CNO FINANCIAL GROUP, INC.

FORM S-1
(Securities Registration Statement)

Filed 11/19/09

Address	11825 N PENNSYLVANIA ST CARMEL, IN 46032
Telephone	3178176100
CIK	0001224608
Symbol	CNO
SIC Code	6321 - Accident and Health Insurance
Industry	Insurance (Life)
Sector	Financial
Fiscal Year	12/31

Table of Contents

As filed with the Securities and Exchange Commission on November 19, 2009

Registration No. 333-

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

Form S-1

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

Conseco, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**6321**	**75-3108137**
(State or other jurisdiction of incorporation or organization)	*(Primary Standard Industrial Classification Code Number)*	*(I.R.S. Employer Identification Number)*

11825 N. Pennsylvania Street
Carmel, IN 46032
(317) 817-6708
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Karl W. Kindig, Esq.
Secretary
Conseco, Inc.
11825 N. Pennsylvania Street
Carmel, IN 46032
(317) 817-6708
(Name, address, including zip code, and telephone number, including area code, of agent for service)

With copies to:

Gary Horowitz, Esq.
Roxane F. Reardon, Esq.
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017
(212) 455-2000

Deanna Kirkpatrick, Esq.
Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017
(212) 450-4000

Approximate date of commencement of proposed sale to the public: As soon as practicable after this Registration Statement is declared effective.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. ☐

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

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

If this Form is a 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. (Check one):

Large accelerated filer ☑ Accelerated filer ☐ Non-accelerated filer ☐ (Do not check if a smaller reporting company) Smaller reporting company ☐

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	**Proposed Maximum Aggregate Offering Price (2)(3)**	**Amount of Registration Fee**
Common Stock, par value $0.01 per share (and associated Preferred Stock Purchase Rights) (1)	$230,000,000	$12,834

(1) Includes the associated preferred stock purchase rights, which (a) are not currently separable from the shares of Common Stock and (b) are not currently exercisable.
(2) Includes shares to be sold upon exercise of the underwriters' option.

(3) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(o) under the Securities Act of 1933, as amended.

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, as amended, or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8 (a), may determine.

PROSPECTUS (Subject to Completion)

$

CONSECO

Conseco, Inc.

COMMON STOCK

Conseco, Inc. is offering shares of its common stock.

The common stock is listed on the New York Stock Exchange under the symbol "CNO." On November 17, 2009, the reported last sale price of the common stock on the New York Stock Exchange was $5.30 per share.

Investing in our common stock involves risks. See "Risk Factors" beginning on page 10.

PRICE $ A SHARE

	Price to Public	Underwriting Discounts and Commissions	Proceeds to Conseco
Per Share	$	$	$
Total	$	$	$

We have granted the underwriters the right to purchase up to an additional shares from us to cover over-allotments, if any, within 30 days of the date of this prospectus.

None of the Securities and Exchange Commission, any state securities commission or any other regulatory body has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The underwriters expect to deliver the shares to purchasers on or about , 2009.

MORGAN STANLEY

, 2009

TABLE OF CONTENTS

Conseco, Inc., a Delaware corporation ("CNO"), became the successor to Conseco, Inc., an Indiana corporation (our "predecessor company"), in connection with our bankruptcy reorganization which became effective on September 10, 2003 (the "Effective Date"). The terms "Conseco," "we," "us," and "our" as used in this prospectus refer to CNO and its subsidiaries or, when the context requires otherwise, our predecessor company and its subsidiaries.

You should rely only on the information contained in this prospectus and in any free writing prospectus. We and the underwriters have not authorized anyone to provide you with information different from that contained in this prospectus. We and the underwriters are offering to sell, and are seeking offers to buy, shares of our common stock only in jurisdictions where offers and sales are permitted. The information in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or any sale of shares of our common stock.

For investors outside of the United States, neither we nor any of the underwriters have done anything that would permit this offering or possession or distribution of this prospectus in any jurisdiction where action for that purpose is required. Persons outside the United States who come into possession of this prospectus must inform themselves about, and observe any restrictions relating to, the offering of the shares of common stock and the distribution of this prospectus outside of the United States.

State insurance holding company statutes applicable to us generally provide that no person may acquire control of us, and thus indirect control of our insurance subsidiaries, without prior approval of the relevant state insurance commissioners. Generally, any person who acquires beneficial ownership of 10% or more of our outstanding voting securities would be presumed to have acquired such control unless the relevant state insurance commissioners upon application determine otherwise. Beneficial ownership includes the acquisition, directly or indirectly (by revocable proxy or otherwise), of our voting shares. If any person acquires 10% or more of the outstanding shares of common stock in violation of such provisions, our insurance subsidiaries or the state insurance commissioners are entitled to injunctive relief, including enjoining any proposed acquisition, or seizing shares of common stock owned by such person, and such shares of common stock would not be entitled to be voted.

ADDITIONAL INFORMATION

We are subject to the informational requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). In accordance with the Exchange Act, we and our predecessor company have filed annual, quarterly and current reports, proxy statements and other information with the Securities and Exchange Commission (the "SEC"). You may read and copy any document we file at the SEC's public reference facilities at 100 F Street, N.E., Room 1580, Washington, D.C., 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference room. Our SEC filings are also available to the public from the SEC's website at www.sec.gov or through our website at www.conseco.com. However, the information on our web site does not constitute a part of this prospectus. Our web site address and that of the SEC are intended to be inactive textual references only.

In this document, we "incorporate by reference" the information that we have filed with the SEC, which means that we can disclose important information to you by referring you to a document we filed with the SEC. The information incorporated by reference is considered to be a part of this prospectus. We incorporate by reference the documents listed below:

- our annual report on Form 10-K for the fiscal year ended December 31, 2008 (including information specifically incorporated therein by reference from our definitive proxy statement on Schedule 14A filed with the SEC on April 23, 2009);
- our quarterly reports on Form 10-Q for the periods ended March 31, 2009, June 30, 2009 and September 30, 2009; and
- our current reports on Form 8-K filed on January 20, 2009, February 23, 2009, March 17, 2009, March 24, 2009 (Item 5.02 only), March 31, 2009 (the Item 1.01 Form 8-K only), April 8, 2009, May 4, 2009, May 13, 2009 (the Item 8.01 Form 8-K only), May 15, 2009, May 21, 2009 (the Item 8.01 Form 8-K only), June 22, 2009, June 26, 2009, July 23, 2009, August 31, 2009, September 8, 2009, October 13, 2009 (excluding Item 7.01), October 19, 2009 and November 13, 2009.

You may request copies of the filings, at no cost, by writing to the following address or calling the following telephone number: Investor Relations, Conseco, Inc., 11825 N. Pennsylvania Street, Carmel, Indiana 46032, (317) 817-2893.

You should read the information relating to us in this prospectus together with the information in the documents incorporated by reference. You should rely only upon the information provided in this prospectus or incorporated in this prospectus by reference. Conseco has not authorized anyone to provide you with different information. You should not assume that the information in this prospectus, including any information incorporated by reference, is accurate as of any date other than the date indicated on the front cover.

CAUTIONARY NOTE ON FORWARD-LOOKING STATEMENTS

This prospectus contains and incorporates forward-looking statements within the meaning of the federal securities laws and the Private Securities Litigation Reform Act of 1995. Forward-looking statements typically are identified by the use of terms such as "anticipate," "believe," "plan," "estimate," "expect," "project," "intend," "may," "will," "would," "contemplate," "possible," "attempt," "seek," "should," "could," "goal," "target," "on track," "comfortable with," "optimistic" and similar words, although some forward-looking statements are expressed differently. You should consider statements that contain these words carefully because they describe our expectations, plans, strategies and goals and our beliefs concerning future business conditions, our results of operations, financial position, and our business outlook or they state other "forward-looking" information based on currently available information. The "Risk Factors" section of this prospectus provides examples of risks, uncertainties and events that could cause our actual results to differ materially from the expectations expressed in our forward-looking statements. Assumptions and other important factors that could cause our actual results to differ materially from those anticipated in our forward-looking statements include, among other things:

- our ability to continue to satisfy the financial ratio and balance requirements and other covenants of our senior credit agreement;
- liquidity issues associated with the right of holders of our 3.50% convertible debentures due 2035 to require us to repurchase such debentures on September 30, 2010;
- general economic, market and political conditions, including the performance and fluctuations of the financial markets which may affect our ability to raise capital or refinance our existing indebtedness and the cost of doing so;
- our ability to generate sufficient liquidity to meet our debt service obligations and other cash needs;
- our ability to obtain adequate and timely rate increases on our supplemental health products, including our long-term care business;
- the receipt of any required regulatory approvals for dividend and surplus debenture interest payments from our insurance subsidiaries;
- mortality, morbidity, the increased cost and usage of health care services, persistency, the adequacy of our previous reserve estimates and other factors which may affect the profitability of our insurance products;
- changes in our assumptions related to the cost of policies produced or the value of policies in force at the Effective Date;
- the recoverability of our deferred tax assets and the effect of potential ownership changes and tax rate changes on its value;
- our assumption that the positions we take on our tax return filings, including our position that the new debentures (as defined below) will not be treated as stock for purposes of Section 382 of the Internal Revenue Code of 1986, as amended (the "Code"), and will not trigger an ownership change, will not be successfully challenged by the Internal Revenue Service (the "IRS");
- changes in accounting principles and the interpretation thereof;
- our ability to achieve anticipated expense reductions and levels of operational efficiencies including improvements in claims adjudication and continued automation and rationalization of operating systems;
- performance and valuation of our investments, including the impact of realized losses (including other-than-temporary impairment charges);
- our ability to identify products and markets in which we can compete effectively against competitors with greater market share, higher ratings, greater financial resources and stronger brand recognition;
- the ultimate outcome of lawsuits filed against us and other legal and regulatory proceedings to which we are subject;

- our ability to complete the remediation of the material weakness in internal controls over our actuarial reporting process and to maintain effective controls over financial reporting;
- our ability to continue to recruit and retain productive agents and distribution partners and customer response to new products, distribution channels and marketing initiatives;
- our ability to achieve eventual upgrades of the financial strength ratings of Conseco and our insurance company subsidiaries as well as the impact of rating downgrades on our business and our ability to access capital;
- the risk factors or uncertainties listed from time to time in our filings with the SEC;
- regulatory changes or actions, including those relating to regulation of the financial affairs of our insurance companies, such as the payment of dividends and surplus debenture interest to us, regulation of financial services affecting (among other things) bank sales and underwriting of insurance products, regulation of the sale, underwriting and pricing of products, and health care regulation affecting health insurance products; and
- changes in the Federal income tax laws and regulations which may affect or eliminate the relative tax advantages of some of our products.

