiary* means, with respect to any Person, any other Person of which stock or other equity interests having ordinary voting power to elect more than 50% of the board of directors or other governing body are owned, directly or indirectly, by such first Person.

Section 9.4 Interpretation. When a reference is made in this Agreement to a Section, Article or Exhibit such reference shall be to a Section, Article or Exhibit of this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement or in any Exhibit are for convenience of reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Any capitalized terms used in any Exhibit but not otherwise defined therein shall have the meaning set forth in this Agreement. All Exhibits annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth herein. The word *including* and words of similar import when used in this Agreement will mean *including, without limitation,* unless otherwise specified.

Section 9.5 Entire Agreement. This Agreement (including *Annex I*), the Company Disclosure Letter, the Parent Disclosure Letter, the Confidentiality Agreement and the Standstill Agreement constitute the entire agreement, and supersede all prior written agreements, arrangements, communications and understandings and all prior and contemporaneous oral agreements, arrangements, communications and understandings among the parties with respect to the subject matter hereof and thereof.

Section 9.6 Parties in Interest. Nothing in this Agreement, express or implied, is intended to or shall confer upon any Person other than the parties and their respective successors and permitted assigns any legal or equitable right, benefit or remedy of any nature under or by reason of this Agreement, other than with respect to the provisions of Section 6.11 which shall inure to the benefit of the Persons benefiting therefrom who are intended to be the third party beneficiaries thereof.

Section 9.7 Governing Law. This Agreement and all disputes or controversies arising out of or relating to this Agreement or the transactions contemplated hereby shall be governed by, and construed in accordance with, the internal laws of the State of Delaware, without regard to the Laws of any other jurisdiction that might be applied because of the conflicts of laws principles of the State of Delaware.

Section 9.8 Submission to Jurisdiction. Each of the parties irrevocably agrees that any legal action or proceeding arising out of or relating to this Agreement brought by any other party or its successors or assigns shall be brought and determined in the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (unless the Delaware Court of Chancery shall decline to accept jurisdiction over a particular matter, in which case, in any Delaware state or federal court within the State of Delaware), and each of

Table of Contents

the parties hereby irrevocably submits to the exclusive jurisdiction of the aforesaid courts for itself and with respect to its property, generally and unconditionally, with regard to any such action or proceeding arising out of or relating to this Agreement and the transactions contemplated hereby. Each of the parties agrees not to commence any action, suit or proceeding relating thereto except in the courts described above in Delaware, other than actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any such court in Delaware as described herein. Each of the parties further agrees that notice as provided herein shall constitute sufficient service of process and the parties further waive any argument that such service is insufficient. Each of the parties hereby irrevocably and unconditionally waives, and agrees not to assert, by way of motion or as a defense, counterclaim or otherwise, in any action or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby, (a) any claim that it is not personally subject to the jurisdiction of the courts in Delaware as described herein for any reason, (b) that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (c) that (i) the suit, action or proceeding in any such court is brought in an inconvenient forum, (ii) the venue of such suit, action or proceeding is improper or (iii) this Agreement, or the subject matter hereof, may not be enforced in or by such courts.

Section 9.9 *Assignment; Successors*. Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned or delegated, in whole or in part, by operation of law or otherwise, by any party without the prior written consent of the other parties, and any such assignment without such prior written consent shall be null and void; *provided, however*, that Merger Sub may assign any or all of its rights, interests and obligations under this Agreement to any direct or indirect wholly owned Subsidiary of Parent, but no such assignment shall relieve Merger Sub of its obligations hereunder. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns.

Section 9.10 *Enforcement*. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, each of the Company, Parent and Merger Sub shall be entitled to specific performance of the terms hereof, including an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (unless the Delaware Court of Chancery shall decline to accept jurisdiction over a particular matter, in which case, in any Delaware state or federal court within the State of Delaware), this being in addition to any other remedy to which such party is entitled at law or in equity. Each of the parties hereby further waives (a) any defense in any action for specific performance that a remedy at law would be adequate and (b) any requirement under any Law to post security as a prerequisite to obtaining equitable relief.

Section 9.11 *Currency*. All references to *dollars* or *\$* or *US\$* in this Agreement refer to United States dollars, which is the currency used for all purposes in this Agreement.

Section 9.12 *Severability*. Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision or portion of any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable Law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or portion of any provision in such jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision or portion of any provision had never been contained herein.

Section 9.13 *Waiver of Jury Trial*. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Table of Contents

Section 9.14 *Counterparts*. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

Section 9.15 *Facsimile Signature*. This Agreement may be executed by facsimile signature and a facsimile signature shall constitute an original for all purposes.

Section 9.16 *No Presumption Against Drafting Party*. Each of Parent, Merger Sub and the Company acknowledges that each party to this Agreement has been represented by counsel in connection with this Agreement and the transactions contemplated by this Agreement. Accordingly, any rule of Law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the drafting party has no application and is expressly waived.

Section 9.17 *Parent Guarantee*. Parent agrees to take all action necessary to cause Merger Sub or the Surviving Corporation, as applicable, to perform all of its respective agreements, covenants and obligations under this Agreement. Parent unconditionally guarantees to the Company the full and complete performance by Merger Sub or the Surviving Corporation, as applicable, of its respective obligations under this Agreement and shall be liable for any breach of any representation, warranty, covenant or obligation of Merger Sub or the Surviving Corporation, as applicable, under this Agreement. This is a guarantee of payment and performance and not of collectibility. Parent hereby waives diligence, presentment, demand of performance, filing of any claim, any right to require any proceeding first against Merger Sub or the Surviving Corporation, as applicable, protest, notice and all demands whatsoever in connection with the performance of its obligations set forth in this Section 9.17. Notwithstanding anything in this Section 9.17 to the contrary, in the event the Company makes a demand upon Parent pursuant to the terms hereof, Parent shall be entitled to assert against the Company all defenses available to Merger Sub or the Surviving Corporation to enforcement of Merger Sub's or the Surviving Corporation's, as the case may be, underlying obligations under this Agreement, including all defenses personal to Merger Sub or the Surviving Corporation, as the case may be.

[The remainder of this page is intentionally left blank.]

Table of Contents

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

O REILLY AUTOMOTIVE, INC.

By: /s/ Greg Henslee
Name: Greg Henslee
Title: Chief Executive Officer

OC ACQUISITION COMPANY

By: /s/ Greg Henslee
Name: Greg Henslee
Title: Chief Executive Officer

CSK AUTO CORPORATION

By: /s/ Lawrence N. Mondry
Name: Lawrence N. Mondry
Title: Chief Executive Officer

A-57

Table of Contents

ANNEX I

Notwithstanding any other provision of the Offer, but subject to compliance with Section 1.1(a) of the Agreement, Merger Sub (i) shall not be required to accept for payment or pay for any tendered Shares, (ii) may delay the acceptance for payment of, or the payment for, any tendered Shares, and (iii) may terminate or amend the Offer as to Shares not then paid for, in the event that at or prior to the scheduled expiration of the Offer (as it may be extended pursuant to Section 1.1(b) of the Agreement) if: (A) the Minimum Condition shall not have been satisfied; (B) the applicable waiting period (and any extension thereof) applicable to the transactions contemplated by the Agreement (including the Offer and the Merger) under the HSR Act shall not have expired or been terminated; (C) the Registration Condition shall not have been satisfied, (D) the NASDAQ Condition shall not have been satisfied, (E) the Company Tax Opinion Condition shall not have been satisfied, (F) Parent shall not have received, prior to first date on which Merger Sub accepts for payments all Shares validly tendered and not withdrawn pursuant to the Offer, a written opinion of Skadden, Arps, Slate, Meagher & Flom LLP (or other nationally recognized tax counsel reasonably acceptable to Parent) in form and substance reasonably satisfactory to Parent to the effect that the Offer, the Merger and the LLC Merger (if any) together will constitute a reorganization within the meaning of Section 368(a) of the Code (the *Parent Tax Opinion*) (which opinion may rely on such assumptions and representations as such counsel reasonably deems appropriate), such Parent Tax Opinion shall have been withdrawn or an event shall have occurred that prevents Parent from relying on such Parent Tax Opinion, provided that such condition may be waived by Parent in its sole discretion, or (G) immediately prior to the acceptance of Shares for payment in the Offer, any of the following conditions exists:

(a)(i) any Governmental Entity shall have issued an order, decree, injunction or ruling or taken any other action permanently restraining, enjoining or otherwise materially delaying or preventing the consummation of the Offer or the Merger and such order, decree, injunction, ruling or other action shall have become final and non-appealable or (ii) there shall be any pending action, proceeding or counterclaim by any Governmental Entity with respect to the actions set forth in subclause (i); *provided, however*, that the condition set forth in this clause (a)(ii) shall only be a condition during the first 60 days after the date of this Agreement;

(b) any Law enacted, entered, enforced, issued or in effect that prohibits or makes illegal the consummation of the Offer, the Merger or any other transaction contemplated by the Agreement;

(c)(i) other than the representations and warranties in Sections 4.2 and 4.3, the representations and warranties of the Company contained in the Agreement (disregarding any limitation as to materiality, Material Adverse Effect or similar qualifiers set forth therein), shall not be true and correct in all respects, as of the date of the Agreement or at the consummation of the Offer as if made at and as of such time (except for any representation or warranty that is made only as of a specified date, which need only to be true as of such specified date), except where the failure to be so true and correct has not had and would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect and such breach shall not have been cured; or (ii) any of the representations and warranties in Sections 4.2 or 4.3 shall not be true and correct in all material respects as of the date of the Agreement and at the consummation of the Offer as if made at and as of such time and such breach shall not have been cured;

(d) the Company shall have materially breached any of its obligations under the Agreement and such breach or failure to perform shall not have been cured;

(e) any event, change or development shall have occurred following the date of the Agreement that has had or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and such Material Adverse Effect shall not have been cured;

(f)(i) an Adverse Recommendation Change shall have occurred and not been withdrawn, or (ii) the Company shall have approved, endorsed or recommended to the Company's stockholders an Acquisition Proposal other than the Offer or the Merger; or

Table of Contents

(g) the Agreement shall have been terminated in accordance with its terms (the *Termination Condition*).

Approximately 24 hours prior to the expiration of the Offer, the Company shall deliver to Parent a certificate executed on behalf of the Company by the Chief Executive Officer and Chief Financial Officer of the Company certifying that the conditions set forth in paragraphs (c), (d) and (e) in this Annex I are satisfied as of such time and date.

The foregoing conditions (except for the Minimum Condition and the Termination Condition) are for the sole benefit of Merger Sub and Parent and may be asserted by Merger Sub or Parent regardless of the circumstances giving rise to such condition, in whole or in part at any applicable time or from time to time in their sole discretion prior to the expiration of the Offer, except that the conditions relating to receipt of any approvals from any Governmental Entity may be asserted at any time prior to the acceptance for payment of Shares, and all conditions (except for the Minimum Condition and the Termination Condition) may be waived by Parent or Merger Sub in their sole discretion in whole or in part at any applicable time or from time to time, in each case subject to the terms and conditions of the Merger Agreement and the applicable rules and regulations of the SEC. The failure of Parent or Merger Sub at any time to exercise any of the foregoing rights shall not be deemed a waiver of any such right and each such right shall be deemed an ongoing right that may be asserted at any time and from time to time.

Notwithstanding anything contained in this Annex I, neither Parent nor Merger Sub may rely on the failure of any condition set forth herein to be satisfied if such failure was caused by the breach of the Agreement by Parent or Merger Sub, or the failure by Parent or Merger to fulfill any of their respective obligations thereunder.

The capitalized terms used in this Annex I and not defined herein shall have the respective meanings ascribed to them in the Agreement and Plan of Merger (the *Agreement*), dated as of April 1, 2008, between O Reilly Automotive, Inc., a Missouri corporation, OC Acquisition Company, a Delaware corporation and an indirect wholly-owned Subsidiary of Parent, and CSK Auto Corporation, a Delaware corporation.

Table of Contents

Annex B

Section 262 of the Delaware General Corporation Law

§ 262. Appraisal rights

- (a) Any stockholder of a corporation of this State who holds shares of stock on the date of the making of a demand pursuant to subsection (d) of this section with respect to such shares, who continuously holds such shares through the effective date of the merger or consolidation, who has otherwise complied with subsection (d) of this section and who has neither voted in favor of the merger or consolidation nor consented thereto in writing pursuant to § 228 of this title shall be entitled to an appraisal by the Court of Chancery of the fair value of the stockholder's shares of stock under the circumstances described in subsections (b) and (c) of this section. As used in this section, the word "stockholder" means a holder of record of stock in a stock corporation and also a member of record of a nonstock corporation; the words "stock" and "share" mean and include what is ordinarily meant by those words and also membership or membership interest of a member of a nonstock corporation; and the words "depository receipt" mean a receipt or other instrument issued by a depository representing an interest in one or more shares, or fractions thereof, solely of stock of a corporation, which stock is deposited with the depository.
- (b) Appraisal rights shall be available for the shares of any class or series of stock of a constituent corporation in a merger or consolidation to be effected pursuant to § 251 (other than a merger effected pursuant to § 251(g) of this title), § 252, § 254, § 257, § 258, § 263 or § 264 of this title:
- (1) Provided, however, that no appraisal rights under this section shall be available for the shares of any class or series of stock, which stock, or depository receipts in respect thereof, at the record date fixed to determine the stockholders entitled to receive notice of and to vote at the meeting of stockholders to act upon the agreement of merger or consolidation, were either (i) listed on a national securities exchange or (ii) held of record by more than 2,000 holders; and further provided that no appraisal rights shall be available for any shares of stock of the constituent corporation surviving a merger if the merger did not require for its approval the vote of the stockholders of the surviving corporation as provided in subsection (f) of § 251 of this title.
- (2) Notwithstanding paragraph (1) of this subsection, appraisal rights under this section shall be available for the shares of any class or series of stock of a constituent corporation if the holders thereof are required by the terms of an agreement of merger or consolidation pursuant to §§ 251, 252, 254, 257, 258, 263 and 264 of this title to accept for such stock anything except:
- a. Shares of stock of the corporation surviving or resulting from such merger or consolidation, or depository receipts in respect thereof;
- b. Shares of stock of any other corporation, or depository receipts in respect thereof, which shares of stock (or depository receipts in respect thereof) or depository receipts at the effective date of the merger or consolidation will be either listed on a national securities exchange or held of record by more than 2,000 holders;
- c. Cash in lieu of fractional shares or fractional depository receipts described in the foregoing subparagraphs a. and b. of this paragraph; or
- d. Any combination of the shares of stock, depository receipts and cash in lieu of fractional shares or fractional depository receipts described in the foregoing subparagraphs a., b. and c. of this paragraph.

- (3) In the event all of the stock of a subsidiary Delaware corporation party to a merger effected under § 253 of this title is not owned by the parent corporation immediately prior to the merger, appraisal rights shall be available for the shares of the subsidiary Delaware corporation.