Other factors and assumptions not identified above are also relevant to the forward-looking statements, and if they prove incorrect, could also cause actual results to differ materially from those projected.

All forward-looking statements are expressly qualified in their entirety by the foregoing cautionary statements. Our forward-looking statements speak only as of the date made. We assume no obligation to update or to publicly announce the results of any revisions to any of the forward-looking statements to reflect actual results, future events or developments, changes in assumptions or changes in other factors affecting the forward-looking statements.

SUMMARY

This summary may not contain all the information that may be important to you. You should read this entire prospectus, and the financial data and related notes that are incorporated by reference, before making an investment decision.

You should pay special attention to the "Risk Factors" section beginning on page 10 of this prospectus in determining whether an investment in our common stock is appropriate for you.

Our Business

We are a holding company for a group of insurance companies operating throughout the United States that develop, market and administer supplemental health insurance, annuity, individual life insurance and other insurance products. We serve America's middle-income consumers, with a focus on seniors. We believe this is an attractive, underserved, high growth market. We sell our products through three distribution channels: career agents, professional independent producers (some of whom sell one or more of our product lines exclusively) and direct marketing.

As of September 30, 2009, we had $3.3 billion of shareholders' equity and $30.3 billion of assets. For the nine months ended September 30, 2009, we had $3.3 billion of revenues and $67.5 million of net income, compared to the nine months ended September 30, 2008, for which we had $3.1 billion of revenues and $679 million of net losses.

We manage our business through the following three primary operating segments: Bankers Life, Colonial Penn and Conseco Insurance Group, which are defined on the basis of product distribution, and corporate operations, which consists of holding company activities and certain noninsurance company businesses that are not part of our other segments. Prior to the fourth quarter of 2008, we had a fourth operating segment comprised of other business in run-off. The other business in run-off segment had included blocks of business that we no longer market or underwrite and were managed separately from our other businesses. Such segment had consisted primarily of long-term care insurance sold in prior years through independent agents. As a result of the transfer of the stock of Senior Health Insurance Company of Pennsylvania ("Senior Health") by Conseco and CDOC, Inc. ("CDOC"), a wholly owned subsidiary of Conseco, to Senior Health Care Oversight Trust, an independent trust, in November 2008, a substantial portion of the long-term care business in the former other business in run-off segment is presented as discontinued operations in our consolidated financial statements for the periods prior to 2009.

Bankers Life , which consists of the business of Bankers Life and Casualty Company, markets and distributes health and life insurance products and annuities to the middle-income senior market through a dedicated field force of over 5,600 career agents and sales managers supported by a network of over 150 community-based branch offices. Products include Medicare supplement insurance, life insurance, fixed annuities and long-term care insurance. Bankers Life also markets and distributes Medicare Part D prescription drug plans through a distribution and reinsurance arrangement with Coventry Health Care and Medicare Advantage plans primarily through a distribution arrangement with Humana Inc.

Colonial Penn , which consists of the business of Colonial Penn Life Insurance Company ("Colonial Penn"), markets primarily graded benefit and simplified issue life insurance directly to customers through television advertising, direct mail, the internet and telemarketing. Colonial Penn markets its products under its own brand name.

Conseco Insurance Group , which markets and distributes specified disease insurance, accident, disability, life insurance and annuities to middle-income consumers at home and at the worksite. These products are marketed through Performance Matters Associates, Inc., a wholly owned subsidiary, and through independent marketing organizations and insurance agencies. Products being marketed by Conseco Insurance Group are underwritten by Conseco Insurance Company, Conseco Health Insurance Company and Washington National Insurance Company. This segment also includes blocks of long-term care and other insurance business, in these companies and in Conseco Life Insurance Company, which we no longer market.

The following table sets forth information on our segments for the nine months ended September 30, 2009 (dollars in millions):

	Collected Premiums		Income (Loss) before
	$	Percentage	Income Taxes
Bankers Life	$2,316.1	73%	$ 161.1
Colonial Penn	144.2	5	26.2
Conseco Insurance Group	702.5	22	74.6
Corporate	—	—	(106.0)
Total	$3,162.8	100%	$ 155.9

Our principal executive offices are located at 11825 N. Pennsylvania Street, Carmel, Indiana 46032, and our telephone number at this location is (317) 817-6100. Our website is www.conseco.com. Information on our website should not be construed to be part of this prospectus.

Our common stock is listed on the New York Stock Exchange (the “NYSE”) under the symbol “CNO.”

Competitive Strengths

We believe our competitive strengths have enabled and will continue to enable us to capitalize on the opportunities in our target markets. These strengths include the following:

Growing Distribution Force Enables Us to Access Our Middle-Income Market Customers. We are able to reach our customers through a growing distribution force consisting of:

- over 5,600 Bankers Life career agents and sales managers who are trained to cater to the needs of the senior market. These agents sell a number of products such as supplemental health coverage, including Medicare supplement, Medicare Advantage and Medicare Part D products and long-term care insurance, as well as selected life and annuity products that are important to the financial well-being of seniors. This agency force typically visits the home of a policyholder or potential policyholder, which helps develop strong personal relationships;
- over 800 agents with Performance Matters Associates, Inc., as well as the other agents associated with our Conseco Insurance Group segment, who specialize in the sale of supplemental health products which customers can purchase at home or through their worksite. These agents sell specified disease insurance, such as cancer and heart/stroke products, as well as accident, disability and life insurance to middle-income customers; and
- Colonial Penn’s direct contacts with customers through direct mail, television advertising and the Internet.

Products Designed for the Needs of Middle-Income Customers. We primarily sell small face amount risk protection products to our middle-income customers. We do not market variable life or variable annuity business, nor do we market other products such as guaranteed investment products that could increase the liquidity risk to our insurance companies.

Leading National Provider of Life and Health Insurance Products to the Senior Market. Our Bankers Life segment is one of the leading national providers of life and health insurance products focused primarily on the senior market. The career agents with Bankers Life provide a number of products such as supplemental health coverage, including Medicare supplement, Medicare Advantage and Medicare Part D products and long-term care insurance, as well as selected life and annuity products that are important to the financial well-being of seniors.

According to the most recently published report on Medicare supplement insurance by the National Association of Insurance Commissioners, we were ranked fourth in direct premiums earned of individual Medicare supplement insurance in 2008. Our approximately 5,600 career agents and sales managers are trained to cater to the needs of the senior market. Current demographic trends indicate that the senior market will continue to grow, and we believe our focus on seniors will provide us with a significant opportunity to increase our share of this market.

Experienced Management with a Proven Track Record. We have a strong, experienced senior management team. The nine members of our senior management team have, on average, more than 20 years of industry experience. We have made significant changes to our management team in recent years and it has been strengthened by the addition of many experienced industry executives, led by C. James Prieur, who has served as Chief Executive Officer since September 2006. Before joining Conseco, Mr. Prieur had been with Sun Life Financial, Inc. since 1979, where he served in a variety of investment management positions before being promoted to senior vice president and general manager for all U.S. operations of Sun Life Financial in 1997. Mr. Prieur became corporate president and chief operating officer of Sun Life Financial, Inc. in 1999, and he served in that capacity until joining Conseco.

Our Strategy

Our mission is to be a premier provider of life insurance, supplemental health products and annuities to America's middle-income consumers with a focus on seniors and to provide value to our shareholders. We believe we can accomplish this mission through the effective execution of the following strategies:

- *Remain focused on the Needs of Our Middle Income Market Customers.* We define our business by our target markets and not by our products. We continue to adapt our distribution, product offerings and product features to the evolving needs of our middle income and senior customers. We provide a broad range of middle market products to meet the protection needs of our customers and to provide them with longevity solutions. We are able to reach our customers through our career agents and independent agent relationships, directly, through our Colonial Penn direct distribution platform, and at work, through our worksite marketing channel.
- *Expand and Improve the Efficiency of our Distribution Channels.* The continued development and maintenance of our distribution channels is critical to our continued sales growth. We dedicate substantial resources to the recruitment, development and retention of our Bankers Life career agents and seek to maximize their productivity by providing them with high quality leads for new business opportunities. Investments in our Colonial Penn direct distribution platform have enabled us to achieve significant sales growth since 2004. In our Conseco Insurance Group segment, we have refocused efforts on supplemental health and life insurance products to utilize the competitive strengths of our wholly owned distributor, Performance Matters Associates, Inc.
- *Seek Profitable Growth.* We continue to pursue profitable growth opportunities in the middle income market. We focus on marketing and selling products that meet the needs of our customers and we believe it will enable us to provide long-term value for our shareholders. As part of this strategy, we have de-emphasized products with return characteristics that we consider to be inadequate.
- *Pursue Operational Efficiencies and Cost Reduction Opportunities.* We seek to strengthen our competitive position with a focus on cost control and enhanced operational efficiency. Our efforts include:
  - improvements to our policy administration processes and procedures to reduce costs and improve customer service;
  - continued consolidation of policy processing systems, including conversions and elimination of systems;
  - streamlining administrative procedures and consolidating processes across the enterprise to reduce personnel costs; and
  - eliminating expenses associated with the marketing of those products that do not meet our return objectives.
- *Strengthen Our Financial Profile.* In response to the challenging economic environment and to our financial situation, our management team has taken several capital and risk management initiatives to enhance our capital and liquidity position and to improve our profitability. These initiatives included

entering into agreements to sell new convertible debentures and shares of our common stock and warrants. The initial phase of these recapitalization transactions was completed on November 13, 2009. See "— Recent Developments." The proceeds of these recapitalization transactions are being used to refinance our 3.50% Convertible Debentures and to decrease the outstanding indebtedness under our senior credit agreement, with the remaining amounts available for general corporate purposes. In addition, we have pursued several reinsurance transactions, which have improved the capitalization of our life insurance subsidiaries and have served to offset the negative effects of the adverse economic and investment environment.

- *Continue to manage and reduce the risk profile of our business where possible.* We actively manage the risks associated with our business and have taken several steps to reduce the risk profile of our business. In the fourth quarter of 2007, we completed a transaction to coinsure 100 percent of a block of inforce equity-indexed annuity and fixed annuity business sold through our independent distribution channel. Such business was largely out of the surrender charge periods and had policyholder account balances in excess of $2.5 billion. This transaction significantly reduced the asset and liability risks associated with this business. In the fourth quarter of 2008, we transferred the stock of Senior Health to an independent trust, eliminating our exposure to a substantial block of long-term care business previously included in our run-off segment. In 2009, we began coinsuring a significant portion of the new long-term care business written through our Bankers Life segment. These transactions have reduced our exposure to long-term care business that has produced volatile earnings in the past.