B-1

Table of Contents

- (c) Any corporation may provide in its certificate of incorporation that appraisal rights under this section shall be available for the shares of any class or series of its stock as a result of an amendment to its certificate of incorporation, any merger or consolidation in which the corporation is a constituent corporation or the sale of all or substantially all of the assets of the corporation. If the certificate of incorporation contains such a provision, the procedures of this section, including those set forth in subsections (d) and (e) of this section, shall apply as nearly as is practicable.
- (d) Appraisal rights shall be perfected as follows:
- (1) If a proposed merger or consolidation for which appraisal rights are provided under this section is to be submitted for approval at a meeting of stockholders, the corporation, not less than 20 days prior to the meeting, shall notify each of its stockholders who was such on the record date for such meeting with respect to shares for which appraisal rights are available pursuant to subsection (b) or (c) hereof that appraisal rights are available for any or all of the shares of the constituent corporations, and shall include in such notice a copy of this section. Each stockholder electing to demand the appraisal of such stockholder's shares shall deliver to the corporation, before the taking of the vote on the merger or consolidation, a written demand for appraisal of such stockholder's shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such stockholder's shares. A proxy or vote against the merger or consolidation shall not constitute such a demand. A stockholder electing to take such action must do so by a separate written demand as herein provided. Within 10 days after the effective date of such merger or consolidation, the surviving or resulting corporation shall notify each stockholder of each constituent corporation who has complied with this subsection and has not voted in favor of or consented to the merger or consolidation of the date that the merger or consolidation has become effective; or
 - (2) If the merger or consolidation was approved pursuant to § 228 or § 253 of this title, then either a constituent corporation before the effective date of the merger or consolidation or the surviving or resulting corporation within 10 days thereafter shall notify each of the holders of any class or series of stock of such constituent corporation who are entitled to appraisal rights of the approval of the merger or consolidation and that appraisal rights are available for any or all shares of such class or series of stock of such constituent corporation, and shall include in such notice a copy of this section. Such notice may, and, if given on or after the effective date of the merger or consolidation, shall, also notify such stockholders of the effective date of the merger or consolidation. Any stockholder entitled to appraisal rights may, within 20 days after the date of mailing of such notice, demand in writing from the surviving or resulting corporation the appraisal of such holder's shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such holder's shares. If such notice did not notify stockholders of the effective date of the merger or consolidation, either (i) each such constituent corporation shall send a second notice before the effective date of the merger or consolidation notifying each of the holders of any class or series of stock of such constituent corporation that are entitled to appraisal rights of the effective date of the merger or consolidation or (ii) the surviving or resulting corporation shall send such a second notice to all such holders on or within 10 days after such effective date; provided, however, that if such second notice is sent more than 20 days following the sending of the first notice, such second notice need only be sent to each stockholder who is entitled to appraisal rights and who has demanded appraisal of such holder's shares in accordance with this subsection. An affidavit of the secretary or assistant secretary or of the transfer agent of the corporation that is required to give either notice that such notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein. For purposes of determining the stockholders entitled to receive either notice, each constituent corporation may fix, in advance, a record date that shall be not more than 10 days prior to the date the notice is given, provided, that if the notice is given on or after the

Table of Contents

effective date of the merger or consolidation, the record date shall be such effective date. If no record date is fixed and the notice is given prior to the effective date, the record date shall be the close of business on the day next preceding the day on which the notice is given.

- (e) Within 120 days after the effective date of the merger or consolidation, the surviving or resulting corporation or any stockholder who has complied with subsections (a) and (d) of this section hereof and who is otherwise entitled to appraisal rights, may commence an appraisal proceeding by filing a petition in the Court of Chancery demanding a determination of the value of the stock of all such stockholders. Notwithstanding the foregoing, at any time within 60 days after the effective date of the merger or consolidation, any stockholder who has not commenced an appraisal proceeding or joined that proceeding as a named party shall have the right to withdraw such stockholder's demand for appraisal and to accept the terms offered upon the merger or consolidation. Within 120 days after the effective date of the merger or consolidation, any stockholder who has complied with the requirements of subsections (a) and (d) of this section hereof, upon written request, shall be entitled to receive from the corporation surviving the merger or resulting from the consolidation a statement setting forth the aggregate number of shares not voted in favor of the merger or consolidation and with respect to which demands for appraisal have been received and the aggregate number of holders of such shares. Such written statement shall be mailed to the stockholder within 10 days after such stockholder's written request for such a statement is received by the surviving or resulting corporation or within 10 days after expiration of the period for delivery of demands for appraisal under subsection (d) of this section hereof, whichever is later. Notwithstanding subsection (a) of this section, a person who is the beneficial owner of shares of such stock held either in a voting trust or by a nominee on behalf of such person may, in such person's own name, file a petition or request from the corporation the statement described in this subsection.

- (f) Upon the filing of any such petition by a stockholder, service of a copy thereof shall be made upon the surviving or resulting corporation, which shall within 20 days after such service file in the office of the Register in Chancery in which the petition was filed a duly verified list containing the names and addresses of all stockholders who have demanded payment for their shares and with whom agreements as to the value of their shares have not been reached by the surviving or resulting corporation. If the petition shall be filed by the surviving or resulting corporation, the petition shall be accompanied by such a duly verified list. The Register in Chancery, if so ordered by the Court, shall give notice of the time and place fixed for the hearing of such petition by registered or certified mail to the surviving or resulting corporation and to the stockholders shown on the list at the addresses therein stated. Such notice shall also be given by 1 or more publications at least 1 week before the day of the hearing, in a newspaper of general circulation published in the City of Wilmington, Delaware or such publication as the Court deems advisable. The forms of the notices by mail and by publication shall be approved by the Court, and the costs thereof shall be borne by the surviving or resulting corporation.

- (g) At the hearing on such petition, the Court shall determine the stockholders who have complied with this section and who have become entitled to appraisal rights. The Court may require the stockholders who have demanded an appraisal for their shares and who hold stock represented by certificates to submit their certificates of stock to the Register in Chancery for notation thereon of the pendency of the appraisal proceedings; and if any stockholder fails to comply with such direction, the Court may dismiss the proceedings as to such stockholder.

- (h) After the Court determines the stockholders entitled to an appraisal, the appraisal proceeding shall be conducted in accordance with the rules of the Court of Chancery, including any rules specifically governing appraisal proceedings. Through such proceeding the Court shall determine the fair value of the shares exclusive of any element of value arising from the accomplishment or expectation of the merger or consolidation, together with interest, if any, to be paid upon the amount determined to be the fair value. In determining such fair value, the Court shall take into account all relevant factors. Unless the Court in its discretion determines otherwise for good cause shown, interest from the effective date of the merger through the date of payment of the judgment shall be compounded quarterly and shall

Table of Contents

accrue at 5% over the Federal Reserve discount rate (including any surcharge) as established from time to time during the period between the effective date of the merger and the date of payment of the judgment. Upon application by the surviving or resulting corporation or by any stockholder entitled to participate in the appraisal proceeding, the Court may, in its discretion, proceed to trial upon the appraisal prior to the final determination of the stockholders entitled to an appraisal. Any stockholder whose name appears on the list filed by the surviving or resulting corporation pursuant to subsection (f) of this section and who has submitted such stockholder's certificates of stock to the Register in Chancery, if such is required, may participate fully in all proceedings until it is finally determined that such stockholder is not entitled to appraisal rights under this section.

- (i) The Court shall direct the payment of the fair value of the shares, together with interest, if any, by the surviving or resulting corporation to the stockholders entitled thereto. Payment shall be so made to each such stockholder, in the case of holders of uncertificated stock forthwith, and the case of holders of shares represented by certificates upon the surrender to the corporation of the certificates representing such stock. The Court's decree may be enforced as other decrees in the Court of Chancery may be enforced, whether such surviving or resulting corporation be a corporation of this State or of any state.
- (j) The costs of the proceeding may be determined by the Court and taxed upon the parties as the Court deems equitable in the circumstances. Upon application of a stockholder, the Court may order all or a portion of the expenses incurred by any stockholder in connection with the appraisal proceeding, including, without limitation, reasonable attorney's fees and the fees and expenses of experts, to be charged pro rata against the value of all the shares entitled to an appraisal.
- (k) From and after the effective date of the merger or consolidation, no stockholder who has demanded appraisal rights as provided in subsection (d) of this section shall be entitled to vote such stock for any purpose or to receive payment of dividends or other distributions on the stock (except dividends or other distributions payable to stockholders of record at a date which is prior to the effective date of the merger or consolidation); provided, however, that if no petition for an appraisal shall be filed within the time provided in subsection (e) of this section, or if such stockholder shall deliver to the surviving or resulting corporation a written withdrawal of such stockholder's demand for an appraisal and an acceptance of the merger or consolidation, either within 60 days after the effective date of the merger or consolidation as provided in subsection (e) of this section or thereafter with the written approval of the corporation, then the right of such stockholder to an appraisal shall cease. Notwithstanding the foregoing, no appraisal proceeding in the Court of Chancery shall be dismissed as to any stockholder without the approval of the Court, and such approval may be conditioned upon such terms as the Court deems just; provided, however that this provision shall not affect the right of any stockholder who has not commenced an appraisal proceeding or joined that proceeding as a named party to withdraw such stockholder's demand for appraisal and to accept the terms offered upon the merger or consolidation within 60 days after the effective date of the merger or consolidation, as set forth in subsection (e) of this section.
- (l) The shares of the surviving or resulting corporation to which the shares of such objecting stockholders would have been converted had they assented to the merger or consolidation shall have the status of authorized and unissued shares of the surviving or resulting corporation.

Table of Contents**Annex C Information Concerning Directors and Executive Officers of O Reilly and OC Acquisition**

1. *Directors and Officers of O Reilly.* The following table sets forth the name and present principal occupation or employment and material occupations, positions, offices or employments for the past five years, of each director and executive officer of O Reilly. Each such person is a citizen of the United States, unless otherwise noted, and the business address of each person is 233 South Patterson, Springfield Missouri, 65802.

Name	Age	Office(s)	Present Principal Occupation or Employment History and Five-Year Employment History
Gregory L. Henslee	47	Chief Executive Officer and Co-President	O Reilly team member for 23 years. Mr. Henslee's O Reilly career started as a parts specialist, and during his first five years he served in several positions in retail store operations, including district manager. From there he advanced to Computer Operations Manager, and over the past ten years, he has served as Director of Computer Operations/Loss Prevention, Vice President of Store Operations and as Senior Vice President. He has been President of Merchandise, Distribution, Information Systems and Loss Prevention since 1999, and in his current positions of Chief Executive Officer and Co-President since 2005.
Ted F. Wise	57	Chief Operating Officer and Co-President	O Reilly team member for 37 years. Mr. Wise's primary areas of responsibility are Sales, Operations and Real Estate. He began his O Reilly career in sales in 1970, was promoted to store manager in 1973 and became our first district manager in 1977. He continued his progression with O Reilly as Operations Manager, Vice President, Senior Vice President of Operations and Sales, and Executive Vice President. He has been President of Sales, Operations and Real Estate since 1999, and in his current positions of Chief Operating Officer and Co-President since 2005.
Thomas G. McFall	38	Executive Vice President of Finance and Chief Financial Officer	O Reilly team member since 2006. Mr. McFall's primary areas of responsibility are Finance and Accounting. Prior to joining O Reilly, Mr. McFall held the position of Chief Financial Officer - Midwest Operation for CSK Auto Corporation (CSK Auto), following CSK Auto's acquisition of Murray's Discount Auto Stores (Murray's). Mr. McFall served Murray's for eight years as Controller, Vice President of Finance, and Chief Financial Officer, with direct responsibility for finance and accounting, distribution and logistics operations. Prior to joining Murray's, Mr. McFall was an Audit Manager with Ernst & Young, LLP in Detroit, Michigan.

C-1

Table of Contents

Name	Age	Office(s)	Present Principal Occupation or Employment History and Five-Year Employment History
Jeff M. Shaw	46	Senior Vice President of Sales and Operations	O Reilly team member for 18 years. Mr. Shaw's primary areas of responsibility are managing Store Sales and Operations. His O Reilly career started as a parts specialist, and has progressed through the roles of store manager, district manager, regional manager and Vice President of the Southern division. He advanced to Vice President of Sales and Operations in 2003 and to his current position as Senior Vice President of Sales and Operations in 2004.
Michael D. Swearingin	47	Senior Vice President of Merchandise	O Reilly team member 14 years. Mr. Swearingin's primary areas of responsibility are Merchandise, Purchasing and Advertising. His O Reilly career started as a Product Manager, a position he held for four years. From there he advanced to Senior Product Manager, Director of Merchandise and Vice President of Merchandise with responsibility for product mix and replenishment. He has been in his current position as Senior Vice President since 2004.
Gregory D. Johnson	43	Senior Vice President of Distribution Operations	O Reilly team member for 25 years. Mr. Johnson's primary area of responsibility is Distribution. He began his O Reilly career as a part-time stocker in the Nashville DC in 1982 and advanced with O Reilly as Retail Systems Manager, WMS Systems Development Manager, Director of Distribution and Vice President of Distribution. He has been in his current position as Senior Vice President since September 2007.
David E. O Reilly	58	Chairman of the Board	Chairman of the Board from February 2005 to current; Co-Chairman of the Board from August 1999 to February 2005; Chief Executive Officer from March 1993 to February 2005; President of O Reilly from March 1993 to August 1999; Vice President of O Reilly from 1975 to March 1993.
Jay D. Burchfield	62	Director	Chairman of the Board and Director of Trust Company of the Ozarks since April 1998; Director of Banyon Group, Inc since January 1998; Director of Quest Capital Alliance since January 2002; Director of The Beer Company since January 2003. Mr. Burchfield's career has spanned more than 30 years in the banking and financial services industry.
Paul R. Lederer	69	Director	Retired October 1998; Executive Vice President of Worldwide Aftermarket of Federal-Mogul Corporation February 1998 to October 1998; President and Chief Operating Officer of Fel-Pro from November 1994 to February 1998, when it was acquired by Federal-Mogul Corporation; presently a Director of the following companies: MAXIMUS, Dorman Products, UCI, Inc. and Proliance. Mr. Lederer had been a Director of O Reilly from April 1993 to July 1997 and was appointed again as a Director in 2001.