  We have purposefully avoided products like variable life, variable annuity and guaranteed investment contracts that we believe would expose us to risks that are not commensurate with potential profits. We plan to continue to emphasize products that are straight forward and have a lower risk profile. We believe such products meet various needs of the middle income markets we serve. We will continue to manage the investment risks associated with our insurance business by:

  - maintaining a largely investment-grade, diversified fixed-income portfolio;
  - maximizing the spread between the investment income we earn and the yields we pay on investment products within acceptable levels of risk; and
  - continually tailoring our investment portfolio to consider expected liability durations, cash flows and other requirements.

- *Capitalize on favorable trends in our markets.* It is our vision to be a premier provider of insurance products to America's middle-income families and seniors. We believe our middle-income target market is underserved by the financial services industry. In addition, our focus on seniors provides us with significant growth opportunities as an estimated 78 million "baby boomer" Americans born between 1946 and 1964 plan for retirement and become eligible for Medicare. Our middle-income market consumers are impacted by a number of trends, including:

  - increased life expectancy;
  - discontinuance or reduction in employer-sponsored benefit programs;
  - rising healthcare costs; and
  - projected gaps between the needs of seniors and amounts provided by government-sponsored plans such as Social Security and Medicare.

We believe that our focus on middle-income families and seniors will position us favorably to capitalize on the future growth in these markets.

Recent Developments

Settlement of Cash Tender Offer

On November 13, 2009, we completed our previously announced cash tender offer (the "Tender Offer") for any and all of the $293.0 million aggregate principal amount of our 3.50% Convertible Debentures due September 30, 2035 (the "existing debentures"). As of 12:00 midnight, New York City time, on November 12, 2009, the expiration date of the Tender Offer, $176.5 million aggregate principal amount (approximately 60.2% of the outstanding aggregate principal amount immediately prior to the expiration date) of the existing debentures were validly tendered and not withdrawn. The aggregate consideration for the existing debentures accepted by us in the Tender Offer, plus accrued and unpaid interest thereon, was $177.2 million. Following the settlement of the Tender Offer, there is $116.5 million aggregate principal amount of the existing debentures outstanding.

First Issuance of New Debentures

On November 13, 2009, we issued $176.5 million aggregate principal amount of our 7.0% Convertible Senior Debentures due 2016 (the "new debentures") in the initial closing of our previously announced private offering of new debentures to Morgan Stanley & Co. Incorporated ("Morgan Stanley"), as the initial purchaser of the new debentures. The net proceeds from the initial closing of the offering of our new debentures were used to fund a substantial portion of the consideration payable in connection with the Tender Offer for the existing debentures. We expect to issue additional new debentures, and Morgan Stanley, as the initial purchaser, is required to purchase these additional new debentures, subject to the satisfaction of certain conditions, on the following dates:

- the settlement date of any subsequent tender offers we make for outstanding existing debentures that expire before October 5, 2010;
- September 30, 2010, the date on which we may be required by holders of the existing debentures, if any, to repurchase such existing debentures; and
- October 5, 2010, if we elect to redeem any existing debentures that remain outstanding on such date.

The net proceeds from any subsequent closings of the new debentures offering will be used to fund a substantial portion of the aggregate consideration payable for existing debentures that we may repurchase or redeem in accordance with the terms of the existing debentures.

The new debentures are not convertible prior to June 30, 2013, except under limited circumstances. Commencing on June 30, 2013, the new debentures will be convertible into shares of our common stock at the option of the holder at any time, subject to certain exceptions and subject to our right to terminate such conversion rights under certain circumstances relating to the sale price of our common stock. If the holders elect to convert their new debentures upon the occurrence of certain changes of control of Conseco or certain other events, we will be required, under certain circumstances, to increase the conversion rate for such holders of the new debentures who convert in connection with such events. Initially, the new debentures will be convertible into 182.1494 shares of our common stock for each $1,000 principal amount of new debentures, which conversion rate is subject to adjustment following the occurrence of certain events in accordance with the terms of the indenture governing the new debentures.

On November 17, 2009, two investment funds managed by Paulson & Co. Inc. ("Paulson") purchased $120.5 million aggregate principal amount of new debentures from Morgan Stanley, and other purchasers purchased the remaining $56.0 million aggregate principal amount of new debentures from Morgan Stanley. We have been informed by Morgan Stanley that the two funds managed by Paulson have entered into agreements with Morgan Stanley to purchase up to a total of $79.5 million additional aggregate principal amount of new debentures, and other purchasers have agreed to purchase up to the remaining $37.0 million aggregate principal amount of new debentures.

For a description of our offering of new debentures and the terms of the new debentures, see our current report on Form 8-K filed on October 19, 2009, and the exhibits thereto, which are incorporated by reference herein.

Issuance of Common Stock and Warrants to Paulson

On November 13, 2009, we also issued 16.4 million shares of our common stock and warrants to purchase 5.0 million shares of our common stock to several investment funds and accounts managed by Paulson in connection with our previously announced private placement of such securities to Paulson pursuant to a stock and warrant purchase agreement we entered into with Paulson on October 13, 2009. The aggregate purchase price was $77.9 million. After the payment of financial advisory and other offering expenses, we used $36.8 million to repay indebtedness under our senior credit agreement, pursuant to the terms of the senior credit agreement and $10.5 million to fund the portion of the settlement of the Tender Offer that was not funded by the issuance of new debentures. The remaining proceeds will be used:

- to pay the portion of the purchase price, repurchase price or redemption price of the existing debentures that are (i) tendered in any subsequent issuer tender offer for the existing debentures, (ii) repurchased by us as required by the holders thereof on September 30, 2010 or (iii) redeemed by us on October 5, 2010 respectively; and
- for general corporate purposes.

On November 13, 2009, concurrently with the completion of the private placement of our common stock and warrants, we entered into an investor rights agreement with Paulson, pursuant to which we granted to Paulson, among other things, certain registration rights with respect to certain securities and certain preemptive rights, and Paulson agreed to, among other things, certain restrictions on transfer of certain securities, certain voting limitations and certain standstill provisions.

After giving effect to the private placement of common stock, Paulson has informed us that it owns approximately 9.9% of our outstanding shares of common stock, including shares that Paulson previously acquired in open market transactions.

The warrants have an exercise price of $6.50 per share of common stock, subject to customary anti-dilution adjustments. Prior to June 30, 2013, the warrants are not exercisable, except under limited circumstances. Commencing on June 30, 2013, the warrants will be exercisable for shares of our common stock at the option of the holder at any time, subject to certain exceptions. The warrants expire on December 30, 2016.

Prior to our entering into the stock and warrant purchase agreement with Paulson, our board of directors deemed Paulson an “Exempted Entity” and therefore not an “Acquiring Person” (each as defined in our Section 382 rights agreement, dated as of January 20, 2009, that we entered into with American Stock Transfer & Trust Company, LLC, as rights agent (the “Section 382 Rights Agreement”)) for purposes of our Section 382 Rights Agreement, with respect to the 16.4 million shares of common stock, any shares of common stock issued upon exercise of the warrants, any common stock issued upon conversion of any new debentures owned by Paulson, as well as the shares of common stock Paulson owned as of the date of the stock and warrant purchase agreement. See “Description of Capital Stock — Section 382 Rights Agreement.”

For a detailed description of the warrants and the stock and warrant purchase agreement and the investor rights agreement, see our current report on Form 8-K filed on October 13, 2009, and the exhibits thereto, which are incorporated by reference herein.

THE OFFERING

Issuer	Conseco, Inc., a Delaware corporation.
Common stock offered	shares of common stock (shares if the underwriters exercise their over-allotment option in full).
Over-allotment option	We have granted the underwriters a 30-day option to purchase a maximum of additional shares of our common stock at the offering price to cover over-allotments.
Common stock outstanding after this offering	shares of common stock (shares if the underwriters exercise their over-allotment option in full).
Use of proceeds	We estimate that our net proceeds from the sale of our common stock in this offering will be approximately $ million, or $ million if the underwriters exercise their over-allotment option in full, after deducting underwriting discounts and commissions and our estimated offering expenses. These estimated amounts assume an offering price of $ per share. A $1.00 increase (decrease) in the assumed offering price of $ per share would increase (decrease) the net proceeds to us from this offering by $ million, or $ million if the underwriters exercise their over-allotment option in full, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting underwriting discounts and commissions and estimated offering expenses. We intend to use 50% of the net proceeds to repay indebtedness under our senior credit agreement, as required by our senior credit agreement. We intend to use the remaining net proceeds for general corporate purposes. See "Use of Proceeds."
Risk factors	See "Risk Factors" beginning on page 10 of this prospectus for a discussion of the risk factors you should carefully consider before deciding to invest in our common stock.
Dividend policy	We do not anticipate paying any cash dividends on our common stock in the foreseeable future. We are prohibited from paying cash dividends pursuant to the terms of our senior credit agreement.
New York Stock Exchange symbol	CNO

Unless we specifically state otherwise, information in this prospectus regarding the number of shares of our common stock outstanding after this offering excludes (a) 677,500 shares of restricted stock issued but not yet vested under our amended and restated long-term incentive plan; (b) the shares of our common stock issuable upon conversion of the existing debentures; (c) the 53,369,775 shares of our common stock issuable upon conversion of the new debentures (not including any additional shares issuable upon conversion in connection with a make whole adjustment event); and (d) the 5,000,000 shares of our common stock issuable upon exercise of the warrants issued to Paulson.

Unless we specifically state otherwise, information in this prospectus regarding the number of shares of our common stock outstanding after this offering also assumes that the underwriters do not exercise their option to purchase up to additional shares of our common stock within 30 days of the date of this prospectus.

SELECTED CONSOLIDATED FINANCIAL AND OPERATING DATA

The following table sets forth selected financial data for Conseco, Inc. as of and for the nine months ended September 30, 2009 and 2008, and as of and for the years ended December 31, 2008, 2007, 2006, 2005 and 2004. We derived the historical financial data as of September 30, 2009 and 2008 and for the nine-month periods ended September 30, 2009 and 2008 from our unaudited interim consolidated financial statements incorporated by reference herein which, in the opinion of our management, have been prepared on the same basis as our audited consolidated financial statements and reflect all adjustments, consisting of normal recurring adjustments, necessary for a fair presentation of our results of operations and financial position for such periods (except for the data as of and for the nine months ended September 30, 2009, which reflects the adoption of new accounting guidance on other-than-temporary impairments effective January 1, 2009). Interim results are not necessarily indicative of the results to be expected for the entire fiscal year. Historical results are not necessarily indicative of future performance. The data should be read in conjunction with the information under "Management's Discussion and Analysis of Consolidated Financial Condition and Results of Operation" and our consolidated financial statements and related notes contained in the documents incorporated by reference in this prospectus.