Table of Contents

Name	Age	Office(s)	Present Principal Occupation or Employment History and Five-Year Employment History
Charles H. O Reilly, Jr.	68	Director	Retired from active Company management, February 2002. Vice-Chairman of the Board since August 1999; Chairman of the Board from March 1993 to August 1999; President and Chief Executive Officer of O Reilly from 1975 to March 1993.
John Murphy	57	Director	President and Chief Executive Officer of Accuride Corporation, 2007 to present. President and Chief Operating Officer of Accuride Corporation, 1998 to 2007. Executive Vice President, Administration/Chief Financial Officer/Corporate Secretary of North American Stainless, Inc. 1994 to 1997.
Ronald Rashkow	67	Director	Principal of RPMS, Inc., an investment banking services firm. Member of the advisory Board of Hilco Trading Co and Ygomi LLC. Founder of Handy Andy Home Improvement Centers and a founding principal of Chapman Partners, LLC. Founder and Chairman of WOOP-i LLC, an S.E.O. and internet marketing organization. General partner in several commercial shopping centers and retail properties.
Lawrence P. O Reilly	61	Director	Retired from active Company management, February 2003; Vice-Chairman of the Board from February 2005 to current; Co-Chairman of the Board from August 1999 to February 2005; Chief Operating Officer from March 1993 to February 2003; President from March 1993 to August 1999; Vice President of O Reilly from 1975 to March 1993. Chairman and Director of St. Johns Hospital Springfield since January 2000; Chairman of the Missouri Sports Hall of Fame since January 2003; and Trustee of the Lance Armstrong Endowment Board since December of 2005.
Rosalie O Reilly-Wooten	66	Director	Retired from active Company management, February 2002. Executive Vice President of O Reilly from March 1993 to February 2002 where she managed Telecommunications, Risk Management and Human Resources. Currently serving on the Ozarks Greenways Board of Directors, CASA Advisory Board, Breast Cancer Foundation of the Ozarks Advisory Board, Missouri Council for the Arts Board and Drury University Board of Trustees.
Joe C. Greene	72	Director	Of Counsel to Husch and Eppenberger law firm, Director of Ozarks Coca-Cola Bottling Company, Director of Missouri Sports Hall of Fame, Director of Commerce Bank, N.A. Mr. Greene has engaged in the private practice of law for more than 45 years.

Table of Contents

2. *Directors and Officers of OC Acquisition Company.* The following table sets forth the name and present principal occupation or employment, and material occupations, positions, offices or employments for the past five years, of each director and executive officer of OC Acquisition Company. Each such person is a citizen of the United States, unless otherwise noted, and the business address of each person is c/o O Reilly Automotive, Inc., 233 South Patterson, Springfield Missouri, 65802.

Name	Age	Office(s)	Present Principal Occupation or Employment History and Five-Year Employment History
Gregory L. Henslee	47	Chief Executive Officer, Co-President and Director	O Reilly team member for 23 years. Mr. Henslee's O Reilly career started as a parts specialist, and during his first five years he served in several positions in retail store operations, including district manager. From there he advanced to Computer Operations Manager, and over the past ten years, he has served as Director of Computer Operations/Loss Prevention, Vice President of Store Operations and as Senior Vice President. He has been President of Merchandise, Distribution, Information Systems and Loss Prevention since 1999, and in his current positions of Chief Executive Officer and Co-President since 2005.
Ted F. Wise	57	Chief Operating Officer, Co-President and Director	O Reilly team member for 37 years. Mr. Wise's primary areas of responsibility are Sales, Operations and Real Estate. He began his O Reilly career in sales in 1970, was promoted to store manager in 1973 and became our first district manager in 1977. He continued his progression with O Reilly as Operations Manager, Vice President, Senior Vice President of Operations and Sales, and Executive Vice President. He has been President of Sales, Operations and Real Estate since 1999, and in his current positions of Chief Operating Officer and Co-President since 2005.
Thomas G. McFall	38	Chief Financial Officer, Treasurer, Secretary and Director	O Reilly team member since 2006. Mr. McFall's primary areas of responsibility are Finance and Accounting. Prior to joining O Reilly, Mr. McFall held the position of Chief Financial Officer Midwest Operation for CSK Auto Corporation (CSK Auto), following CSK Auto's acquisition of Murray's Discount Auto Stores (Murray's). Mr. McFall served Murray's for eight years as Controller, Vice President of Finance, and Chief Financial Officer, with direct responsibility for finance and accounting, distribution and logistics operations. Prior to joining Murray's, Mr. McFall was an Audit Manager with Ernst & Young, LLP in Detroit, Michigan.

Table of Contents

Annex D CSK s Annual Report on Form 10-K for the Year Ended February 3, 2008

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

Form 10-K

**x ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT
OF 1934**

For the fiscal year ended February 3, 2008.

**.. TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE
ACT OF 1934**

Commission file number 001-13927

CSK Auto Corporation

(Exact name of registrant as specified in its charter)

Edgar Filing: O REILLY AUTOMOTIVE INC - Form S-4/A

Delaware
*(State or other jurisdiction of
incorporation or organization)*

86-0765798
*(I.R.S. Employer
Identification No.)*

645 E. Missouri Ave.

Suite 400

Phoenix, Arizona
(Address of principal executive offices)

85012
(Zip Code)

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of Each Class</u>	<u>Name of Each Exchange on Which Registered:</u>
Common Stock, \$.01 par value	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act:

None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to section 13 or 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Edgar Filing: O REILLY AUTOMOTIVE INC - Form S-4/A

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company

(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes No

As of August 3, 2007, the aggregate market value of our voting and non-voting common stock held by non-affiliates was approximately \$541.2 million. For purposes of the above statement only, all directors and executive officers of the registrant are assumed to be affiliates.

As of April 11, 2008, there were 44,033,363 shares of our common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of our definitive Proxy Statement for our 2008 Annual Meeting of Stockholders are incorporated by reference into Part III of this Form 10-K.

Table of Contents**TABLE OF CONTENTS**

	Page
<u>PART I</u>	
Item 1. <u>Business</u>	4
Item 1A. <u>Risk Factors</u>	17
Item 1B. <u>Unresolved Staff Comments</u>	24
Item 2. <u>Properties</u>	25
Item 3. <u>Legal Proceedings</u>	26
Item 4. <u>Submission of Matters to a Vote of Security Holders</u>	28
<u>PART II</u>	
Item 5. <u>Market for Registrant's Common Equity and Related Stockholder Matters</u>	28
Item 6. <u>Selected Financial Data</u>	30
Item 7. <u>Management's Discussion and Analysis of Financial Condition and Results of Operations</u>	32
Item 7A. <u>Quantitative and Qualitative Disclosures About Market Risk</u>	62
Item 8. <u>Financial Statements and Supplementary Data</u>	63
Item 9. <u>Changes in and Disagreements with Accountants on Accounting and Financial Disclosure</u>	118
Item 9A. <u>Controls and Procedures</u>	118
Item 9B. <u>Other Information</u>	126
<u>PART III</u>	
Item 10. <u>Directors, Executive Officers and Corporate Governance</u>	126
Item 11. <u>Executive Compensation</u>	126
Item 12. <u>Security Ownership of Certain Beneficial Owners and Management</u>	127
Item 13. <u>Certain Relationships and Related Transactions, and Director Independence</u>	127
Item 14. <u>Principal Accountant Fees and Services</u>	127
<u>PART IV</u>	
Item 15. <u>Exhibits and Financial Statement Schedules</u>	128

As used herein, the terms CSK, CSK Auto, the Company, we, us, and our refer to CSK Auto Corporation and its subsidiaries, including its operating subsidiary, CSK Auto, Inc., and its subsidiary, CSKAUTO.COM, Inc. The term Auto as used herein refers to our operating subsidiary, CSK Auto, Inc., and its subsidiary, CSKAUTO.COM, Inc.

You may obtain, free of charge, copies of this Annual Report on Form 10-K (this Annual Report) as well as our Quarterly Reports on Form 10-Q and Current Reports on Form 8-K (and amendments to those reports) filed with or furnished to the Securities and Exchange Commission (SEC) as soon as reasonably practicable after such reports have been filed or furnished by accessing our website at www.cskauto.com, then clicking Investors. Information contained on our website is not part of this Annual Report.

Note Concerning Forward-Looking Information

Certain statements contained in this Annual Report are forward-looking statements and are usually identified by words such as may, will, expect, anticipate, believe, estimate, continue, could, should or other similar expressions. We intend forward-looking statements to be covered by safe harbor provisions for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995. These forward-looking statements reflect current views about our plans, strategies and prospects and speak only as of the date of this Annual Report.

Table of Contents

We believe that it is important to communicate our future expectations to our investors. However, forward-looking statements are subject to risks, uncertainties and assumptions often beyond our control, including, but not limited to, competitive pressures, the overall condition of the national and regional economies, factors affecting import of products, factors impacting consumer spending and driving habits such as high gas prices, war and terrorism, natural disasters and/or extended periods of inclement weather, consumer debt levels and inflation, demand for our products, integration and management of any current and future acquisitions, conditions affecting new store development, relationships with vendors, risks related to compliance with Section 404 of the Sarbanes-Oxley Act of 2002 (SOX and such Section, SOX 404) and litigation and regulatory matters. Actual results may differ materially from anticipated results described in these forward-looking statements. For more information related to these and other risks, please refer to the Risk Factors section in this Annual Report. In addition to causing our actual results to differ, the factors listed and referred to above may cause our intentions to change from those statements of intention set forth in this Annual Report. Such changes in our intentions may cause our results to differ. We may change our intentions at any time and without notice based upon changes in such factors, our assumptions or otherwise.

Except as required by applicable law, we do not intend and undertake no obligations to update publicly any forward-looking statements, whether as a result of new information, future events or otherwise. Given the uncertainties and risk factors that could cause our actual results to differ materially from those contained in any forward looking statement, you should not place undue reliance upon forward-looking statements and should carefully consider these risks and uncertainties, together with the other risks described from time to time in our other reports and documents filed with the SEC.

Table of Contents

PART I

**Item 1. Business
Merger Agreement**

On April 1, 2008, the Company entered into an Agreement and Plan of Merger (the Merger Agreement) with O Reilly Automotive, Inc. (O Reilly) and an indirect wholly-owned subsidiary of O Reilly pursuant to which the Company is expected to become a wholly-owned subsidiary of O Reilly (the Acquisition).

In order to effectuate the Acquisition, O Reilly has agreed to commence an exchange offer (the Exchange Offer) pursuant to which each share of the Company s common stock tendered in the Exchange Offer will be exchanged for (a) a number of shares of O Reilly s common stock equal to the exchange ratio (as calculated below), plus (b) \$1.00 in cash (subject to possible reduction as described below). Pursuant to the Merger Agreement, the exchange ratio will equal \$11.00 divided by the average trading price of O Reilly s common stock during the five consecutive trading days ending on and including the second trading day prior to the closing of the Exchange Offer; provided, that if such average trading price of O Reilly s common stock is greater than \$29.95 per share, then the exchange ratio will be 0.3673, and if such average trading price is less than \$25.67 per share, then the exchange ratio will be 0.4285. If such average trading price is less than or equal to \$21.00 per share, the Company may terminate the Merger Agreement unless O Reilly exercises its option to issue an additional number of its shares or increase the amount of cash to be paid such that the total value of O Reilly common stock and cash exchanged for each share of the Company s common stock is at least equal to \$10.00 (less any possible reduction of the cash component of the offer price as described below).

Upon completion of the Exchange Offer, any remaining shares of the Company s common stock will be acquired in a second-step merger at the same price at which shares of the Company s common stock were exchanged in the Exchange Offer.

The Acquisition is expected to be completed during the second quarter of the Company s fiscal year ending February 1, 2009 (fiscal 2008) and is subject to regulatory review and customary closing conditions, including that at least a majority of the Company s outstanding shares of common stock be tendered in the Exchange Offer and the expiration or termination of any waiting period (and any extension thereof) under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

The Merger Agreement includes customary representations, warranties and covenants by the Company, including covenants (a) to cease immediately any discussions and negotiations with respect to an alternate acquisition proposal, (b) not to solicit any alternate acquisition proposal and, with certain exceptions, not to enter into discussions concerning or furnish information in connection with any alternate acquisition proposal, and (c) subject to certain exceptions, for the Company s Board of Directors not to withdraw or modify its recommendation that the Company s stockholders tender shares into the Exchange Offer. In addition, the Company has agreed to use reasonable best efforts to obtain appropriate waivers or consents under the Company s credit or debt agreements and instruments if needed or if requested by O Reilly to remedy any default or event of default thereunder that may arise after the date of the Merger Agreement (the Credit Agreement Waivers). The \$1.00 cash component of the offer price for each share of the Company s common stock tendered in the Exchange Offer will be subject to reduction in the event that the Company pays more than \$3.0 million to its lenders in order to obtain any Credit Agreement Waivers. The Company does not anticipate any need to obtain any Credit Agreement Waivers prior to the anticipated closing of the Exchange Offer.

The Merger Agreement contains certain termination rights for both the Company and O Reilly, including if the Exchange Offer has not been consummated or if the expiration or termination of any waiting period (and any extension thereof) under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, has not occurred, in either case on or before the date that is 180 days after the date of the Merger Agreement, and provisions that permit termination in connection with the exercise of the fiduciary duties of the Company s Board of Directors with respect to superior offers. The Merger Agreement further provides that upon termination of the Merger Agreement under specified circumstances, the Company may be required to pay O Reilly a termination fee of \$22.0 million.

Table of Contents

In connection with the Acquisition, O Reilly has received a commitment letter from Lehman Commercial Paper Inc., Lehman Brothers Inc., Lehman Brothers Commercial Bank, Bank of America, N.A., and Banc of America Securities LLC to provide a \$1,200.0 million first lien senior secured revolving credit facility, which O Reilly is expected to use, in part, to repay at the time of the closing of the Exchange Offer all amounts outstanding and other amounts payable under the Company's \$350.0 million floating rate term loan facility (the Term Loan Facility) and \$325.0 million senior secured revolving line of credit (the Senior Credit Facility), following which such Facilities will be terminated. Thus, although the consummation of the Exchange Offer would result in an event of default and the possible acceleration of indebtedness under those Facilities, it is contemplated that those Facilities will be repaid in full and cease to exist at the closing of the Exchange Offer. If the Acquisition is completed as planned, the Company's \$100.0 million of 6³/₄% senior exchangeable notes (6³/₄% Notes) will remain outstanding. O Reilly's acquisition of the Company and the closing of the Exchange Offer are not conditioned upon the completion of, or availability of funding under, its committed \$1,200.0 million credit facility.

Term Loan Facility Financial Covenants

Our Term Loan Facility contains a maximum leverage ratio that we do not believe at this time we will be able to satisfy beginning in the first quarter of the Company's fiscal year ending January 30, 2010 (fiscal 2009). In addition to having the potential to cause a default under the Term Loan Facility at the end of the first quarter of fiscal 2009, if we do not obtain a waiver or amendment of that covenant prior to the completion of our financial statements for the first quarter of fiscal 2008, our belief that it is probable that this covenant will not be satisfied for the first quarter of fiscal 2009 will cause us to have to classify all of our indebtedness under the Term Loan Facility and the Senior Credit Facility, as well as the 6³/₄% Notes, as current liabilities in our financial statements beginning with our financial statements for the first quarter of fiscal 2008. Furthermore, beginning with the second quarter of fiscal 2008, we would be required to reduce (to twelve months) the time period over which we amortize debt issuance costs and debt discount, increasing the interest costs we report in our financial statements. The classification of all such indebtedness as current liabilities and the acceleration of the amortization of interest costs will not cause a default under our borrowing agreements. However, any such classification could have adverse consequences upon our relationships with, and the credit terms upon which we do business with, our vendors, although we expect such consequences, if any, to be limited due to the expected closing of the Exchange Offer in the second quarter of fiscal 2008. The Company does not expect to seek waivers or amendments under its credit facilities prior to the closing of the Exchange Offer as these credit facilities are expected to be repaid and terminated upon the closing of the Exchange Offer.