We have prepared the selected financial data, other than statutory data, in conformity with generally accepted accounting principles. We have derived the statutory data from the statements filed by our insurance subsidiaries with regulatory authorities and have prepared the statutory data in accordance with statutory accounting practices, which vary in certain respects from generally accepted accounting principles ("GAAP").

	Nine Months Ended September 30,		Year Ended December 31,				
	2009	2008	2008	2007	2006	2005	2004
	(amounts in millions, except per share data)						
Statement of Operations Data [(a)]							
Insurance policy income	$2,346.1	$2,436.9	$ 3,253.6	$2,895.7	$2,696.4	$2,620.9	$2,611.2
Net investment income	970.9	862.8	1,178.8	1,369.8	1,350.8	1,222.8	1,178.8
Net realized investment gains (losses)	(43.5)	(169.4)	(262.4)	(158.0)	(46.6)	(3.3)	36.7
Total revenues	3,283.7	3,144.1	4,189.7	4,131.3	4,019.8	3,865.1	3,848.2
Interest expense	87.8	80.5	106.5	125.3	81.0	61.0	79.5
Total benefits and expenses	3,127.8	3,134.2	4,186.0	4,149.3	3,860.6	3,462.1	3,470.3
Income (loss) before income taxes, minority interest, discontinued operations and cumulative effect of accounting change	155.9	9.9	3.7	(18.0)	159.2	403.0	377.9
Income tax expense	88.4	333.7	413.3	61.1	58.3	143.1	132.5
Income (loss) before discontinued operations	67.5	(323.8)	(409.6)	(79.1)	100.9	259.9	245.4
Discontinued operations, net of income taxes	—	(355.2)	(722.7)	(105.9)	.3	51.1	44.3
Net income (loss)	67.5	(679.0)	(1,132.3)	(185.0)	101.2	311.0	289.7
Preferred stock dividends	—	—	—	14.1	38.0	38.0	65.5
Net income (loss) applicable to common stock	67.5	(679.0)	(1,132.3)	(199.1)	63.2	273.0	224.2
Per Share Data							
Income (loss) before discontinued operations, basic	$ .37	$ (1.76)	$ (2.22)	$ (.54)	$ .42	$ 1.47	$ 1.36
Income (loss) before discontinued operations, diluted	$ .36	$ (1.76)	(2.22)	(.54)	.41	1.40	1.31
Net income, basic	$ .37	$ (3.68)	(6.13)	(1.15)	.42	1.81	1.70
Net income, diluted	$ .36	$ (3.68)	(6.13)	(1.15)	.41	1.68	1.59
Book value per common share outstanding	$ 18.03	$ 14.70	8.82	23.03	26.64	25.45	21.34
Weighted average shares outstanding for basic earnings	184.8	184.7	184.7	173.4	151.7	151.2	132.3

	Nine Months Ended September 30,		Year Ended December 31,				
	2009	2008	2008	2007	2006	2005	2004
	(amounts in millions, except per share data)						
Weighted average shares outstanding for diluted earnings	185.3	184.7	184.7	173.4	152.5	185.0	155.9
Shares outstanding at period-end	184.9	184.7	184.8	184.7	152.2	151.5	151.1
Balance Sheet Data — at Period End (a)(b)							
Total investments	$21,603.9	$19,738.5	$18,647.5	$21,324.5	$23,768.8	$23,424.6	$22,169.5
Total assets	30,269.0	32,367.7	28,763.3	33,961.5	33,580.2	32,871.0	31,478.0
Corporate notes payable	1,261.9	1,168.0	1,311.5	1,167.6	966.4	809.4	768.0
Total liabilities	26,935.3	29,651.4	27,133.3	29,709.2	28,858.6	28,347.4	27,586.1
Shareholders' equity	3,333.7	2,716.3	1,630.0	4,252.3	4,721.6	4,523.6	3,891.9
S **tatutory Data — at Period End (c)**							
Statutory capital and surplus	$ 1,285.1	$ 1,330.8	$ 1,311.5	$ 1,336.2	$ 1,554.5	$ 1,603.8	$ 1,510.0
Asset valuation reserve ("AVR")	23.1	99.3	55.0	161.3	179.1	142.7	117.0
Total statutory capital and surplus and AVR	1,308.2	1,430.1	1,366.5	1,497.5	1,733.6	1,746.5	1,627.0

(a) Our financial condition and results of operations have been significantly affected during the periods presented by our discontinued operations. Please refer to the notes to the consolidated financial statements incorporated herein by reference.

(b) The balance sheet data as of September 30, 2008 has been retrospectively adjusted as a result of our adoption, effective January 1, 2009, of authoritative guidance requiring issuers of convertible debt instruments that may be settled in cash upon conversion (including partial cash settlement) to separately account for the liability and equity components in a manner that reflects the entity's non-convertible debt borrowing rate when interest cost is recognized.

(c) We have derived the statutory data from statements filed by our insurance subsidiaries with regulatory authorities which are prepared in accordance with statutory accounting principles, which vary in certain respects from GAAP, and include amounts related to our discontinued operations in the nine months ended September 30, 2008, and the years ended December 31, 2007, 2006, 2005 and 2004.

RISK FACTORS

Your investment in our common stock involves risks. You should carefully consider the risks described below, as well as the other information included or incorporated by reference in this prospectus, before making an investment decision. Our business, financial condition or results of operations could be materially adversely affected by any of these risks, and you may lose all or part of your investment. In addition, please read "Cautionary Note on Forward-Looking Statements" in this prospectus where we describe additional uncertainties associated with our business and the "Forward-Looking Statements" incorporated by reference in this prospectus.

Risks Related to Our Business

We have substantial indebtedness, which may have an adverse effect on our business or limit our ability to take advantage of business, strategic or financing opportunities.

As of September 30, 2009, we had aggregate principal amount of indebtedness of $1.27 billion, consisting of the borrowings under the senior credit agreement, the existing debentures and a Senior Health note. After giving effect to the transactions described in "Summary — Recent Developments" and this offering and the application of the proceeds of this offering as described in "Use of Proceeds," as of September 30, 2009, our aggregate indebtedness would have been $ million. See "Capitalization."

As disclosed in detail in the Form 10-K for the year ended December 31, 2008 and Forms 10-Q for the quarters ended March 31, 2009, June 30, 2009 and September 30, 2009 and under risk factors set forth below, our senior credit agreement contains various restrictive covenants and required financial ratios that we must meet or maintain and that limit our operating flexibility. Our current credit ratings may adversely affect our ability to access capital and may increase the cost of such capital, which could have a material adverse effect on our financial condition and results of operations. These covenants place significant restrictions on the manner in which we may operate our business and our ability to meet these financial covenants may be affected by events beyond our control. If we default under any of these covenants, the lenders could declare all outstanding borrowings, accrued interest and fees to be immediately due and payable. In such event, the holders of our existing debentures outstanding, our new debentures outstanding and the Senior Health note could elect to take similar action with respect to those debts. If that were to occur, we would not have sufficient liquidity to repay our indebtedness. Absent sufficient liquidity to repay our indebtedness, our management may conclude that there is substantial doubt regarding our ability to continue as a going concern, in which case, we would also be precluded from subsequent issuances of new debentures. Our senior credit agreement also imposes restrictions that limit our ability to take certain actions. Absent a waiver or modification by the lenders under the senior credit agreement, these restrictions impact the manner in which we operate our business.

If we fail to pay interest or principal on the existing debentures or the new debentures, we will be in default under the applicable indenture governing such debentures. A default under either indenture could also lead to a default under agreements governing our existing and future indebtedness, including under our senior credit agreement. If the repayment of the related indebtedness were to be accelerated after any applicable notice or grace periods, we may not have sufficient funds to repay our indebtedness.

Our senior credit agreement contains various restrictive covenants and required financial ratios that limit our operating flexibility; our current credit ratings may adversely affect our ability to access capital and the cost of such capital, which could have a material adverse effect on our financial condition and results of operations.

As of September 30, 2009, we had $854.6 million principal amount of debt outstanding under our senior credit agreement. After giving effect to the transactions described in "Summary — Recent Developments" and this offering and the application of the proceeds of this offering as described in "Use of Proceeds," as of September 30, 2009, our aggregate indebtedness under our senior credit agreement would have been $ million. See "Capitalization."

Pursuant to our senior credit agreement, we agreed to a number of covenants and other provisions that restrict our ability to borrow money and pursue some operating activities without the prior consent of the lenders. We also agreed to meet or maintain various financial ratios and balances. Our ability to meet these financial tests and maintain ratings may be affected by events beyond our control. There are several conditions or circumstances that could lead to an event of default under our senior credit agreement, as described below. In the event of an event of default, management would conclude there is substantial doubt regarding our ability to continue as a going concern, which would have material adverse consequences to our financial condition and results of operations, as further described below.

The senior credit agreement prohibits or restricts, among other things:

- the payment of cash dividends on our common stock;
- the repurchase of our common stock;
- the issuance of additional debt or capital stock;
- liens;
- the transfer or sale of assets unless the net proceeds are reinvested in our insurance operations or used to reduce the amount due under the senior credit agreement;
- affiliate transactions;
- certain investment activities;
- change in business; and
- prepayment of indebtedness (other than the senior credit agreement).

The senior credit agreement also requires that our annual audited consolidated financial statements be accompanied by an opinion from a nationally-recognized independent public accounting firm stating that such audited consolidated financial statements present fairly, in all material respects, our financial position and results of operations in conformity with GAAP for the periods indicated. For us to remain in compliance with the senior credit agreement, such opinion cannot include an explanatory paragraph regarding our ability to continue as a going concern or similar qualification. Although we were in compliance with the provisions of the senior credit agreement as of September 30, 2009, these provisions represent significant restrictions on the manner in which we may operate our business. If we default under any of these provisions, the lenders could declare all outstanding borrowings, accrued interest and fees to be due and payable. If that were to occur, we may not have sufficient liquidity to repay amounts due under the senior credit agreement in full or any of our other debts.

Pursuant to the senior credit agreement, as long as the debt to total capitalization ratio (as defined in the senior credit agreement) is greater than 20% or certain insurance subsidiaries (as defined in the senior credit agreement) have financial strength ratings of less than A- from A.M. Best, we are required to make mandatory prepayments with all or a portion of the proceeds from the following transactions or events: (i) the issuance of certain indebtedness; (ii) certain equity issuances; (iii) certain asset sales or casualty events; and (iv) excess cash flows (as defined in the senior credit agreement). The first such payment, of $1.2 million, was paid in March 2009 and pursuant to the terms of the senior credit agreement, reduced our second quarter 2009 principal payment from $2.2 million to $1.0 million. In addition, in connection with the closing of our private placement of common stock and warrants, we made a payment of approximately $36.8 million (equal to half of the net proceeds from the issuance and sale of shares of our common stock and warrants to Paulson) pursuant to the terms of the senior credit agreement.

The following summarizes the financial ratios and amounts that we are required to meet or maintain under our senior credit agreement as of September 30, 2009:

	Covenant Under the Senior Credit Agreement as Amended on March 30, 2009	Balance or Ratio as of September 30, 2009	Margin for Adverse Development from September 30, 2009 Levels
Aggregate risk-based capital ratio	Greater than or equal to 200% from March 31, 2009 through June 30, 2010 and thereafter, greater than 250% (the same ratio required by the agreement prior to the amendment).	252%	Reduction to total adjusted capital (defined as combined statutory capital and surplus plus the asset valuation reserve and 50 percent of the balance of the provision of policyholder dividends) of approximately $268 million, or an increase to required risk-based capital of approximately $134 million.
Combined statutory capital and surplus	Greater than $1,100 million from March 31, 2009 through June 30, 2010 and thereafter, $1,270 million (the same amount required by the agreement prior to the amendment).	$1,308 million	Reduction to combined statutory capital and surplus of approximately $208 million.
Debt to total capitalization ratio	Not more than 32.5% from March 31, 2009 through June 30, 2010 and thereafter, not more than 30% (the same ratio required by the agreement prior to the amendment).	26.8%	Reduction to shareholders' equity of approximately $831 million or additional debt of $400 million.
Interest coverage ratio	Greater than or equal to 1.50 to 1 for rolling four quarters from March 31, 2009 through June 30, 2010 and thereafter, 2.00 to 1 (the same ratio required by the agreement prior to the amendment).	3.12 to 1	Reduction in cash flows to the holding company of approximately $101 million.

As described above, under our senior credit agreement, several financial covenant requirements currently in place will revert back to the requirements in place prior to the amendment effected in March 2009, beginning in the third quarter of 2010. The levels of margin between the future covenant requirements and our current financial status are small. If we are unable to demonstrate our ability to comply with the future loan covenants with adequate margins for adverse deviation prior to March 31, 2010 (the date by which we are required to provide audited financial statements to the lenders under the senior credit agreement), management would conclude there is substantial doubt about our ability to continue as a going concern. Further, the audit opinion that we would receive from our independent registered public accounting firm would include an explanatory paragraph regarding our ability to continue as a going concern. Such an opinion would be in breach of the covenants in the senior credit agreement. If that were to occur, it is highly probable that we would not have sufficient liquidity to repay our bank indebtedness in full or any of our other indebtedness which could also be accelerated as a result of the default.

The following summarizes the financial ratios and amounts that we will be required to meet or maintain under our senior credit agreement in the third quarter of 2010 compared to current levels.

	Covenant Under the Senior Credit Commencing in the Third Quarter of 2010	Balance or Ratio as of September 30, 2009	Pro Forma Margin from Current Levels Assuming Future Requirements were in Effect at September 30, 2009
Aggregate risk-based capital ratio	Greater than or equal to 250%	252%	Reduction to total adjusted capital of approximately $8 million, or an increase to the risk-based capital of approximately $3 million.
Combined statutory capital and surplus	Greater than $1,270 million	$1,308 million	Reduction to combined statutory capital and surplus of approximately $38 million.
Debt to total capitalization ratio	Not more than 30%	26.8%	Reduction to shareholders' equity of approximately $504 million or additional debt of $216 million.
Interest coverage ratio	Greater than or equal to 2.00 to 1	3.12 to 1	Reduction in cash flows to the holding company of approximately $69 million.

These covenants place significant restrictions on the manner in which we may operate our business and our ability to meet these financial covenants may be affected by events beyond our control. If we default under any of these covenants, the lenders could declare all outstanding borrowings, accrued interest and fees to be immediately due and payable, which would have material adverse consequences to us. If the lenders under our senior credit agreement would elect to accelerate the amounts due, the holders of our existing debentures outstanding, new debentures outstanding and Senior Health note could elect to take similar action with respect to those debts. If that were to occur, we would not have sufficient liquidity to repay our indebtedness.

S&P has assigned a "CCC" rating on our senior secured debt with a stable outlook. In S&P's view, an obligation rated "CCC" is currently vulnerable to nonpayment and is dependent upon favorable business, financial and economic conditions to meet its financial commitment on the obligation. S&P has a total of 22 separate categories rating senior debt, ranging from "AAA (Extremely Strong)" to "D (Payment Default)." There are seventeen ratings above our "CCC" rating and four ratings that are below our rating. Moody's has assigned a "Caa1" rating on our senior secured debt with a positive outlook. In Moody's view, an obligation rated "Caa1" is in poor standing and there may be present elements of danger with respect to principal or interest. Moody's has a total of 21 separate categories in which to rate senior debt, ranging from "Aaa (Exceptional)" to "C (Lowest Rated)." There are 16 ratings above our "Caa1" rating and four ratings that are below our rating. A stable outlook by S&P means that a rating is not likely to change over the intermediate term. If we were to require additional capital, either to refinance our existing indebtedness or for any other reason, our current senior debt ratings, as well as economic conditions in the credit markets generally, could severely restrict our access to and the cost of such capital.

The obligations under our senior credit agreement are guaranteed by our current and future domestic subsidiaries, other than our insurance subsidiaries and certain immaterial subsidiaries. CDOC's guarantee under our senior credit agreement is secured by a lien on substantially all of the assets of the guarantors, including the stock of Conseco Life Insurance Company of Texas (“Conseco Life of Texas”) (which is the parent of Bankers Life and Casualty Company, Bankers Conseco Life Insurance Company (“Bankers Conseco Life”) and Colonial Penn), Washington National (which is the parent of Conseco Insurance Company and Conseco Life) and Conseco Health. If we fail to make the required payments, do not meet the financial covenants or otherwise default on the terms of our senior credit agreement, the stock of Conseco Life of Texas, Washington National and Conseco Health could be transferred to the lenders under such agreement. Any such transfer would have a material adverse effect on our business, financial condition and results of operations, and would have a significant adverse effect on the market value of our common stock.

The holders of our outstanding existing debentures have the right to require us to repurchase such existing debentures on September 30, 2010 and our ability to repay or repurchase such existing debentures is limited by the senior credit agreement and other factors; if we are unable to refinance a substantial percentage of our outstanding existing debentures with other debt and/or equity securities, it would have material adverse consequences to our financial condition and results of operations.

Holders of the existing debentures have the right to require us to repurchase their existing debentures for cash on September 30, 2010. As of November 13, 2009, there are $116.5 million in principal amount of existing debentures outstanding. We have commitments from Morgan Stanley to purchase an additional aggregate principal amount of new debentures equal to the aggregate principal amount of existing debentures that holders thereof require us to repurchase on September 30, 2010. If we do not satisfy certain closing conditions on September 30, 2010 or Morgan Stanley defaults on its obligations to purchase the new debentures on such date, we will be unable to repurchase existing debentures and accordingly, we will be in default under the existing debentures. Such failure could also result in an acceleration of our debt under the senior credit agreement and new debentures and we would not have the ability to repay such indebtedness.

As a result of the liquidity issues raised by the right of holders of our existing debentures to require us to repurchase their existing debentures on September 30, 2010 and/or the restrictive covenants and financial ratios contained in our senior credit agreement, we may be required to conclude that there is substantial doubt regarding our ability to continue as a going concern in our financial statements for the year ended December 31, 2009 or any quarter thereafter, resulting in the violation of one or more loan covenant requirements, which, if not cured, would entitle our lenders to declare all outstanding amounts under the senior credit agreement to be due and payable. In such a case, it is highly probable that we would not have sufficient liquidity to repay our bank indebtedness in full or any of our other indebtedness which could also be accelerated as a result of the default.

We are required to assess our ability to continue as a going concern as part of our preparation of financial statements at each quarter-end. The assessment includes, among other things, consideration of our plans to address our liquidity and capital needs during the next 12 months. As described in the previous risk factor, if we do not satisfy certain closing conditions or if Morgan Stanley defaults on its obligations to purchase the new debentures, we may be unable to repurchase any of the $116.5 million par value of existing debentures that are put back to us on September 30, 2010 pursuant to the right of the holders.

In addition, as part of our analysis regarding our ability to continue as a going concern, we are also required to consider our ability to comply with the future loan covenant and financial ratio requirements under our senior credit agreement. Beginning in the third quarter of 2010, several of the financial covenant and minimum ratio requirements currently in place under our senior credit agreement will revert back to the requirements in place prior to the most recent amendment of the agreement. These requirements include maintaining an aggregate risk-based capital ratio of 250%, rather than the current requirement of 200%, and combined statutory capital and surplus of $1.27 billion, rather than the current requirement of $1.1 billion. Our risk-based capital ratio at September 30, 2009 was 252% and our combined capital and surplus was $1.31 billion.

We believe that absent successful completion of the initiatives described below, we may not be able to maintain compliance with the future loan covenant and financial ratio requirements that would be required under our senior credit agreement beginning in the third quarter of 2010 or we may not be able to maintain compliance with adequate margins for adverse developments. We are pursuing initiatives, such as reinsurance transactions, to improve our risk-based capital ratio and our statutory capital and surplus level. We believe that these initiatives would allow us to continue to achieve compliance with the covenant levels that would be required under our senior credit agreement beginning in the third quarter of 2010; however, we can provide no assurance that these initiatives will be successful. The initiatives have not been completed and may require regulatory approval and/or the agreement of counterparties, which are outside our control and, therefore, there can be no assurance that we will be successful in executing them. In addition, the levels of margin between other future requirements, such as the debt to total capitalization ratio and interest coverage ratio, were small at September 30, 2009, and we may not be able to achieve compliance with these requirements in the future.

We may not be required to undertake the above initiatives if: (i) the calculation of our required capital for commercial mortgages based on the use of the Mortgage Experience Adjustment Factor (“MEAF”) is modified by the National Association of Insurance Commissioners (“NAIC”) in a manner that results in a capital requirement that is the same or similar to the requirement calculated pursuant to temporary modifications effective for 2009; (ii) the proposal to modify the calculation of risk-based capital requirements for investments in residential mortgage-backed securities (“RMBS”) is adopted by the NAIC; (iii) we successfully complete the proposed registered public offering of our common stock or other equity offering in the future; and/or (iv) we renegotiate the covenants under the senior credit agreement.