If the Exchange Offer were to fail to close, prior to the end of the first quarter of fiscal 2009, we would seek to obtain a waiver or amendment of certain covenants contained in the Term Loan Facility, including the maximum leverage ratio covenant. No assurance can be given that we would be able to obtain such a waiver or amendment on terms that would be satisfactory to us. Failure to comply with the financial covenants of the Term Loan Facility would result in an event of default under the Term Loan Facility after the first quarter of fiscal 2009, which could result in possible acceleration of all of our indebtedness thereunder, under the Senior Credit Facility and under the indenture under which the 6³/₄% Notes were issued, all of which could have a material adverse effect on us.

General

CSK Auto Corporation is the largest specialty retailer of automotive parts and accessories in the Western United States and one of the largest such retailers of such products in the entire country, based, in each case, on store count. Headquartered in Phoenix, Arizona, CSK became a publicly traded company in March 1998, and has historically grown through a combination of acquisitions and organic growth. CSK was incorporated under the laws of the State of Delaware in 1993.

We have the number one market position in 22 of the 32 major markets in which we operate, based on store count. As of February 3, 2008, through our wholly owned subsidiary, CSK Auto, Inc., we operated 1,349 stores in

Table of Contents

22 states, with our principal concentration of stores in the Western United States. Our stores are known by the following four brand names (referred to collectively as CSK Stores):

Checker Auto Parts, founded in 1969, with 487 stores in the Southwestern, Rocky Mountain and Northern Plains states and Hawaii;

Schuck's Auto Supply, founded in 1917, with 222 stores in the Pacific Northwest states and Alaska;

Kragen Auto Parts, founded in 1947, with 504 stores primarily in California; and

Murray's Discount Auto Stores, founded in 1972, with 136 stores in the Midwest.

In December 2005, we purchased all the outstanding stock of Murray's Inc. and its subsidiary, Murray's Discount Auto Stores, Inc. (collectively Murray's). As of the acquisition date, Murray's operated 110 automotive parts and accessories retail stores in Michigan, Illinois, Ohio and Indiana states in which the Company previously had no significant market presence. The 110 acquired Murray's stores, as well as new stores we open in our Midwest markets, will retain the Murray's name. The Murray's stores complemented our existing operations and expanded our markets served from 19 to 22 states.

We offer a broad selection of national brand name, private-label and generic automotive products for domestic and imported cars and light trucks. Our products include new and remanufactured automotive replacement parts, maintenance items and accessories. The following table reflects several of the types of products we sell:

Hard Parts	Maintenance Products	Accessory Products
A/C Compressors	Antifreeze & Windshield	Air Fresheners
Alternators	Washer Fluid	Cell Phone Accessories
Batteries & Accessories	Belts & Hoses	Drinks & Snacks
Brake Drums, Rotors, Shoes & Pads	Chemicals, including Brake & Power Steering Fluid, Oil & Fuel Additives	Floor Mats
Carburetors	Fuses	Hand Cleaner
Clutches	Lighting	Neon Lighting
CV Axles	Oil & Transmission Fluid	Mirrors
Engines	Oil, Air, Fuel & Transmission Filters	Paint & Accessories
Fuel Pumps	Oxygen Sensors	Performance Products
Mufflers	Protectants & Cleaners	Seat Covers
Shock Absorbers & Struts	Refrigerant & Accessories	Steering Wheel Covers
Starters	Sealants & Adhesives	Stereos
Water Pumps	Spark Plugs & Wires, Wash & Wax, Windshield Wipers	Tools

Our stores average approximately 7,500 square feet in size and typically offer a store specific mix averaging approximately 16,000 SKUs. We also operate a highly efficient network of strategically located priority parts depots to provide the majority of our stores an additional 40,000 SKUs on a same-day delivery basis. Through our extensive on-line vendor network, we make available up to an additional 250,000 SKUs on a same-day delivery basis to the majority of our stores and up to 1,000,000 additional SKUs on a next-day delivery basis to substantially all of our stores.

We serve both the do-it-yourself (DIY) and the commercial installer, also referred to as the do-it-for-me (DIFM), markets. The DIY market, which is comprised of consumers who typically repair and maintain vehicles themselves, is the foundation of our business. Sales to the DIY market represented approximately 82% of our net sales for fiscal 2007. The DIFM market is comprised of auto repair professionals, fleet owners, governments and municipalities, and is estimated to have accounted for over 68% of the annual sales in the U.S. automotive aftermarket

Edgar Filing: O REILLY AUTOMOTIVE INC - Form S-4/A

industry in 2007 (excluding the sales of tires and services performed by DIFM professionals), according to statistics published by the Automotive Aftermarket Industry Association (AAIA). Sales to the DIFM market represented approximately 18% of our net sales for fiscal 2007. We believe we are well positioned to effectively and

Table of Contents

profitably further penetrate the highly fragmented DIFM market because of our sales force dedicated to DIFM customers, experienced in-store sales associates, level of customer service, conveniently located stores, efficient depot delivery network, attractive pricing, and ability to provide timely availability of a broad selection of national brand name products.

E-Commerce

We operate separate e-commerce sites for our retail and commercial customers. Our retail website, which utilizes the *partsamerica.com* URL, has become a targeted destination for DIY auto parts consumers. Our customers can find price, availability, images and other rich content on hundreds of thousands of our products on the website. The site is completely integrated with our warehouse, inventory and store systems and was one of the first to offer in-store pickup and returns. Through a business arrangement we have with Advance Auto Parts, we are able to offer the in-store service virtually coast to coast. Our commercial e-commerce site, *cskproshop.com*, offers DIFM customers the ability to develop estimates, perform complex diagnostics, research vehicle problems and order products online. The site is also integrated with our store systems so that an online order will be automatically delivered to the customer. The site also provides our customers the ability to review their monthly statements and digital reproductions of all their signed invoices.

Industry Overview

We compete in the U.S. automotive aftermarket industry, which, according to statistics by the AAIA published in 2007, has estimated annual sales of approximately \$121 billion. Estimated sales include replacement parts, accessories, maintenance items, batteries and automotive fluids for cars and light trucks but exclude sales of tires and services performed by DIFM professionals. The industry is comprised of the DIY market and the DIFM market. We believe that the U.S. automotive aftermarket industry is characterized by stable demand and is growing because of increases in:

the number and age of automotive vehicles in use;

the number of miles driven annually per vehicle;

the number of licensed drivers;

the percentage of the total light vehicle fleet represented by light trucks (including SUVs), which generate higher average aftermarket product purchases versus such purchases generated per car; and

the existence of \$53 billion per year of unperformed and underperformed maintenance by U.S. vehicle owners, according to the Automotive Aftermarket Suppliers Association.

While consolidation of automotive aftermarket retailers continues to occur, the industry remains highly fragmented. Our primary competitors include national and regional automotive parts chains, wholesalers, jobber stores, including those associated with national parts distributors and associations, such as NAPA and CARQUEST, independent operators, automobile dealers, and discount stores and mass merchandisers that carry automotive products.

Competitive Strengths and Strategies

We believe that our competitive strengths and strategies include the following:

Leading Market Position in the Western United States. We are the largest specialty retailer of automotive parts and accessories in the Western United States and have the number one market position in 22 of the 32 major markets in which we operate, based on store count. We believe that we have better brand name recognition than many of our competitors due to the long operating history of our stores, our advertising and marketing programs and the breadth of our product selection.

Edgar Filing: O REILLY AUTOMOTIVE INC - Form S-4/A

As the largest specialty retailer of automotive parts and accessories in the Western United States, we believe we have certain competitive advantages over smaller retail chains and independent operators. These advantages include: (1) our brand name recognition as a trusted source of automotive parts and accessories, (2) our ability to

Table of Contents

make available a broad selection of products on a timely basis, (3) marketing and distribution efficiencies due to economies of scale, and (4) our efficient store level information and distribution systems. We also believe that we enjoy a competitive advantage over mass merchandisers due to our convenient locations, our focus on automotive parts and accessories and our knowledgeable sales associates.

Focus on Customer Service. As part of our promise of G.R.E.A.T. service, our internally developed customer service initiative, we aim to provide the highest level of customer service in our industry in order to generate repeat business. G.R.E.A.T. service includes:

Greet the customer

Respond to the customer's needs

Expedite the customer's transaction

Ask the customer if we can be of further assistance

Thank the customer

We provide specialty tools to our customers through our POWERBUILT® Specialty Tool Rental Program that allows customers to use certain specialty tools for specific applications without purchasing the tools on a permanent basis. We have approximately sixty-five specialty tools in this program available to our customers, including a harmonic balancer puller, ball joint separator set and valve spring compressor. Our sales associates also provide certain free services to our customers including oil and battery recycling and check engine light readings in certain of our markets, as well as wiper blade installation, battery charging and testing of starters, alternators and batteries in all of our markets.

Recruiting, training and retaining high quality sales associates are major components of our focus on customer service. Our training programs and incentives encourage our sales associates to develop technical expertise that enables them to effectively advise customers on product selection and use. We have an average of two National Institute for Automotive Service Excellence, or ASE, certified parts professionals per store. To further satisfy our customers' needs, we also offer a no hassle returns policy, electronically maintained warranties and a customer service call center.

Efficient Store-Level Information and Distribution Systems. We have optimized our store-level information systems and warehouse and distribution systems in order to more effectively manage our inventory and increase the availability of products to our customers. We have an advanced electronic product catalog in our stores that enhances our associates' ability to assist our customers in selecting the right parts for their automotive needs. Our sophisticated inventory management systems provide inventory movement forecasting based on history, trends and seasonality. Our systems have enhanced our ability to predict the size and timing of product requirements by closely monitoring service level goals, vendor lead times and cost of inventory assumptions. Our store level replenishment system generates orders based upon store on-hand and store model stock quantities. Store model stock quantities are determined by an automatic model stock adjustment system that utilizes historical sales patterns, seasonality and store presentation requirements. Our fully integrated warehouse and distribution network and our 36 strategically located priority parts depots have allowed us to improve distribution efficiency. Our investment in these systems in our stores and in our distribution network has enhanced our ability to have the right parts in the right places to meet our customers' needs.

We also maintain a market specific pricing program that seeks to optimize margins while maintaining price competitiveness. Our pricing philosophy is that we should not lose a customer because of price. We closely monitor our competitors' pricing levels through our store specific pricing program, which analyzes prices at the store level rather than at the market or chain level. This initiative enables us to establish pricing levels at each store based upon that store's local market competition. Our opening price point products offer excellent value at low prices. In addition, our sales associates are encouraged to offer premium products at higher price points yielding higher margins. These premium products typically provide extra features, improved performance, an enhanced warranty, or are nationally branded items.

Table of Contents

Drive Customer Traffic and Increase Sales Base. Our marketing and merchandising strategy is designed to drive customer traffic and build market share. Our strategy is to make available to our customers one of the broadest selections of quality brand name products on a timely basis in order to maximize customer satisfaction and generate loyal customers. We also strive to be the industry leader in introducing new and innovative product offerings, supported by our promotional print advertising programs that include color circulars and newspaper advertisements. We offer our products at competitive prices in conveniently located and attractively designed stores. Our advertising programs are specifically tailored to target our various customer constituencies for maximum appeal and effectiveness.

Store Operations

Late in fiscal 2007, we reorganized our store operations management function and reduced our geographic regions from ten to eight. Our stores are currently divided into the following eight geographic regions: Southwest, Rocky Mountain, Northwest, Southern California, Los Angeles, Bay Area, Northern California, and Great Lakes. Regional vice presidents, each of whom oversees 9 to 12 district managers, lead each region. Each of our district managers has responsibility for between 10 and 20 stores.

The table below sets forth, as of February 3, 2008, the geographic distribution of our stores and the trade names under which they operate.

	Checker Auto Parts	Schuck's Auto Supply	Kragen Auto Parts	Murray's Discount Auto Stores	Company Total
California	1	2	485		488
Washington		142			142
Arizona	128				128
Colorado	87				87
Michigan				60	60
Illinois				59	59
Minnesota	57				57
Utah	55				55
Nevada	27		19		46
Oregon		44			44
New Mexico	34				34
Idaho	9	24			33
Wisconsin	27				27
Texas	18				18
Ohio				14	14
Hawaii	11				11
Wyoming	11				11
Alaska		10			10
Montana	10				10
North Dakota	7				7
South Dakota	5				5
Indiana				3	3
Total	487	222	504	136	1,349

Our stores are generally open seven days a week, with hours from 8:00 a.m. to 9:00 p.m. on Monday through Friday, from 8:00 a.m. to 8:00 p.m. on Saturday and from 9:00 a.m. to 7:00 p.m. on Sunday. Some stores are open 24 hours and some stores are open until midnight. The stores employ an average of approximately 7 to 9 associates, including a store manager, two assistant store managers and a staff of full-time and part-time associates.

Table of Contents

Store Formats

Approximately 62% of our stores are freestanding, with the balance located within strip shopping centers. Stores range in size from approximately 2,700 to 24,000 square feet, average approximately 7,500 square feet in size and offer a store specific mix of approximately 16,000 SKUs.

As of February 3, 2008, other than the 136 Murray s stores approximating 10,200 square feet, we have three principal store formats, which are 6,000, 7,000 and 8,000 square feet in size. The store size for a given new location is selected generally based upon sales volume expectations determined through a detailed market analysis that we conduct as part of our site selection process. The majority of the Murray s stores we acquired in fiscal 2005 are 10,000 square feet or larger. The following table categorizes our stores by size as of February 3, 2008:

Store Size	Number of Stores
10,000 sq. ft. or greater	184
8,000 9,999 sq. ft.	249
6,000 7,999 sq. ft.	652
5,000 5,999 sq. ft.	192
Less than 5,000 sq. ft.	72
	1,349

When shopping for hard parts (e.g., starters, alternators, water pumps), our customers are serviced by knowledgeable parts personnel utilizing our electronic parts catalogs, with enhanced product application information, instant inventory availability and product images on thousands of parts. Accessory and maintenance items are easily accessible to our customers via convenient to shop shelving fixtures that contain such products as oil and air filters, additives, waxes and other items. We provide specifically designed shelving for batteries and, in many stores, oil products.

Our newest prototypical store format is referred to as a pod store. Unlike the traditional store layout, wherein our sales associates are situated behind parts counters, these new store formats have free-standing pods centrally located on the sales floor in the stores. Our associates interact with our customers using the electronic product catalogs located on these pods. We believe that having our associates on the sales floor with our customers will enhance the positive shopping experience.

Growth Strategy

Our growth strategy is focused on our existing and adjacent markets and includes:

stabilizing our current business and judiciously opening new stores;

relocating under-performing stores with expiring leases to better locations;

restoring top line sales growth in both the DIY and DIFM business through improved merchandising mix with a greater emphasis on hard parts depth; and

improving top-of-mind awareness of our brands with our customer base.

Store Location Selections

Edgar Filing: O REILLY AUTOMOTIVE INC - Form S-4/A

Our real estate department utilizes a comprehensive, market-based approach that identifies and analyzes potential store locations based on detailed demographic and competitive studies. These studies include analysis of population density, growth patterns, age, per capita income, vehicle traffic counts and the number and type of existing automotive-related facilities, such as automotive parts stores and other competitors within a pre-determined radius of the potential new location. These potential new locations are compared to our existing locations to determine opportunities for opening new stores and relocating or expanding existing stores.

Table of Contents

The following table sets forth our store development activities during the periods indicated:

	Fiscal Year		
	2007	2006	2005
Beginning stores	1,332	1,277	1,134
New stores (excluding relocated stores)	38	64	36
Acquired stores			110
Relocated stores	7	8	8
Closed stores (including relocated stores)	(28)	(17)	(11)
Ending stores	1,349	1,332	1,277
Total new, acquired and relocated stores	45	72	154

In fiscal 2008, we plan to open 21 new stores (excluding relocated stores), relocate 7 stores and close approximately 47 stores (including the relocated stores), resulting in an estimated net decrease of 19 stores.

Store Merchandising

Our store merchandising program, which classifies our product mix into separate categories, is designed to determine the optimal inventory mix at each individual store based on that store's historical sales, lookup inquiries, and company internal search engines. We believe that we can improve store sales, gross profit margin and inventory turnover by tailoring individual store inventory mix based on SKU specific information.

Purchasing

Merchandise is selected from over 250 primary and approximately 350 special order suppliers and purchased for all stores by personnel at our corporate headquarters in Phoenix, Arizona. No one single supplier accounted for 10% or more of our purchases in fiscal 2007, 2006 or 2005. Our stores offer products with nationally recognized, well-advertised brand names, such as Armor All, Autolite, Castrol, Fel Pro, Fram, Goodyear, Havoline, Mobil, Monroe, Pennzoil, Prestone, Quaker State, RayBestos, Stant, Sylvania, Turtle Wax and Valvoline. In addition to brand name products, our stores carry a wide variety of high quality generic products. Most of our generic products are produced by nationally recognized manufacturers; therefore, we believe that our generic products are of a quality that is comparable to brand name products.

Our inventory management systems include the E-3 Advanced Warehouse Replenishment Buying System, which provides inventory movement forecasting based upon history, trend and seasonality. Combined with service level goals, vendor lead times and cost of inventory assumptions, the E-3 Buying System determines the timing and size of purchase orders. The vast majority of the dollar values of transactions are sent via electronic data interchange, with the remainder being sent by a computerized email or facsimile interface. Our store replenishment system generates orders based upon store on-hand and store model stock. This includes an automatic model stock adjustment system utilizing historical sales, seasonality and store presentation requirements. We can also allocate seasonal and promotional merchandise based upon a store's history of prior promotional and seasonal sales.

Commercial Sales Program

In addition to our primary focus on serving the DIY consumer, we have significantly increased our marketing directed at the commercial or DIFM customer in the automotive replacement parts market. According to the AAIA, the commercial or DIFM market is estimated to have constituted in excess of 68% of the annual sales in the automotive aftermarket (excluding the sales of tires and services performed by DIFM professionals) in 2006 and, based on 2007 research by Lang Marketing Resources, Inc., in 2006 the DIFM market grew at a slightly faster rate than the DIY market relative to the prior year (2005). Our commercial sales program, which is intended to facilitate greater penetration of the DIFM market, is targeted toward professional mechanics, auto repair shops, auto dealers, fleet owners, mass and general merchandisers with auto repair facilities and other commercial repair outlets located near our stores.

Table of Contents

We have made a significant commitment to this portion of our business and upgraded the information systems capabilities available to our commercial sales organization. In addition, we employ one district sales manager for every approximately six stores with a commercial sales center. The district sales manager is responsible for servicing existing and developing new commercial accounts. In addition, at a minimum, each commercial sales center has a dedicated in-store salesperson, driver and delivery vehicle.

We have developed commercial marketing programs to reward our commercial customers and provide value added services to their clients. One such program is our ProShop NASCAR Performance Network (PNP). This program is a co-branded membership program between CSK ProShop and the National Association for Stock Car Auto Racing (NASCAR) that provides to our commercial customers nationwide repair warranty service supported by over 30,000 participating repair shops throughout the U.S. and, among other benefits, a comprehensive marketing and advertising package allowing our commercial customers to market themselves using the NASCAR and CSK ProShop co-branded logo. The PNP program also gives our commercial customers a chance to participate in special promotions and incentives from NASCAR licensed brands like Goodyear, Raybestos, BWD and Autolite.

We believe we are well positioned to effectively and profitably service commercial customers, who typically require a higher level of customer service and broader product availability than the DIY customer. The commercial market has traditionally been serviced primarily by jobbers. However, automotive specialty retailing chains, such as CSK, have continued to increase their share of the commercial market. We believe we have significant competitive advantages in servicing the commercial market because of our user-friendly information systems developed specifically for our DIFM business, as well as our experienced sales associates, conveniently located stores, attractive pricing and ability to consistently deliver a broad product offering with an emphasis on national brand names.

As of February 3, 2008, we operated commercial sales centers in 737 of our 1,349 stores. Our sales to commercial accounts (including sales by stores without commercial sales centers) were \$340.5 million and \$320.2 million in fiscal 2007 and 2006, respectively. On a comparable store basis, our commercial sales increased approximately 6% in fiscal 2007. We believe there is opportunity for further commercial sales growth in all of our markets.

Advertising

We support our marketing and merchandising strategy primarily through print and radio advertising, in-store promotional displays and targeted direct mail programs. The print advertising is primarily comprised of color circulars and spadea, which are wrapped around Sunday newspaper comics sections. We also advertise on radio to support print advertising events and to reinforce our image and name recognition. Advertising efforts include Spanish language radio and billboards as well as bilingual print advertising and store signage. In-store signs and displays are used to promote products, identify departments, and to announce store specials. We also sponsor Major League Baseball in major markets throughout our trade area and a National Hot Rod Association (NHRA) Powerade Championship Series» nitro funny car team, and have been designated the Official Auto Parts Store of the NHRA.

Websites

Our websites include the following:

<http://www.cskauto.com;>

<http://www.cskautoparts.com;>

<http://www.checkerauto.com;>

<http://www.schucks.com;>

<http://www.kragen.com;> and

<http://www.murraysdiscount.com>

Table of Contents

Associates

As of February 3, 2008, we employed approximately 9,100 full-time associates and approximately 5,697 part-time associates. Approximately 86% of our personnel are employed in store level operations, 8% in distribution and 6% in our corporate headquarters.

For at least the past 10 years, we have not experienced any significant labor disruption and we believe that our labor relations are good. Except for a limited number of our stores in the Northern California market, whose associates have been represented by a union for many years, none of our personnel are represented by a labor union.

Competition

We compete in both the DIY and DIFM markets of the automotive aftermarket industry, which is highly fragmented and generally very competitive. We compete primarily with national and regional retail automotive parts chains (such as AutoZone, Inc., The Pep Boys – Manny, Moe and Jack, O Reilly Automotive, Inc. and Advance Auto Parts, Inc.), wholesalers or jobber stores (some of which are associated with national automotive parts distributors or associations, such as NAPA and CARQUEST), automobile dealers, and discount stores and mass merchandisers that carry automotive replacement parts, maintenance items and accessories (such as Wal-Mart Stores, Inc.). As the largest specialty retailer of automotive parts and accessories in the Western United States based on store count, we believe we have certain competitive advantages over smaller retail chains and independent operators. These advantages include: (1) our brand name recognition as a trusted source of automotive parts and accessories, (2) our ability to make available a broad selection of products on a timely basis, (3) marketing and distribution efficiencies achieved from economies of scale, and (4) our efficient store level information and distribution systems. We also believe that we enjoy a competitive advantage over mass merchandisers due to our convenient locations, our focus on automotive parts and accessories and our knowledgeable sales associates.

The principal competitive factors that affect our business are store location, customer service, product selection, availability, quality and price. While we believe that we compete effectively in our various markets, certain competitors are larger in terms of number of stores and sales volume, have greater financial and management resources and have been operating longer than we have in certain geographic areas.

Trade Names, Service Marks and Trademarks

We own the trade names and service marks Checker Auto Parts, Schuck's, Schuck's Auto Supply, Kragen and Kragen Auto Parts, and have registered Schuck's and Kragen Auto Parts with the United States Patent and Trademark Office for use in connection with our automotive parts retailing business. We acquired the trade name Murray's Discount Auto Stores and the registered service mark Murray's Auto Parts, among other marks, in connection with our December 2005 acquisition of Murray's. In addition, we own and have registered numerous trademarks with respect to many of our private label products and advertising and marketing strategies. We believe that our various trade names, service marks and trademarks are important to our merchandising strategies. There are no infringing uses known by us that materially affect the use of such items.

Warehouse and Distribution

Our warehouse and distribution system utilizes bar coding, radio frequency scanners and sophisticated conveyor and put-to-light systems. In all our distribution centers, we operate with metric based incentive programs measuring accuracy, safety and productivity. These metric based programs have contributed significantly to improved efficiencies in labor productivity and other areas of focus in our distribution centers. Each store is currently serviced by one of our four main distribution centers, with the four regional distribution centers handling bulk materials, such as oil and antifreeze. All of our merchandise is shipped from the vendors to our distribution centers, with the exception of batteries and certain other products, which are shipped directly to stores by the vendor. In fiscal 2007, we completed an approximately 80,000 square foot expansion of our Phoenix, Arizona distribution center.

Table of Contents

International Trade

To help protect ourselves against difficulties of bringing imported goods into the United States, we have participated in the U.S. Customs and Border Protection (CBP) worldwide supply chain security initiative and have achieved a Customs Trade Partnership Against Terrorism (C-TPAT) member status with the CBP. Among other benefits to C-TPAT members, our imported containers have experienced reduced border wait time, compared to containers belonging to importers that have not voluntarily participated in this CBP partnership program.

Seasonality

Our business is somewhat seasonal in nature, with the highest sales occurring in the months of June through October (overlapping our second and third fiscal quarters). In addition, our business is affected by weather conditions. While unusually severe or inclement weather tends to reduce sales, as our customers are more likely to defer elective maintenance during such periods, extremely hot and cold temperatures tend to enhance sales by causing auto parts to fail and sales of seasonal products to increase.

Environmental Matters

We are subject to various federal, state and local laws and governmental regulations relating to the operation of our business, including those governing the handling, storage and disposal of hazardous substances, the recycling of batteries and used lubricants, and the ownership and operation of real property. For example, under environmental laws, a current or previous owner or operator of real property may be liable for the cost of removal or remediation of hazardous substances in soil or groundwater. Such laws often impose joint and several liability and liability may be imposed without regard to whether the owner or operator knew of, or was responsible for, the release of such hazardous substances. We have recorded no liabilities to provide for the cost of environmental remediation activities, as we do not believe that we have incurred any such liabilities.

At some of our locations acquired in prior years, automobiles are serviced in automotive service facilities that we sublease to third parties. As a result of investigations undertaken in connection with such acquisitions, we are aware that soil or groundwater may be contaminated at some of these properties. In certain of these cases, we obtained indemnities from the former operators of these facilities. Although there can be no assurance, based on current information, we believe that any such contamination will not result in any liabilities that would have a material adverse effect on our financial position, results of operations or cash flows.

As part of our operations, we handle hazardous materials in the ordinary course of business and our customers may bring hazardous materials onto our property in connection with, for example, our oil recycling program. We currently provide a recycling program for batteries in California and for the collection of used lubricants at certain of our stores as a service to our customers pursuant to agreements with third-party vendors. The batteries and used lubricants are collected by our associates, deposited into vendor-supplied containers/pallets and then disposed of by the third-party vendors. In general, our agreements with such vendors contain provisions that are designed to limit our potential liability under applicable environmental regulations for any damage or contamination that may be caused by the batteries and lubricants to off-site properties (including as a result of waste disposal) and to our properties, when caused by the vendor.

Environmental laws and regulations have not had a material impact on our operations to date, but there can be no assurance that compliance issues relative to such laws and regulations will not have a material adverse effect on our financial position, results of operations or cash flows in the future.

Executive Officers

The following table sets forth the name, age and position of each of our executive officers as of April 11, 2008. Below the table appears a brief account of each executive officer's business experience. Our executive officers also have the same titles at our subsidiary, CSK Auto, Inc.

Table of Contents

Certain executive officers who were employed by the Company during fiscal 2007 are no longer employed by the Company. James B. Riley, the Company's former Chief Financial Officer, resigned from the Company effective at the end of June 2007. Steven L. Korby, who has worked for the Company as a consultant since July 2006, was the Company's interim Chief Financial Officer until the Company hired Mr. James D. Constantine as a permanent replacement for Mr. Riley in November 2007. Also, the Company's former Chief Executive Officer, Maynard Jenkins, retired from the Company on August 15, 2007. Upon Mr. Jenkins' retirement, Mr. Lawrence Mondry was appointed as the Company's President and Chief Executive Officer.

Name	Age	Position
Lawrence N. Mondry	47	President, Chief Executive Officer and Director
James Constantine	55	Executive Vice President of Finance and Chief Financial Officer
Dale Ward	58	Executive Vice President - Operations
Brian Woods	37	Executive Vice President - Merchandising
Michael Bryk	53	Senior Vice President of Finance and Controller
Larry Buresh	63	Senior Vice President and Chief Information Officer
Larry Ellis	53	Senior Vice President - Logistics
Greg Langdon	53	Senior Vice President - Store Operations
Randi V. Morrison	43	Senior Vice President, General Counsel and Secretary
John Saar	57	Senior Vice President - Real Estate and Human Resources

Lawrence N. Mondry became our President and Chief Executive Officer and a director on August 15, 2007. Mr. Mondry has over 20 years experience in merchandising and executive management positions in the multi-unit specialty retailing industry. Most recently, he served as the Chief Executive Officer of CompUSA Inc., a retailer and reseller of personal computers and related products and services, from November 2003 to May 2006. He had served as President and Chief Operating Officer of CompUSA Stores since March 2000. From December 1993 to March 2000, he served as Executive Vice President - Merchandising and, from 1990 to December 1993, as Senior Vice President and General Merchandise Manager. Mr. Mondry began his retail career in 1983 with Highland Superstores, a multi-regional consumer electronics retailer, where he held various merchandising positions including Vice President, National Merchandise Manager. Mr. Mondry currently serves on the board of directors of Micron Technology, Inc.