Any modifications to the calculation of risk-based capital requirements for commercial mortgage loans or RMBS would result from a regulatory process over which we have no control and which is not required to take our specific circumstances into account. Accordingly, we can provide no assurances that the modifications to risk-based capital requirements will occur before we are required to assess our ability to continue as a going concern in conjunction with the completion of our future financial statements, as further described below. Even if such modifications occur, the modifications may be effective for a limited period of time which could limit our ability to consider them when assessing our ability to continue as a going concern. In addition, our risk-based capital ratio may suffer future deterioration as a result of future realized losses on investments (including other-than-temporary impairments), decreases in the ratings of certain of our investments, net statutory losses from the operations of our insurance subsidiaries, changes in statutory regulations with respect to risk-based capital requirements or the valuation of assets or liabilities, or for other reasons.

Accordingly, even if we successfully complete the future sales of the new debentures in order to address the going concern issues related to the repurchase right under the existing debentures, in connection with the preparation of our financial statements for subsequent periods, we, or our independent registered public accountants, may conclude that there is not a sufficient likelihood that we will be able to comply with the risk-based capital ratio, statutory capital and surplus and other covenants in our senior credit agreement beginning in the third quarter of 2010. In such event, we may be required to conclude at December 31, 2009, or any subsequent period, that there is substantial doubt regarding our ability to continue as a going concern in our financial statements for subsequent periods. If we were to conclude there was substantial doubt regarding our ability to continue as a going concern in our financial statements for subsequent periods, we may be required to increase the valuation allowance for deferred tax assets, which could result in the violation of one or more loan covenant requirements under the senior credit agreement and we would also be precluded from issuing new debentures sufficient to repurchase all of the remaining outstanding existing debentures.

In addition, our senior credit agreement requires that our annual audited consolidated financial statements be accompanied by an opinion, from a nationally-recognized independent public accounting firm, which does not include an explanatory paragraph regarding our ability to continue as a going concern or similar qualification. As part of the going concern analysis, consideration must be given to, among other factors, our ability to comply with the financial covenant requirements under our senior credit agreement for at least 12 months following the date of the financial statements. If the actions we are taking do not adequately address the liquidity issues with respect to the repurchase right under the existing debentures, or we do not complete the initiatives intended to increase our risk-based capital and other ratios and statutory capital and surplus above the levels required under the senior credit agreement, with adequate margins for possible adverse developments, or we otherwise are not able to demonstrate prior to March 31, 2010 (the date by which we are required to provide audited financial statements to the lenders under the senior credit agreement) that we will be in compliance with the financial covenant requirements in the senior credit agreement for at least 12 months following the date of the financial statements, management would conclude there is substantial doubt about our ability to continue as a going concern and the audit opinion that we would receive from our independent registered public accounting firm would include an explanatory paragraph regarding our ability to continue as a going concern. Such an opinion would be in breach of the covenants in the senior credit agreement. If the circumstances leading to the substantial doubt were not cured prior to the issuance of the audit opinion, or we were unable to obtain a waiver on the going concern opinion requirement within 30 days after notice from the lenders, it would be an event of default entitling the lenders to declare all outstanding borrowings, accrued interest and fees to be due and payable. If an event of default were to occur in connection with the preparation of our financial statements for the year ended December 31, 2009, it is highly probable that we would not have sufficient liquidity to repay our bank indebtedness in full or any of our other indebtedness which could also be accelerated as a result of the default. Such an opinion that there is substantial doubt regarding our ability to continue as a going concern would also preclude subsequent issuances of new debentures.

The purchase agreement for the sale of the new debentures may be terminated by Morgan Stanley, as the initial purchaser, if with respect to any closing date for the offering of the new debentures occurring after the filing of our Form 10-Q for our quarter ended September 30, 2009, any Form 10-Q or 10-K that we are required to file with the SEC on or before October 5, 2010 (or such earlier closing date by which all $293.0 million aggregate principal amount of debentures have been issued and delivered) is not filed on or before the date we are required to file such Form 10-Q or Form 10-K, as the case may be, with the Securities and Exchange Commission ("SEC"); our financial statements included in such Form 10-Q have not been subjected to a completed SAS 100 review or our independent registered public accountants have not issued an audit report on our financial statements included in such as the case may be; and we fail to deliver an officer's certificate to the initial purchaser by the business day following the deadline for filing such Form 10-Q or Form 10-K, as the case may be, stating that our failure to file such Form 10-Q or Form 10-K, as the case may be, within the SEC's deadlines pertains to something other than in connection with the conclusion of our management or our independent registered public accountants that there is a substantial doubt about our ability to continue as a going concern; *provided* , that, if we fail to file such Form 10-Q or Form 10-K, as the case may be, and fail to deliver such officer's certificate, the initial purchaser may, upon prior written notice, elect to terminate the purchase agreement, and thus each forward purchase agreement, prior to such subsequent closing date.

We are a holding company and our liquidity and ability to meet our obligations may be constrained by the ability of our insurance subsidiaries to distribute cash to us.

We and CDOC, a wholly owned subsidiary of ours and a guarantor under our senior credit agreement, are holding companies with no business operations of our own. We and CDOC depend on our operating subsidiaries for cash to make principal and interest payments on debt and to pay administrative expenses and income taxes. We and CDOC receive cash from insurance subsidiaries, consisting of dividends and distributions, principal and interest payments on surplus debentures and tax-sharing payments, as well as cash from our non-insurance subsidiaries consisting of dividends, distributions, loans and advances. A deterioration in the financial condition, earnings or cash flow of our significant subsidiaries for any reason could hinder the ability of such subsidiaries to pay cash dividends or other disbursements to us and/or CDOC, which would limit our ability to meet our debt service requirements and satisfy other financial obligations. In addition, we may elect to contribute additional capital to certain insurance subsidiaries to strengthen their surplus for covenant compliance or regulatory purposes or to provide the capital necessary for growth, in which case it is less likely that our insurance subsidiaries would pay dividends to us. Accordingly, this could limit our ability to meet debt service requirements and satisfy other holding company financial obligations.

We receive dividends and other payments from CDOC and from certain non-insurance subsidiaries. CDOC receives dividends and surplus debenture interest payments from our insurance subsidiaries and payments from certain of our non-insurance subsidiaries. Payments from our non-insurance subsidiaries to us or CDOC, and payments from CDOC to us, do not require approval by any regulatory authority or other third party. However, the payment of dividends or surplus debenture interest by our insurance subsidiaries to CDOC is subject to state insurance department regulations and may be prohibited by insurance regulators if they determine that such dividends or other payments could be adverse to our policyholders or contract holders. Insurance regulations generally permit dividends to be paid from statutory earned surplus of the insurance company without regulatory approval for any 12-month period in amounts equal to the greater of (or in a few states, the lesser of):

- statutory net gain from operations or statutory net income for the prior year, or
- 10% of statutory capital and surplus as of the end of the preceding year.

This type of dividend is referred to as “ordinary dividends.” Any dividends in excess of these levels require the approval of the director or commissioner of the applicable state insurance department. This type of dividend is referred to as “extraordinary dividends.” During the first nine months of 2009, our insurance subsidiaries paid extraordinary dividends of $35.0 million to CDOC. Each of the immediate insurance subsidiaries of CDOC had negative earned surplus at September 30, 2009. Accordingly, any dividend payments from the insurance subsidiaries to the holding company will require the prior approval of the director or commissioner of the applicable state insurance department.

During the next twelve months, we are expecting our insurance subsidiaries to pay approximately $60.0 million of extraordinary dividends to CDOC (subject to approval by the applicable state insurance department). In addition, we are expecting Conseco Life of Texas to pay interest on surplus debentures of $48.8 million in the next twelve months, which will not require additional approval *provided* the risked-based capital ratio of Conseco Life of Texas exceeds 100 percent (but will require prior written notice to the applicable state insurance department).

Furthermore, risk-based capital (“RBC”) requirements and other capital requirements can also limit, in certain circumstances, the ability of our insurance subsidiaries to pay dividends to CDOC. For example, certain states have established minimum capital requirements for insurance companies licensed to do business in their state. These additional requirements generally have not had a significant impact on our insurance subsidiaries, but the capital requirements in Florida have caused Conseco Health to maintain a higher level of capital and surplus than it would otherwise maintain and have thus limited its ability to pay dividends.

In addition, although we are under no obligation to do so, we may elect to contribute additional capital to strengthen the surplus of certain insurance subsidiaries for covenant compliance or regulatory purposes or to provide the capital necessary for growth. Any election regarding the contribution of additional capital to our insurance subsidiaries could affect the ability of our top tier insurance subsidiaries to pay dividends. The ability of our insurance subsidiaries to pay dividends is also impacted by various criteria established by rating agencies to maintain or receive higher ratings and by the capital levels that we target for our insurance subsidiaries, as well as risk-based capital and statutory capital compliance requirements under our senior credit agreement.

In addition, our insurance subsidiary Washington National may not distribute funds to any affiliate or shareholder, without prior notice to the Florida Office of Insurance Regulation, in accordance with an order from the Florida Office of Insurance Regulation.

The following table sets forth the aggregate amount of dividends and other distributions that our insurance subsidiaries paid to us in the nine months ended September 30, 2009 and in each of the last two fiscal years:

	Nine Months Ended September 30, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007
	(dollars in millions)		
Dividends	$ 35.0	$ 20.0	$ 50.0
Surplus debenture interest	47.1	56.4	69.9
Fees for services provided pursuant to service agreements	55.8	83.2	92.9
Tax sharing payments	3.2	1.1	1.9
Total paid	$ 141.1	$160.7	$214.7

There are risks to our business associated with the current economic environment.

Over the past year, the U.S. economy has experienced unprecedented credit and liquidity issues and entered into a recession. Following several years of rapid credit expansion, a sharp contraction in mortgage lending coupled with dramatic declines in home prices, rising mortgage defaults and increasing home foreclosures, resulted in significant write-downs of asset values by financial institutions, including government-sponsored entities and major commercial and investment banks. These write-downs, initially of mortgage-backed securities but spreading to most sectors of the credit markets, and to credit default swaps and other derivative securities, have caused many financial institutions to seek additional capital, to merge with larger and stronger institutions, to be subsidized by the U.S. government and, in some cases, to fail. Reflecting concern about the stability of the financial markets, generally, and the strength of counterparties, many lenders and institutional investors have reduced and, in some cases, ceased to provide funding to borrowers, including other financial institutions. These factors, combined with declining business and consumer confidence and increased unemployment, have precipitated an economic slowdown and fears of a prolonged recession.