James Constantine became our Executive Vice President of Finance and Chief Financial Officer in November 2007. From 2006 to November 2007, Mr. Constantine was Senior Vice President and Chief Financial Officer of ShopKo Stores Operating Co., a retailer of goods and services with stores located throughout the Midwest, Mountain and Pacific Northwest regions. From 2000 to 2005, Mr. Constantine was Executive Vice President, Chief Financial and Administrative Officer of Factory Card & Party Outlet, a specialty retailer of party and special occasion merchandise. Prior to that, Mr. Constantine was Senior Assistant Treasurer for, and held various other managerial positions with, Sears, Roebuck and Co. from 1981 to 1999. From 1974 to 1981, he held various managerial positions with Deloitte & Touche LLP. Mr. Constantine holds a Masters of Business Administration from the University of Chicago and is a Certified Public Accountant.

Dale Ward became our Executive Vice President - Operations, with oversight responsibility for Store Operations and Commercial Sales in January 2008. Prior to this appointment, Mr. Ward was Executive Vice President overseeing Store Operations, Commercial Sales, Human Resources and Merchandising & Marketing from October 2006. Prior to this appointment, Mr. Ward served the Company in numerous roles, including Senior Vice President - Merchandising & Marketing since May 2005, Executive Vice President - Commercial Operations from October 2001 to May 2005 and Senior Vice President - Store Operations from March 1997 to October 2001. Prior to that, Mr. Ward served as Executive Vice President and Chief Operating Officer of Orchard Supply Hardware since April 1996. Mr. Ward served as President and Chief Executive Officer of F&M Super Drug Stores, Inc., a drugstore chain, from 1994 to 1995. He also served as President and Chief Executive Officer of Ben Franklin Stores, Inc., a variety and craft store chain, from 1988 to 1993 and as Chairman of Ben Franklin Crafts Inc., a craft store chain, from 1991 to 1993.

Table of Contents

Brian Woods became our Executive Vice President Merchandising in August 2007. Before joining CSK Auto, Mr. Woods was employed by CompUSA, a retailer and reseller of personal computers and related products and services, for fifteen years and served in a variety of executive and management positions. From October 2003 to February 2007, he served as Executive Vice President and General Merchandising Manager. Prior to that, from March 2000 to October 2003, he held the position of Vice President of Technology Services.

Michael Bryk became our Senior Vice President of Finance and Controller in October 2007. Mr. Bryk served for fourteen years in a variety of financial executive and management positions with CompUSA, a retailer and reseller of personal computers and related products and services. In particular, from February 2007 through September 2007, he served as Executive Vice President and Chief Financial Officer. From 2002 through February 2007, he served as Vice President Finance and Administration. Prior to that, from 2000 to 2002, he served as Vice President Controller. Before joining CompUSA in 1993, Mr. Bryk served as the Chief Financial Officer and in other finance management capacities while employed with other consumer product retailers in the Midwestern and Southeastern United States.

Larry Buresh became our Senior Vice President and Chief Information Officer in November 1998. Prior to that, Mr. Buresh was Vice President and Chief Information Officer of Chief Auto Parts, Inc. from 1995 to November 1998. From 1994 to 1995, Mr. Buresh was Senior Director of Central Information Services for Sears, Roebuck & Co. From 1986 to 1994, Mr. Buresh was Vice President and Chief Information Officer of Frank's Nursery & Crafts, Inc. Prior to that, Mr. Buresh was Vice President of Management Information Services for Ben Franklin Stores Company. Mr. Buresh is also a director of Service Repair Solutions (formerly Mobile Productivity Incorporated) and Association for Retail Technology Standards.

Larry Ellis became our Senior Vice President Logistics in April 2002. Prior to that, Mr. Ellis served as Vice President Distribution, Transportation, Priority Parts and Replenishment. Mr. Ellis' career in Logistics began over thirty years ago with Fleenor's, Inc., which, through a series of transactions, was subsequently acquired by Northern Automotive Corporation (a predecessor to CSK Auto, Inc.) in 1988. During his career, Mr. Ellis has served in several middle and senior management positions.

Greg Langdon became our Senior Vice President Store Operations in February 2008. Mr. Langdon has more than thirty-five years of retail store operations management experience. Most recently, Mr. Langdon served as Vice President and Divisional Vice President Operations since October 2005, and Regional Vice President Operations between October 1999 and October 2005. Mr. Langdon began his career with CSK Auto in May 1986 and, before joining CSK, worked for Sears and Roebuck for thirteen years in a variety of management positions.

Randi V. Morrison became our Senior Vice President, General Counsel & Secretary in October 2006. Ms. Morrison was formerly Vice President, General Counsel & Secretary since August 2005. Prior to that Ms. Morrison was Vice President, Assistant General Counsel & Secretary from February 2004 to August 2005, Assistant General Counsel & Assistant Secretary from April 2001 to February 2004 and Senior Counsel from March 2000 to April 2001. Ms. Morrison joined CSK Auto as Legal Counsel in March 1997.

John Saar became our Senior Vice President Real Estate and Human Resources in January 2008. Prior to that, Mr. Saar served as Senior Vice President Commercial Sales since October 2006 and Divisional Vice President since 2001. Mr. Saar has more than 35 years of tenure with the Company and has served in various management and senior management roles with responsibility for real estate, human resources, store operations and other functions.

The term of office of each officer is until election and qualification of a successor or otherwise at the pleasure of the Board of Directors. There is no arrangement or understanding between any of the above-listed officers and any other person pursuant to which any such officer was elected as an officer. None of the above-listed officers has any family relationship with any director or other executive officer.

Available Information and Exchange Certifications

In addition to this Annual Report, we file quarterly and periodic reports, proxy statements and other information with the Securities and Exchange Commission (the "SEC"). All documents that are filed with the SEC are available free of charge on the CSK Auto corporate website at www.cskauto.com. Also, the public may read

Table of Contents

and copy any materials we file with the SEC at the SEC's Public Reference Room at 100 F Street, NE, Washington, DC 20549. Information on the operation of the Public Reference Room is available by calling the SEC at 1-800-SEC-0330. We also post our corporate governance guidelines, code of business conduct and ethics and the charters of the committees of our Board of Directors on our website. Any amendments to, or waivers from, a provision of our code of ethics applicable to our principal executive officer, principal financial officer, controller, or persons performing similar functions will be disclosed by posting such information on our website. The reference to our website address does not constitute incorporation by reference of the information contained on our website and such information should not be considered part of this document.

The New York Stock Exchange (NYSE) requires that the Chief Executive Officer of each listed company certify annually to the NYSE that he or she is not aware of any violation by the company of NYSE corporate governance listing standards as of the date of such certification. The Company submitted the certification of its Chief Executive Officer with its 2007 Annual Written Affirmation to the NYSE on December 10, 2007.

We included the certifications of the Chief Executive Officer and the Chief Financial Officer of the Company required by Section 302 of SOX and related SEC rules, relating to the quality of the Company's public disclosure, in this Annual Report as Exhibits 31.1 and 31.2.

Item 1A. Risk Factors

Our business, operations and financial condition are subject to various risks. Some of these risks are described below, and you should take such risks into account in evaluating us or any investment decision involving the Company. This section does not describe all risks that may be applicable to us, our industry or our business, and it is intended only as a summary of certain material risk factors.

Risks Related to the Merger Agreement

The failure of the Acquisition to close could have material adverse consequences for the Company.

The Company has focused a great deal of internal resources on the strategic review process and the review of strategic initiatives that culminated in the execution of the Merger Agreement and will continue to focus resources on the consummation of the Merger Agreement. The Merger Agreement contains many conditions to its consummation as summarized under Item 1, Business. Should the Acquisition fail to close for any reason and the Company be unable to promptly pursue other strategic alternatives, the Company could be left in a materially weaker position than it might have been if it never commenced the processes that led to the execution of the Merger Agreement, including as a result of employee departures in anticipation of the Acquisition. In addition, if the Acquisition does not close, prior to the end of the first quarter of fiscal 2009, the Company expects that it would need to obtain a waiver or amendment of certain covenants in its Term Loan Facility, which, if not attainable upon reasonably satisfactory terms, could have adverse effects on the Company in fiscal 2008 as described below under Risks Related to Our Financial Condition. *Our failure to comply with the covenants contained in our Debt Agreements could have a material effect on us.* In addition, if the Acquisition is not completed, the price of the Company's common stock may decline, as the market price of the Company's common stock increased significantly upon the announcement of the Acquisition.

Risks Related to Our Internal Controls

We have identified material weaknesses in our internal control over financial reporting, which could continue to impact our ability to report our results of operations and financial condition accurately and in a timely manner.

As required by SOX 404, management has conducted an assessment of our internal control over financial reporting, identified material weaknesses in our internal control over financial reporting and concluded that our internal control over financial reporting was not effective as of February 3, 2008. For a detailed description of our material weaknesses, see Item 9A, Controls and Procedures. Our material weaknesses result in more than a reasonable possibility that a material misstatement in our financial statements will not be prevented or detected. As a result, we must perform extensive additional work to obtain reasonable assurance regarding the reliability of our

Table of Contents

financial statements. Even with this additional work, given the material weaknesses identified, including the significant turnover of Finance organization personnel and use of consultants to augment the Company's accounting staff, there is a risk of additional errors not being prevented or detected timely, which could result in a material misstatement of our published financial statements. In addition, it is possible that other material weaknesses may be identified.

Although we have remediated several material weaknesses previously identified, we have extensive work remaining to remedy the material weaknesses and other deficiencies we have determined exist at February 3, 2008. We are in the process of implementing a full work plan for remedying the identified material weaknesses, and this work will continue during fiscal 2008. There can be no assurance as to when the remediation will be completed. Until our remedial efforts are completed, management will continue to devote significant time and attention to these efforts. There will also continue to be an increased risk that we will be unable to timely file future periodic reports with the SEC, that a default under our debt agreements could occur as a result of delays and that our future financial statements could contain errors that will be undetected.

The continuing existence of material weaknesses in our internal control over financial reporting and the frequency of our restatements of our financial statements may make it more difficult and expensive to refinance our capital structure.

In 2006 we entered into a Term Loan Facility. Should we desire to refinance our Term Loan Facility or to otherwise issue securities, the continued existence of our material weaknesses and the fact that we have restated our financial statements twice in the last three years may make it more difficult for us to do so and may increase the cost of doing so. Both the continued exposure to floating rate interest rates through the Term Loan Facility and our Senior Credit Facility and the increased costs associated with any refinancing of the Term Credit Facility could have negative impacts on our results of operations and financial condition.

Risks Related to Our Fiscal 2006 Audit Committee-led Investigation and Prior Restatement of Historical Financial Statements

Pending and future governmental inquiries may adversely affect us, the trading prices of our securities and our ability to access the capital markets.

Our fiscal 2006 Audit Committee-led investigation and the related restatement of historical financial statements is summarized under Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations—Other Significant Events. During the course of our Audit Committee-led investigation conducted in fiscal 2006 and following its substantial completion, representatives of the Audit Committee and its advisors shared with the SEC the conclusions of such investigation. The Company continues to share information with the SEC and believes it is cooperating fully with the agency in its formal investigation. In addition, certain of our former and current executive officers, directors and other employees are or may be subject to investigation by the SEC in connection with these matters. During fiscal 2007, the U.S. Attorney's office in Phoenix and the Department of Justice in Washington, D.C. indicated that they have opened an investigation related to historical accounting practices that were the subject of the Audit Committee-led investigation. Adverse developments in connection with these proceedings, including any expansion of their scope or a referral to and investigation by other governmental agencies, could negatively impact us and divert our resources and the focus of our management team from our ordinary business operations. In addition, we have incurred and we may continue to incur significant expenses associated with responding to these investigations (including substantial fees of lawyers and other professional advisors and potential obligations to indemnify officers and directors who may be subject to such investigation(s)), and we may be required to pay criminal or civil fines, consent to injunctions on future conduct or suffer other penalties, any of which could have a material adverse effect on us. It is also possible that the existence, findings and outcome of these inquiries may have a negative impact on lawsuits that are pending or may be filed against us, the trading prices of our securities and our ability to access the capital markets. See Item 3, Legal Proceedings for a more detailed description of these proceedings.

Table of Contents

We have been named as a defendant in a class action lawsuit that may adversely affect our financial condition, results of operations and cash flows.

We and certain of our former executive officers and current and former directors are defendants in a consolidated securities class action lawsuit. Our management's attention may be diverted from our ordinary business operations by this lawsuit and we have incurred and we may continue to incur significant expenses associated with the defense of this lawsuit (including substantial fees of lawyers and other professional advisors and potential obligations to indemnify officers and directors who may be parties to such actions). In addition, as a result of this lawsuit, we may be required to pay a judgment or settlement that could have a material adverse effect on our results of operations, financial condition, liquidity and our ability to meet our debt obligations. We recently entered into an agreement in principle to settle this class action lawsuit. See Item 3, "Legal Proceedings" for a more detailed description of these proceedings and the agreement in principle.

Potential indemnification obligations and limitations of our director and officer liability insurance could adversely affect us.

As discussed above and in Item 3, "Legal Proceedings," several of our current and former directors, officers and employees are or may become the subject of criminal, administrative and civil investigations and lawsuits. Under Delaware law, our charter documents and certain indemnification agreements, we may have an obligation to indemnify and are currently incurring expenses on the behalf of our current and former officers and employees and directors in relation to these matters. Some of these indemnification obligations may not be covered by our directors' and officers' insurance policies. If the Company incurs significant uninsured indemnity obligations in the future, this could have a material adverse effect on our business, results of operations, financial condition and cash flows.

Risks Related to our Industry and Business

Our industry is highly competitive and we may not have the resources to compete effectively.

The retail sale of automotive parts and accessories is highly competitive. Some of our competitors have more financial resources, are more geographically diverse, or have better name recognition than we do, which might place us at a competitive disadvantage. Because we seek to offer competitive prices, if our competitors reduce their prices, we may reduce our prices to maintain a competitive position, which could cause a material decline in our revenues and earnings and hinder our ability to service our debt.

We compete primarily with the following types of businesses:

national and regional retail automotive parts chains;

wholesalers or jobber stores (including those associated with national parts distributors or associations, such as NAPA and CARQUEST);

automobile dealers; and

mass merchandisers and discounters that carry automotive replacement parts, maintenance items and accessories.

We may not be able to grow our number of stores in a profitable manner or achieve the synergies anticipated when acquisitions are made.

Our store growth is based, in part, on expanding selected stores, relocating existing stores, adding new stores primarily in markets we currently serve, and, from time to time, acquiring stores in our existing and new markets from other automotive parts and accessories retailers.

Our successful future organic growth and growth through acquisitions are dependent upon a number of factors, including our ability to:

locate and obtain acceptable store sites;

Table of Contents

negotiate favorable lease terms;

complete the construction of new and relocated stores in a timely manner; hire, train and retain competent managers and associates;

integrate new and acquired stores into our systems and operations; and

achieve the anticipated synergies and operating results that are often built into the purchase price when existing stores or chains are acquired.

Acquisitions involve a variety of risks. Failure to successfully integrate a large number of acquired stores into our existing business or failure to achieve anticipated synergies and operating results from such acquisitions could adversely affect our financial condition and results of operations, particularly during the periods closely following the acquisition of such stores.

We cannot assure you that we will be able to continue to open new stores as we have in the past or that our opening of new stores in markets we already serve will not adversely affect existing store profitability, nor can we assure you that we will be able to manage our growth effectively.

A decrease in vehicle miles driven, higher gasoline prices and mild summer or winter temperatures may negatively affect our revenues.

The need to purchase or replace auto parts is affected by the number of vehicle miles driven. A substantial decrease in the number of vehicle miles driven could have a negative impact on our revenues. Factors that may cause the number of vehicle miles to decrease include:

weather conditions;

increases in gasoline prices;

changes in the economy; and

changes in travel patterns.

Increases in gasoline prices, as we experienced during fiscal 2007 and 2006, may also adversely affect our revenues because our customers may defer purchases of certain items as they use a higher percentage of their income to pay for gasoline. While we generally experience increased sales when temperatures are extreme, mild summer or winter temperatures may adversely affect our revenues. These factors could result in a decline in the customer traffic at our stores, which could adversely affect our business, financial condition, results of operations and cash flows.

A decrease in the demand for products we offer for sale could adversely affect our financial condition and results of operations.

Overall demand for products we sell depends on many factors and may decline for a number of reasons, including:

Improving or declining economic conditions During periods of declining economic conditions, both DIY and DIFM customers may defer vehicle maintenance or repair. During periods of good economic conditions, more of our DIY customers may pay others to repair and maintain their cars instead of working on their own cars or consumers may opt to purchase new vehicles rather than service the vehicles they currently own.

Edgar Filing: O REILLY AUTOMOTIVE INC - Form S-4/A

Declining vehicle ages and numbers and improving parts quality A decline in the average age of vehicles, in the number of cars on the road or the continued increase in the quality of auto parts could result in a reduction in the demand for our product offerings. If any of these factors cause overall demand for the products we sell to decline, our business, financial condition, results of operations and cash flows could be adversely affected.

Table of Contents

A decrease in the ability and willingness of our suppliers to supply products to us on favorable terms may have a negative impact on our business.

Our business depends on developing and maintaining productive relationships with our vendors and upon their ability and willingness to sell products to us on favorable price and other terms. Many factors outside our control may harm these relationships and the ability or willingness of these vendors to sell these products on such terms. For example, financial difficulties that some of our vendors may face may increase the cost of the products we purchase from them. In addition, our failure to pay promptly or order sufficient quantities of inventory from our vendors may increase the cost of products we purchase from them or may lead to their refusal to sell products to us at all. The trend towards consolidation among automotive parts suppliers may disrupt our relationship with some vendors. Any disruption in our vendor relationships or in our vendor operations, including those that could arise as a result of the Acquisition or because of concern about our compliance with the covenants contained in our credit facilities, could have a material adverse effect on our business, financial condition, results of operations and cash flows.

We receive various payments, allowances, and discounts from our vendors based on, among other things, the volume of our product purchases or the services that we provide to them. These vendor discounts and allowances reduce our costs of sales when the corresponding product is sold. Monies received from the vendors include rebates, allowances, and promotional funds. Typically, these funds are dependent on purchase volumes and advertising plans. The amounts to be received are subject to changes in market conditions, vendor marketing strategies, and changes in the profitability or sell-through of the related merchandise. Any material change in, or failure to obtain vendor allowances and discounts, such as might result from our failure to sell a sufficient quantity of the vendor's products, could have a material adverse effect on our business, financial condition, results of operations and cash flows.

Our operations are concentrated in the Western United States, and therefore our business is subject to fluctuations when adverse conditions occur in that region.

The overwhelming majority of our stores are located in the Western United States. As a result of this geographic concentration, we are subject to regional risks such as the economy, weather conditions, power outages, cost of electricity, earthquakes and other natural disasters. In recent years, certain areas in which we operate have experienced economic recessions and extreme weather conditions. Although temperature extremes tend to enhance sales by causing a higher incidence of parts failure and increasing sales of seasonal products, unusually severe weather can reduce sales by causing deferral of elective maintenance. Because our business is somewhat seasonal, inclement weather occurring during traditionally peak selling months may harm our business. Several of our competitors operate stores across the United States and, therefore, may not be as sensitive to such regional risks.

War or acts of terrorism or the threat of either may have a negative impact on our financial condition, results of operations and cash flows.

War or acts of terrorism or the threat of either may have a negative impact on our results of operations by making it more difficult to obtain merchandise available for sale in our stores. In fiscal 2007, we imported approximately 6% of our merchandise directly from other countries, primarily China. If imported goods become difficult or impossible to bring into the United States and if we cannot obtain such merchandise from other sources at similar costs, our sales and profit margins may be negatively affected. To help protect ourselves against difficulties of bringing imported goods into the United States, we have participated in the CBP worldwide supply chain security initiative and have achieved a C-TPAT member status with the CBP. Among other benefits to C-TPAT members, our imported containers have experienced reduced border wait time, compared to the containers belonging to importers that have not voluntarily participated in this CBP partnership program. If we are unable to maintain our current C-TPAT status it would increase the time it takes to get products into our stores. In the event that commercial transportation is curtailed or substantially delayed, our business may be adversely impacted, as we may have difficulty shipping merchandise to our distribution centers and stores, which could result in a diminished ability to meet our customer demand. War or acts of terrorism or the threat of either may negatively affect the economy and may also cause the number of vehicle miles to decrease, the price of gasoline to increase and elective maintenance to be deferred.

Table of Contents

Because we are involved in litigation from time to time, and are subject to numerous governmental laws and regulations, we could incur substantial judgments, fines, legal fees and other costs.

We currently and from time to time face complaints or litigation incidental to the conduct of our business, including asbestos and similar product liability claims, slips and falls, and other general liability claims, discrimination and employment claims, vendor disputes, and miscellaneous environmental and real estate claims. In some cases, the damages claimed against us are substantial. We accrue reserves using our best estimate of the probable and reasonably estimable contingent liabilities. Although we maintain liability insurance for some litigation claims, if one or more of the claims greatly exceed our coverage limits or our insurance policies do not cover a claim, it could have a material adverse effect on our business and operating results. We are also currently subject to a securities class action lawsuit that is not incidental to our business and is described in greater detail below. See Item 3, *Legal Proceedings* in this Annual Report.

In addition, we are subject to numerous federal, state, and local governmental laws and regulations relating to, among other things, taxation, employment, environmental protection, and building and zoning requirements. If we fail to comply with existing or future laws or regulations, we may be subject to governmental or judicial fines or sanctions.

We are subject to environmental laws and the cost of compliance with these laws could negatively impact our financial condition, results of operations and cash flows.

We are subject to various federal, state, and local laws and governmental regulations relating to the operation of our business, including those governing the handling, storage, and disposal of hazardous substances, the recycling of batteries and used lubricants, and the ownership and operation of real property. As a result of investigations undertaken in connection with certain of our store acquisitions, we are aware that soil or groundwater may be contaminated at some of our properties. There can be no assurance that any such contamination will not have a material adverse effect on us. In addition, as part of our operations, we handle hazardous materials and our customers may also bring hazardous materials onto our properties in connection with, for example, our oil recycling program. There can be no assurance that compliance with environmental laws and regulations will not have a material adverse effect on us in the future. See *Environmental Matters* in Item 1, *Business* in this Annual Report.

Risks Related to our Financial Condition

We are highly leveraged and, in fiscal 2007, we had higher annual interest costs than we had in fiscal 2006. As of February 3, 2008, we had an aggregate of approximately \$487 million of outstanding indebtedness under our Senior Credit Facility, our Term Loan Facility and the indenture under which \$100.0 million of our 6³/₄% Notes were issued (collectively, the *Debt Agreements*). Our substantial debt could adversely affect our business, financial condition and results of operations in many ways, including those set forth below.

Our substantial debt and increased interest payment obligations could adversely affect our financial health, undermine our ability to grow and operate profitably and prevent us from fulfilling our obligations under the Debt Agreements.

The degree to which we are leveraged and the increased interest rates resulting from the refinancing of most of our indebtedness in fiscal 2006 and the amendments to our Term Loan Facility in fiscal 2007 could subject us to the following risks:

it may be more difficult to meet our payment and other obligations;

our ability to obtain additional financing for working capital, capital expenditures, acquisitions or general corporate purposes may be impaired in the future;

a substantial portion of our cash flow from operations must be dedicated to the payment of principal and interest on our indebtedness, thereby reducing the funds available for other purposes;

Table of Contents

the majority of our indebtedness, including our Senior Credit Facility and Term Loan Facility, carries variable rates of interest, and our interest expense could increase if interest rates in general increase;

we are substantially more leveraged than some of our competitors, which might place us at a competitive disadvantage to those competitors who have lower debt service obligations and significantly greater operating and financial flexibility than we do;

we may not be able to adjust rapidly to changing market conditions;

we may be more vulnerable in the event of a downturn in general economic conditions or in our business;

our failure to comply with the financial and other restrictive covenants governing our other Debt Agreements, which, among other things, require us to maintain certain financial ratios and limit our ability to incur additional debt and sell assets, could result in an event of default that, if not cured or waived, could have a material adverse effect on our business or our prospects. See Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations, under the heading Factors Affecting Liquidity and Capital Resources Debt Covenants; and

a credit rating downgrade may increase the cost of refinancing our existing debt or obtaining additional financing in the future. Any of the above-listed factors could have an adverse effect on our business, financial condition, results of operations, and the price of our common stock.

Our failure to comply with the covenants contained in our Debt Agreements could have a material effect on us.

Our credit facilities require us to maintain certain financial ratios. Failure to comply with these ratios or other financial or restrictive covenants could result in an event of default under the applicable credit facility, which could result in a default or acceleration of all of our other indebtedness, which acceleration, if it occurs, would have a material adverse effect on us. In particular, our Term Loan Facility contains a maximum leverage ratio with which we do not expect to be able to comply beginning with the first quarter of fiscal 2009.

In addition to having the potential to cause a default under the Term Loan Facility at the end of the first quarter of 2009, if we fail to obtain a waiver for amendment of that covenant prior to the completion of our financial statements for the first quarter of fiscal 2008, our belief that it is probable that this covenant will not be satisfied for the first quarter of fiscal 2009 will require us to classify substantially all of our indebtedness as current liabilities at May 4, 2008 (the end of the Company's first quarter of fiscal 2008). The classification of all such indebtedness as current liabilities (i.e., due within twelve months) will not cause a default under our borrowing agreements. However, such reclassification could have adverse consequences upon our relationships with and the credit terms upon which we do business with our vendors although we expect such consequences, if any, to be limited due to the expected closing of the Exchange Offer in the second quarter of fiscal 2008. Furthermore, beginning with the second quarter of fiscal 2008, we would be required to reduce (to twelve months) the time period over which we amortize debt issuance costs and debt discount relating to reclassified indebtedness, increasing the interest costs we report in our financial statements.

Our Debt Agreements restrict or prohibit our ability to engage in or enter into some operating and financing arrangements, which may limit our ability to operate our business.

The operating and financial restrictions and covenants in certain of our Debt Agreements impose significant operating and financial restrictions on us and require us to meet certain financial tests. These restrictions may also have a negative impact on our business, results of operations and financial condition by significantly limiting or prohibiting us from engaging in certain transactions, including:

incurring or guaranteeing additional indebtedness;

making investments;

creating liens on our assets;

Table of Contents

transferring or selling assets currently held by us;

paying dividends;

engaging in mergers, consolidations, or acquisitions; or

engaging in other business activities.

These restrictions could place us at a disadvantage relative to competitors that are not subject to such limitations.

In addition, a breach of the covenants, ratios, or restrictions contained in our Debt Agreements could result in an event of default thereunder. Upon the occurrence of such an event of default, the lenders under all of our Debt Agreements, or, in the case of the 6^{3/4} % Notes, the holders of such 6^{3/4}% Notes, could elect to declare all amounts outstanding under the agreements, together with accrued interest, to be immediately due and payable. If our lenders or the holders of the 6^{3/4}% Notes accelerate the payment of any of our indebtedness, we cannot assure you that our assets securing such debt would be sufficient to repay in full that indebtedness and our other indebtedness.

The market price for our common stock may be volatile.

In past periods, there has been volatility in the market price for our common stock. In addition, the market price of our common stock could fluctuate substantially in the future in response to a number of factors, including but not limited to the following:

actual or anticipated fluctuations in our operating results;

actual or anticipated changes in our growth rates or our competitors' growth rates;

changes in stock market analyst recommendations regarding our common stock, the common stock of companies that investors deem comparable to us or our industry generally;

uncertainties created by our inability to timely file our periodic reports with the SEC;

operating and stock price performance of other companies that investors deem comparable to us;

changes in governmental regulations;

geopolitical conditions, such as acts or threats of terrorism or military conflicts; and

concentration of the ownership of our common stock and possible speculation as to our future as a stand-alone organization. General market fluctuations, industry factors and general economic and political conditions or events, economic slowdowns, interest rate changes, credit loss trends or currency fluctuations could also cause the market price of our common stock to decrease regardless of our operating performance. In recent years the stock market has experienced extreme price and volume fluctuations. This volatility has had a significant effect on the market prices of securities issued by many companies for reasons unrelated to their operating performance. These broad market fluctuations may materially adversely affect our stock price regardless of our operating results.

Edgar Filing: O REILLY AUTOMOTIVE INC - Form S-4/A

In addition, the market price for our common stock could be subject to significant fluctuation based on rumors and events relating to the Acquisition.

Item 1B. *Unresolved Staff Comments*

None.

Table of Contents**Item 2. Properties**

The following table sets forth certain information concerning our principal leased facilities as of February 3, 2008:

Facility	Location	Area Served	Number	
			Square Footage	of Stores Served
Distribution Centers:				
Distribution center ⁽¹⁾	Dixon, CA	California, Nevada, Washington, Oregon, Idaho, Alaska, Hawaii	325,500	544
Distribution center ⁽²⁾	Phoenix, AZ	Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, South Dakota, Texas, Utah, Wyoming	353,504	582
Office, warehouse and distribution center	Mendota Heights, MN	Michigan, Minnesota, North Dakota, South Dakota, Wisconsin	124,783	94
Office, warehouse and distribution center ⁽³⁾	Belleville, MI	Illinois, Indiana, Michigan, Ohio	352,009	137
Corporate Facilities:				
Corporate office	Phoenix, AZ	All	127,810	
Corporate warehouse and mail center	Phoenix, AZ	Arizona, Colorado, Washington	52,087	
Regional Distribution Centers:				
Regional distribution center	Auburn, WA	Washington, Oregon, Idaho, Alaska	81,761	192
Regional distribution center	Aurora, CO	Colorado, Wyoming, South Dakota	34,800	88
Regional distribution center	Clearfield, UT	Colorado, Utah, Idaho, Wyoming, Montana, Oregon	60,000	98
Regional distribution center	Commerce, CA	California	75,000	205
Return Centers:				
Returns center	Phoenix, AZ	Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, South Dakota, Texas, Utah, Wyoming	69,796	582
Returns center	West Sacramento, CA	California, Nevada, Washington, Oregon, Idaho, Alaska, Hawaii	65,400	544

- (1) Subject to time period and other restrictions, we have the ability to expand the Dixon distribution center by 161,000 square feet should the need arise.
- (2) In fiscal 2007, we completed an approximately 80,000 square foot expansion of our Phoenix, Arizona distribution center (included in the square footage noted above).
- (3) The distribution center in Belleville is approximately 285,000 square feet and currently services 137 stores. This distribution facility has the capacity to service approximately 400 stores.