Even under more favorable market conditions, general factors such as the availability of credit, consumer spending, business investment, capital market conditions and inflation affect our business. For example, in an economic downturn, higher unemployment, lower family income, lower corporate earnings, lower business investment and lower consumer spending may depress the demand for life insurance, annuities and other insurance products. In addition, this type of economic environment may result in higher lapses or surrenders of policies. Accordingly, the risks we face related to general economic and business conditions are more pronounced given the severity and magnitude of the recent adverse economic and market conditions experienced.

More specifically, our business is exposed to the performance of the debt and equity markets, which have been materially and adversely affected by recent economic developments. Adverse conditions, including but not limited to, a lack of buyers in the marketplace, volatility, credit spread changes, and benchmark interest rate changes, have affected and will continue to impact the liquidity and value of our investments. The manner in which poor debt and equity market performance and changes in interest rates have adversely affected, and will continue to adversely affect, our business, financial condition, growth and profitability include, but are not limited to, the following:

- The value of our investment portfolio has declined, which has resulted in, and may continue to result in, higher realized and/or unrealized losses. For example, in 2008 the value of our investments decreased by $2.5 billion due to net unrealized losses on investments. A widening of credit spreads, such as the market has experienced in 2008, increases the net unrealized loss position of our investment portfolio and may ultimately result in increased realized losses. The value of our investment portfolio can also be affected by illiquidity and by changes in assumptions or inputs we use in estimating fair value. Further, certain types of securities in our investment portfolio, such as asset-backed securities supported by residential and commercial mortgages, have been disproportionately affected. Although the value of our investments increased on an aggregate basis in 2009, there can be no assurance that higher realized and/or unrealized losses will not occur in the future. Continued adverse capital market conditions could result in further realized and/or unrealized losses.
- Changes in interest rates also have other effects related to our investment portfolio. In periods of increasing interest rates, life insurance policy loans, surrenders and withdrawals could increase as policyholders seek investments with higher returns. This could require us to sell invested assets at a time when their prices are depressed by the increase in interest rates, which could cause us to realize investment losses. Conversely, during periods of declining interest rates, we could experience increased premium payments on products with flexible premium features, repayment of policy loans and increased percentages of policies remaining in-force. We would obtain lower returns on investments made with these cash flows. In addition, borrowers may prepay or redeem bonds in our investment portfolio so that we might have to reinvest those proceeds in lower yielding investments. As a consequence of these factors, we could experience a decrease in the spread between the returns on our investment portfolio and amounts credited to policyholders and contract owners, which could adversely affect our profitability.
- The attractiveness of certain of our products may decrease because they are linked to the equity markets and assessments of our financial strength, resulting in lower profits. Increasing consumer concerns about the

returns and features of our products or our financial strength may cause existing customers to surrender policies or withdraw assets, and diminish our ability to sell policies and attract assets from new and existing customers, which would result in lower sales and fee revenues.

These extraordinary economic and market conditions have materially and adversely affected us. It is difficult to predict how long the current economic and market conditions will continue, whether the financial markets will continue to deteriorate and which aspects of our products and/or business will be adversely affected. However, the lack of credit, lack of confidence in the financial sector, increased volatility in the financial markets and reduced business activity are likely to continue to materially and adversely affect our business, financial condition and results of operations.

Our investment portfolio is subject to several risks that may diminish the value of our invested assets and negatively impact our profitability, our financial condition, our liquidity and our ability to continue to comply with the financial covenants under our senior credit agreement.

The value of our investment portfolio is subject to numerous factors, which are difficult to predict, and are often beyond our control. These factors include, but are not limited to, the following:

- changes in interest rates and interest rate spreads can reduce the value of our investments as further discussed in the risk factor below entitled "— Changing interest rates may adversely affect our results of operations;"
- changes in patterns of relative liquidity in the capital markets for various asset classes;
- changes in the ability of issuers to make timely repayments on actively managed fixed maturity investments can reduce the value of our investments. This risk is significantly greater with respect to below-investment grade securities, which comprised 9% of our actively managed fixed maturity investments as of September 30, 2009;
- changes in the estimated timing of receipt of cash flows. For example, our structured security investments, which comprised 17% of our actively managed fixed maturity investments at September 30, 2009, are subject to risks relating to variable prepayment on the assets underlying such securities, such as mortgage loans. When structured securities prepay faster than expected, investment income may be adversely affected due to the acceleration of the amortization of purchase premiums or the inability to reinvest at comparable yields in lower interest rate environments; and
- changes in the relative risk premium required in the market for a given level of risk.

We have recorded writedowns of fixed maturity investments, equity securities and other invested assets as a result of conditions which caused us to conclude a decline in the fair value of the investment was other than temporary as follows (excluding any such amounts included in discontinued operations): $324.2 million in the first nine months of 2009 ($164.3 million of which was recognized through net income and $159.9 million of which was recognized through accumulated other comprehensive loss); $162.3 million in 2008; $105.5 million in 2007 (including $73.7 million of writedowns of investments which were subsequently transferred pursuant to a coinsurance agreement as further discussed in the note to our consolidated financial statements, incorporated by reference in this prospectus, entitled "Summary of Significant Accounting Policies"); and $21.1 million in 2006. Our investment portfolio is subject to the risks of further declines in realizable value. However, we attempt to mitigate this risk through the diversification and active management of our portfolio.

In the event of substantial product surrenders or policy claims, we may choose to maintain highly liquid, and potentially lower-yielding, assets or to sell assets at a loss, thereby eroding the performance of our portfolio.

Because a substantial portion of our operating results are derived from returns on our investment portfolio, significant losses in the portfolio may have a direct and materially adverse impact on our results of operations. In addition, losses on our investment portfolio could reduce the investment returns that we are able to credit to our customers of certain products, thereby impacting our sales and eroding our financial performance. Investment losses may also reduce the capital of our insurance subsidiaries, which may cause us to make additional capital contributions to those subsidiaries or may limit the ability of the insurance subsidiaries to make dividend payments to the holding company. In addition, future investment losses could cause us to be in violation of the financial covenants under our senior credit agreement as described under "— Our senior credit agreement contains various restrictive covenants and required financial ratios that limit our operating flexibility; our current credit ratings may adversely affect our ability to access capital and the cost of such capital, which could have a material adverse effect on our financial condition and results of operations."

Deteriorating financial performance of securities collateralized by mortgage loans and commercial mortgage loans may lead to writedowns, which could have a material adverse effect on our results of operations and financial condition.

Changes in mortgage delinquency or recovery rates, declining real estate prices, changes in credit or bond insurer credit ratings and the quality of service provided by service providers on securities in our portfolios could lead us to determine that writedowns are appropriate in the future.

The determination of the amount of realized investment losses recorded as impairments of our investments is highly subjective and could have a material adverse effect on our operating results and financial condition.

The determination of the amount of realized investment losses recorded as impairments vary by investment type and is based upon our periodic evaluation and assessment of known and inherent risks associated with the respective asset class. Such evaluations and assessments are revised as conditions change and new information becomes available. We update our evaluations regularly and reflect changes in realized investment gains and losses from impairments in operating results as such evaluations are revised. Our assessment of whether unrealized losses are other-than-temporary impairments requires significant judgment and future events may occur, or additional information may become available, which may necessitate future impairments of securities in our portfolio. Historical trends may not be indicative of future other-than-temporary impairments. For example, the cost of our fixed maturity and equity securities is adjusted for impairments in value deemed to be other than temporary in the period in which the determination is made. The assessment of whether impairments have occurred is based on our case-by-case evaluation of the underlying reasons for the decline in fair value.

The determination of the fair value of our fixed maturity securities results in unrealized net investment gains and losses and is highly subjective and could materially impact our operating results and financial condition.

In determining fair value, we generally utilize market transaction data for the same or similar instruments. The degree of management judgment involved in determining fair values is inversely related to the availability of market observable information. The fair value of financial assets and financial liabilities may differ from the amount actually received to sell an asset or the amount paid to transfer a liability in an orderly transaction between market participants at the measurement date. Moreover, the use of different valuation assumptions may have a material effect on the fair values of the financial assets and financial liabilities. As of September 30, 2009, our total unrealized net investment losses before adjustments for insurance intangibles and deferred income taxes were $238 million.

Litigation and regulatory investigations are inherent in our business, may harm our financial strength and reputation and negatively impact our financial results.

Insurance companies historically have been subject to substantial litigation. In addition to the traditional policy claims associated with their businesses, insurance companies face policyholder suits and class action suits. We also face significant risks related to regulatory investigations and actions. The litigation and regulatory investigations we are, have been, or may become subject to include matters related to sales or underwriting practices, payment of contingent or other sales commissions, claim payments and procedures, product design, product disclosure, administration, additional premium charges for premiums paid on a periodic basis, calculation of cost of insurance charges, changes to certain non-guaranteed policy features, denial or delay of benefits, charging excessive or impermissible fees on products and recommending unsuitable products to customers. Certain of our insurance policies allow or require us to make changes based on experience to certain non-guaranteed elements such as cost of insurance charges, expense loads, credited interest rates and policyholder bonuses. We intend to make changes to certain non-guaranteed elements in the future. In some instances in the past, such action has resulted in litigation and similar litigation may arise in the future. Our exposure (including the potential adverse financial consequences of delays or decisions not to pursue changes to certain non-guaranteed elements), if any, arising from any such action cannot presently be determined. Our pending legal and regulatory actions include matters that are specific to us, as well as matters faced by other insurance companies. State insurance departments focus on sales and claims payment practices and product issues in their market conduct examinations. Negotiated settlements of class action and other lawsuits have had a material adverse effect on the business, financial condition and results of operations of our insurance companies. We are, in the ordinary course of our business, a plaintiff or defendant in actions arising out of our insurance business, including class actions and reinsurance disputes, and, from time to time, we are also involved in various governmental and administrative proceedings and investigations and inquiries such as information requests, subpoenas and books and record examinations, from state, federal and other authorities. The ultimate outcome of these lawsuits and investigations, however, cannot be predicted with certainty. In the event of an unfavorable outcome in one or more of these matters, the ultimate liability may be in excess of liabilities we have established and could have a material adverse effect on our business, financial condition, results of operations or cash flows. We could also suffer significant reputational harm as a result of such litigation, regulatory action or investigation which could have a material adverse effect on our business, financial condition, results of operations or cash flows.