Table of Contents

As of February 3, 2008, all but one of our operating stores was leased. The expiration dates (including renewal options) of the store leases are summarized as follows:

Years	Number of Stores
2008 2009	72
2010 2011	43
2012 2013	67
2014 2020	384
2021 2030	611
2031 thereafter	171
	1,348

Additional information regarding our facilities appears in Item 1, *Business*, under the captions *Store Operations*, *Store Formats*, and *Warehouse and Distribution*.

Item 3. *Legal Proceedings*
Securities Class Action Litigation

On June 9 and 20, 2006, two shareholder class actions alleging violations of the federal securities laws were filed in the United States District Court for the District of Arizona against the Company and four of its former officers: Maynard Jenkins (who also was a director), James Riley, Martin Fraser and Don Watson. The cases are entitled *Communication Workers of America Plan for Employees Pensions and Death Benefits v. CSK Auto Corporation, et al.*, No. CV-06-1503 PHX DGC (*Communication Workers*) and *Wilfred Fortier v. CSK Auto Corporation, et al.*, No. CV-06-1580 PHX DGC. The cases were consolidated on September 18, 2006 with *Communication Workers* as the lead case. The consolidated actions have been brought by lead plaintiff *Communication Workers of America Plan for Employee Pensions and Death Benefits* (the *Lead Plaintiff*) on behalf of a putative class of purchasers of CSK Auto Corporation stock between March 20, 2003 and April 13, 2006, inclusive. Lead Plaintiff filed an Amended Consolidated Complaint on November 30, 2006. Lead Plaintiff voluntarily dismissed James Riley by not naming him as a defendant in the Amended Consolidated Complaint. The Company and Messrs. Jenkins, Fraser and Watson (collectively referred to as the *Defendants*) filed motions to dismiss the Amended Consolidated Complaint, which the court granted on March 28, 2007. The court allowed Lead Plaintiff leave to amend its complaint, and it filed its Second Amended Consolidated Complaint on May 25, 2007.

The Second Amended Consolidated Complaint alleges violations of Section 10(b) of the Securities Exchange Act of 1934, as amended (the *Exchange Act*), and Rule 10b-5 promulgated thereunder, as well as Section 20(a) of the Exchange Act. The Second Amended Consolidated Complaint alleges that Defendants issued false statements before and during the putative class period about the Company's income, earnings and internal controls, allegedly causing the Company's stock to trade at artificially inflated prices during the putative class period. It seeks an unspecified amount of damages. Defendants filed motions to dismiss the Second Amended Consolidated Complaint on July 13, 2007. On September 27, 2007, the court issued an order granting the motion to dismiss Mr. Fraser with prejudice and denying the motions to dismiss the Company and Messrs. Jenkins and Watson. On October 24, 2007 the court issued a scheduling order setting forth a pretrial schedule that contemplates a trial, if necessary, in March 2009. Lead Plaintiff filed its motion to certify the class on January 18, 2008 and the Company filed its response on February 15, 2008. Lead Plaintiff filed its reply in support of its motion for class certification on March 14, 2008. A hearing on the motion was scheduled to take place on March 21, 2008.

Before the hearing on March 21, 2008, and as a result of ongoing settlement discussions, Lead Plaintiff and the defendants (including the Company) reached an agreement in principle to settle the case. Pursuant to the agreement in principle, the settlement amount will be \$10.0 million in cash (which the Company expects will be paid by its directors and officers liability insurance) and \$1.7 million in the Company's stock (to be contributed by the Company and valued at the closing price on March 20, 2008). The Company would also pay interest on the cash portion of the settlement at the rate of 5% per annum to the extent that it is not deposited into the settlement escrow account within 30 days of March 21, 2008. The agreement in principle also includes certain corporate governance

Table of Contents

and contracting policy terms that would apply so long as the Company remains an independent company. The court has scheduled a hearing on preliminary approval of the settlement on April 22, 2008. See Note 22 Subsequent Events in the notes to the audited consolidated financial statements included in Item 8 of this Annual Report for additional information.

Shareholder Derivative Litigation

On July 31, 2006, a shareholder derivative suit was filed in the United States District Court for the District of Arizona against certain of CSK's former officers and certain current and former directors. The Company was a nominal defendant. On June 11, 2007, plaintiff filed a Second Amended Complaint alleging claims under Section 304 of the Sarbanes-Oxley Act of 2002 and for alleged breaches of fiduciary duties, abuse of control, gross mismanagement, waste of corporate assets, and unjust enrichment. The Second Amended Complaint sought, purportedly on behalf of the Company, damages, restitution, and equitable and injunctive relief. On June 22, 2007, the Company filed a motion to dismiss the Second Amended Complaint for failure to plead demand futility adequately or, in the alternative, to stay the case until the shareholder class action litigation is resolved. The individual defendants joined in the Company's motion. On August 24, 2007, the court granted the Company's motion to dismiss the suit based on plaintiff's failure to adequately plead demand futility. The court entered a judgment in defendants' favor on October 22, 2007. Plaintiff did not file a notice of appeal in the 30 days allowed for doing so, and the judgment in defendants' favor is now final.

Governmental Investigations

The SEC is conducting an investigation related to certain historical accounting practices of the Company. On November 27, 2006, the SEC served a subpoena on the Company seeking the production of documents from the period January 1, 1997 to the date of the subpoena related primarily to the types of matters identified in the Audit Committee-led investigation, including internal controls and accounting for inventories and vendor allowances. On December 5, 2006, the SEC also served document subpoenas on Messrs. Jenkins, Fraser and Watson. Since that time, the SEC has served subpoenas for documents and testimony on, and requested testimony from, current and former employees, officers, directors and other parties it believes may have information relevant to the investigation. The Company's Audit Committee has shared with the SEC the conclusions of the Audit Committee-led investigation. In addition, the U.S. Attorney's office in Phoenix (the USAO) and the Department of Justice in Washington, D.C. (the DOJ) have opened an investigation related to these historical accounting practices. Counsel for the Company's Audit Committee has met with the USAO and DOJ and has shared with them requested information from the Audit Committee-led investigation. At this time, we cannot predict when these investigations will be completed or what their outcomes will be.

Other Litigation

During fiscal 2007, we accrued approximately \$1.5 million for the estimated costs of settling various regulatory compliance matters relating to our operating practices. We do not believe these matters will have a material adverse effect on our consolidated financial position, results of operations or cash flows.

We currently and from time to time are involved in other litigation incidental to the conduct of our business, including but not limited to asbestos and similar product liability claims, slip and fall and other general liability claims, discrimination and employment claims, vendor disputes, and miscellaneous environmental and real estate claims. The damages claimed in some of this litigation are substantial. Based on internal review, we accrue reserves using our best estimate of the probable and reasonably estimable contingent liabilities. We do not currently believe that any of these other legal claims incidental to the conduct of our business, individually or in the aggregate, will result in liabilities material to our consolidated financial position, results of operations or cash flows.

Table of Contents**Item 4. Submission of Matters to a Vote of Security Holders**

We held our Combined 2006 and 2007 Annual Meeting of Stockholders on November 8, 2007. The following are the results of certain matters voted upon at the meeting:

I. Stockholders elected seven directors to serve until our 2008 Annual Meeting of the Stockholders. The stockholders voted as follows:

Directors	Votes for	Withheld
Lawrence N. Mondry	39,533,001	757,800
James G. Bazlen	38,725,609	1,565,192
Morton Godlas	38,777,688	1,513,113
Terilyn A. Henderson	38,777,949	1,512,852
Charles K. Marquis	39,481,549	809,252
Charles J. Philippin	38,782,175	1,508,626
William A. Shutzer	38,693,607	1,597,194

There were no broker non-votes with respect to the election of directors.

II. Stockholders ratified the appointment of PricewaterhouseCoopers LLP as our independent registered public accounting firm for the fiscal year ending February 3, 2008. The stockholders voted as follows:

For: 38,891,131 Against: 1,388,750 Abstain: 10,920 Broker non-vote: 3,838,281

III. Stockholders approved an amendment to the Company's 2004 Stock and Incentive Plan to increase the total number of shares of common stock available for issuance under the Plan by 1,500,000 shares. The stockholders voted as follows:

For: 33,921,318 Against: 3,355,777 Abstain: 212,932 Broker non-vote: 6,639,053

PART II**Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities**
Market Price

Our common stock has been listed on the New York Stock Exchange under the symbol CAO since March 12, 1998. As of April 11, 2008, there were 44,033,363 shares of our common stock outstanding and there were 48 record holders of our common stock.

The following table sets forth, for the periods indicated, the high and low sales prices for our common stock as reported by the New York Stock Exchange.

	Price Range of Common Stock	
	High	Low
Fiscal 2007:		
First Quarter	\$ 17.83	\$ 16.27
Second Quarter	19.14	12.42
Third Quarter	13.95	10.03
Fourth Quarter	10.72	3.96
Fiscal 2006:		

Edgar Filing: O REILLY AUTOMOTIVE INC - Form S-4/A

First Quarter	\$ 16.84	\$ 12.23
Second Quarter	13.29	10.71
Third Quarter	15.90	10.62
Fourth Quarter	17.27	15.17

Table of Contents**Performance Graph**

The following graph reflects the cumulative stockholder return (change in stock price plus reinvested dividends) of a \$100 investment in our common stock for the five-year period from February 2, 2003 through February 3, 2008, in comparison with the Standard & Poor's 500 Composite Stock Index and the Standard & Poor's SmallCap Specialty Stores Index. The comparisons are not intended to forecast or be indicative of possible future performance of our common stock. The performance graph shall not be deemed to be incorporated by reference into our SEC filings and shall not constitute soliciting material or otherwise be considered filed under the Securities Act of 1933, as amended, or the Exchange Act.

COMPARISON OF 5 YEAR CUMULATIVE TOTAL RETURN***Among CSK Auto, Inc., The S&P 500 Index****And The S&P SmallCap Specialty Stores**

* \$100 invested on 2/2/03 in stock or 1/31/03 in index-including reinvestment of dividends.
Indexes calculated on month-end basis.

Copyright © 2008, Standard & Poor's, a division of The McGraw-Hill Companies, Inc. All rights reserved.
www.researchdatagroup.com/S&P.htm

Source: Research Data Group, Inc.

	2/2/03	2/1/04	1/30/05	1/29/06	2/4/07	2/3/08
CSK Auto, Inc.	100.00	196.28	154.73	159.96	165.59	90.34
S&P 500	100.00	134.57	142.96	157.79	180.70	176.52
S&P SmallCap Specialty Stores	100.00	191.32	191.27	199.52	229.87	144.64

Dividends

We have not paid any dividends on our common stock during the fiscal years shown above. We currently do not intend to pay any dividends on our common stock.

CSK Auto Corporation is a holding company with no business operations of its own. It therefore depends upon payments, dividends and distributions from Auto, its wholly owned subsidiary, for funds to pay dividends to our stockholders. Auto currently intends to retain its earnings to fund its working capital, debt repayment and capital expenditure needs and for other general corporate purposes. Auto has no current intention of paying dividends or making other distributions to us in excess of amounts necessary to pay our operating expenses and taxes. The Senior Credit Facility, Term Loan Facility and the indenture under which the 6³/₄% Notes were issued contain restrictions on Auto's ability to pay dividends or make payments or other distributions to us. See Note 10 Long-Term Debt to the consolidated financial statements included in Item 8 of this Annual Report.

Table of Contents**Item 6. Selected Financial Data**

The following table sets forth our selected consolidated statement of operations, balance sheet and operating data. The selected statement of operations and balance sheet data are derived from our consolidated financial statements. You should read the data presented below together with our consolidated financial statements and related notes included in Item 8, Financial Statements and Supplementary Data, and the information in Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations, below.

	Fiscal Year ⁽¹⁾				
	2007	2006	2005	2004	2003
	(In thousands, except per share amounts and selected store data)				
Statement of Operations Data					
Net sales	\$ 1,851,647	\$ 1,907,776	\$ 1,651,285	\$ 1,604,991	\$ 1,606,731
Cost of sales	984,649	1,011,712	864,674	839,564	904,090
Gross profit	866,998	896,064	786,611	765,427	702,641
Operating and administrative	804,265	788,400	653,471	629,309	624,557
Investigation and restatement costs ⁽²⁾	12,348	25,739			
Securities class action settlement ⁽⁸⁾	11,700				
Store closing costs ⁽³⁾	1,983	1,487	2,903	2,229	12,522
Operating profit	36,702	80,438	130,237	133,889	65,562
Interest expense	54,163	48,767	33,599	33,851	52,754
Loss on debt retirement ⁽⁴⁾		19,450	1,600	1,026	49,494
Income (loss) before income taxes and cumulative effect of change in accounting principle	(17,461)	12,221	95,038	99,012	(36,686)
Income tax expense (benefit)	(6,309)	4,991	37,248	39,450	(14,738)
Income (loss) before cumulative effect of change in accounting principle	(11,152)	7,230	57,790	59,562	(21,948)
Cumulative effect of change in accounting principle, net of tax ⁽⁵⁾		(966)			
Net income (loss)	\$ (11,152)	\$ 6,264	\$ 57,790	\$ 59,562	\$ (21,948)
Basic earnings (loss) per share:					
Income (loss) before cumulative effect of change in accounting principle	\$ (0.25)	\$ 0.16	\$ 1.30	\$ 1.30	\$ (0.48)
Cumulative effect of change in accounting principle ⁽⁵⁾		(0.02)			
Net income (loss) per share	\$ (0.25)	\$ 0.14	\$ 1.30	\$ 1.30	\$ (0.48)
Diluted earnings (loss) per share:					
Income (loss) before cumulative effect of change in accounting principle	\$ (0.25)	\$ 0.16	\$ 1.29	\$ 1.29	\$ (0.48)
Cumulative effect of change in accounting principle ⁽⁵⁾		(0.02)			
Net income (loss) per share	\$ (0.25)	\$ 0.14	\$ 1.29	\$ 1.29	\$ (0.48)
Shares used in computing basic per share amounts	43,971	43,877	44,465	45,713	45,658
Shares used in computing diluted per share amounts	43,971	44,129	44,812	46,002	45,658

Table of Contents

	Fiscal Year ⁽¹⁾				
	2007	2006	2005	2004	2003
	(In thousands, except per share amounts and selected store data)				
Other Data					
Commercial sales ⁽⁶⁾	\$ 340,545	\$ 320,188	\$ 296,159	\$ 270,812	\$ 271,397
Selected Store Data					
Number of stores (end of period)	1,349				