The limited historical claims experience on our long-term care products could negatively impact our operations if our estimates prove wrong and we have not adequately set premium rates.

In setting premium rates, we consider historical claims information and other factors, but we cannot predict future claims with certainty. This is particularly applicable to our long-term care insurance products, for which we (as well as other companies selling these products) have relatively limited historical claims experience. Long-term care products tend to have fewer claims than other health products such as Medicare supplement, but when claims are incurred, they tend to be much higher in dollar amount and longer in duration. Also, long-term care claims are incurred much later in the life of the policy than most other supplemental health products. As a result of these traits, it is difficult to appropriately price this product. For our long-term care insurance, actual persistency in later policy durations that is higher than our persistency assumptions could have a negative impact on profitability. If these policies remain in-force longer than we assumed, then we could be required to make greater benefit payments than anticipated when the products were priced. Mortality is a critical factor influencing the length of time a claimant receives long-term care benefits. Mortality continues to improve for the general population, and life expectancy has increased. Improvements in actual mortality trends relative to assumptions may adversely affect our profitability.

Our Bankers Life segment has offered long-term care insurance since 1985. Recently, the claims experience on our Bankers Life long-term care blocks has generally been higher than our pricing expectations and, the persistency of these policies has been higher than our pricing expectations which may result in higher benefit ratios in the future.

After the transfer of Senior Health to an independent trust, we continue to hold long-term care business acquired through previous acquisitions in our Conseco Insurance Group segment. The premiums collected from this block totaled $24.0 million in the first nine months of 2009 and $33.7 million in 2008. The experience on this acquired block has generally been worse than the acquired companies' original pricing expectations. We have received regulatory approvals for numerous premium rate increases in recent years pertaining to these blocks. Even with these rate increases, this block experienced benefit ratios of 182.6% in the first nine months of 2009, 169.6% in 2008, 192.4% in 2007 and 224.4% in 2006. If future claims experience continues to be worse than anticipated as our long-term care blocks continue to age, our financial results could be adversely affected. In addition, rate increases may cause existing policyholders to allow their policies to lapse.

The results of operations of our insurance business will decline if our premium rates are not adequate or if we are unable to obtain regulatory approval to increase rates.

We set the premium rates on our health insurance policies based on facts and circumstances known at the time we issue the policies and on assumptions about numerous variables, including the actuarial probability of a policyholder incurring a claim, the probable size of the claim, maintenance costs to administer the policies and the interest rate earned on our investment of premiums. In setting premium rates, we consider historical claims information, industry statistics, the rates of our competitors and other factors, but we cannot predict with certainty the future actual claims on our products. If our actual claims experience proves to be less favorable than we assumed and we are unable to raise our premium rates to the extent necessary to offset the unfavorable claims experience, our financial results will be adversely affected.

We review the adequacy of our premium rates regularly and file proposed rate increases on our health insurance products when we believe existing premium rates are too low. It is possible that we will not be able to obtain approval for premium rate increases from currently pending requests or from future requests. If we are unable to raise our premium rates because we fail to obtain approval in one or more states, our financial results will be adversely affected. Moreover, in some instances, our ability to exit unprofitable lines of business is limited by the guaranteed renewal feature of the policy. Due to this feature, we cannot exit such business without regulatory approval, and accordingly, we may be required to continue to service those products at a loss for an extended period of time. Most of our long-term care business is guaranteed renewable, and, if necessary rate increases are not approved, we would be required to recognize a loss and establish a premium deficiency reserve. During 2008, the financial statements of three of our subsidiaries prepared in accordance with statutory accounting practices prescribed or permitted by regulatory authorities reflected the establishment of asset adequacy or premium deficiency reserves primarily related to long-term care and annuity policies. Total asset adequacy or premium deficiency reserves for Washington National, Conseco Insurance Company and Bankers Conseco Life were $53.3 million, $20.0 million and $19.5 million, respectively, at December 31, 2008. Due to differences between statutory and GAAP insurance liabilities, we were not required to recognize a similar premium deficiency reserve in our consolidated financial statements prepared in accordance with GAAP. The determination of the need for and amount of asset adequacy reserves is subject to numerous actuarial assumptions, including our ability to change non-guaranteed elements related to certain products consistent with contract provisions.

If, however, we are successful in obtaining regulatory approval to raise premium rates, the increased premium rates may reduce the volume of our new sales and cause existing policyholders to allow their policies to lapse. This could result in a significantly higher ratio of claim costs to premiums if healthier policyholders who get coverage elsewhere allow their policies to lapse, while policies of less healthy policyholders continue in-force. This would reduce our premium income and profitability in future periods.

Most of our supplemental health policies allow us to increase premium rates when warranted by our actual claims experience. These rate increases must be approved by the applicable state insurance departments, and we are required to submit actuarial claims data to support the need for such rate increases. The re-rate application and approval process on supplemental health products is a normal recurring part of our business operations and reasonable rate increases are typically approved by the state departments as long as they are supported by actual claims experience and are not unusually large in either dollar amount or percentage increase. For policy types on which rate increases are a normal recurring event, our estimates of insurance liabilities assume we will be able to raise rates if experience on the blocks warrants such increases in the future.

The benefit ratio for our long-term care products included in the Conseco Insurance Group segment has increased in recent periods and was 182.6% in the first nine months of 2009 and 169.6% during 2008. We will have to continue to raise rates or take other actions with respect to some of these policies or our financial results will be adversely affected.

As a result of higher persistency and resultant higher claims in our long-term care block in the Bankers Life segment than assumed in the original pricing, our premium rates were too low. Accordingly, we have been seeking approval from regulatory authorities for rate increases on portions of this business. Many of the rate increases have been approved by regulators and implemented. However, it is possible that we will not be able to obtain approval for all or a portion of the premium rate increases from currently pending requests or future requests. If we are unable to obtain these rate increases, the profitability of these policies and the performance of this block of business will be adversely affected. In addition, such rate increases may reduce the volume of our new sales and cause existing policyholders to allow their policies to lapse, resulting in reduced profitability.

We have implemented and will continue to implement from time to time and when actuarially justified, premium rate increases in our long-term care business. In some cases, we offer policyholders the opportunity to reduce their coverage amounts or accept non-forfeiture benefits as alternatives to increasing their premium rates.

The financial impact of our rate increase actions could be adversely affected by policyholder anti-selection, meaning that policyholders who are less likely to incur claims may lapse their policies or reduce their benefits, while policyholders who are more likely to incur claims may maintain full coverage and accept their rate increase.

We have identified a material weakness in our internal control over financial reporting, and our business and stock price may be adversely affected if we have not adequately addressed the weakness or if we have other material weaknesses or significant deficiencies in our internal controls over financial reporting.

We did not maintain effective controls over the accounting and disclosure of insurance policy benefits and the liabilities for some of our insurance products. We previously identified a material weakness in internal controls over the actuarial reporting processes related to the design of controls to ensure the completeness and accuracy of certain in-force policies in our Bankers Life segment, Conseco Insurance Group segment, and the long-term care business reflected in discontinued operations. Remediation efforts to enhance controls over the actuarial reporting process continued in 2008 and the control deficiencies in the actuarial reporting process related to the design of controls over the completeness and accuracy of certain in-force policies in our Bankers Life and long-term care business reflected in discontinued operations were remediated, and the new controls were determined to be effective. However, a material weakness relating to the actuarial reporting process in our Conseco Insurance Group segment continued to exist as of September 30, 2009 and our remediation efforts are continuing.

These control deficiencies resulted in adjustments to insurance policy benefits and the liabilities for insurance products in the consolidated financial statements for the years ended December 31, 2006, December 31, 2007 and December 31, 2008 and for the nine months ended September 30, 2009. If we cannot produce reliable financial reports, investors could lose confidence in our reported financial information, the market price of our stock could decline significantly, we may be unable to obtain additional financing to operate and expand our business, and our business and financial condition could be harmed. In addition, we face the risk that, notwithstanding our efforts to date to identify and remedy all material errors in those financial statements, we may discover other errors in the future and that the cost of identifying and remedying the errors and remediating our material weakness in internal controls will be high and have a material adverse effect on our financial condition and results of operations.

Our ability to use our existing NOLs may be materially impaired by this or other transactions, in which case we would also likely breach the debt to equity covenant of our senior credit agreement.

As of September 30, 2009, we had approximately $4.7 billion of federal tax NOLs and $1.2 billion of capital loss carry-forwards, resulting in a gross deferred tax asset of approximately $2.1 billion, expiring in years 2009 through 2029. Section 382 of the Code imposes limitations on a corporation’s ability to use its NOLs when it undergoes a 50% “ownership change” over a three year period. Although we underwent an ownership change in 2003 as the result of our reorganization, the timing and manner in which we will be able to utilize our NOLs is not currently limited by Section 382.

We regularly monitor ownership changes (as calculated for purposes of Section 382) based on available information and, as of September 30, 2009, our analysis indicated that we were below the 50% ownership change threshold that would limit our ability to utilize our NOLs. However, taking into account the common stock issuance to Paulson described above and this offering of our common stock, we expect to be close to the 50% ownership change level. As a result, any future transaction or transactions and the timing of such transaction or transactions could trigger an additional ownership change under Section 382. Such transactions may include, but are not limited to, additional repurchases or issuances of common stock (including upon conversion of our existing debentures, conversion of the new debentures (including conversion pursuant to a make whole adjustment event), or exercise of the warrants sold to Paulson, as discussed above), or acquisitions or sales of shares of our stock by certain holders of our shares, including persons who have held, currently hold or may accumulate in the future 5% or more of our outstanding common stock (“5% Holders”) for their own account. In January 2009, our board of directors adopted a Section 382 Rights Agreement, which is designed to protect shareholder value by preserving the value of our NOLs. See “Description of Capital Stock — Section 382 Rights Agreement.” The rights agreement provides a strong economic disincentive for any one shareholder knowingly, and without the approval of our board, to become a 5% Holder and for any of our existing 5% Holders to increase their ownership stake by more than 1% of the shares of our common stock then outstanding — and thus limits the uncertainty with regard to the potential for future ownership changes. However, despite the strong economic disincentives of the Section 382 Rights Agreement, shareholders may elect to increase their ownership, including beyond the limits set by the rights agreement, and thus adversely affect our ownership shift calculations.

Additionally, based on the advice of our tax advisor, we have taken the position that, upon issuance, the new debentures are not treated as stock for purposes of Section 382 and do not trigger an ownership change. However, the IRS may not agree with our position. If the IRS were to succeed in challenging this position, the issuance of the new debentures would push us above the 50% ownership change level described above and trigger an ownership change under Section 382.

If an ownership change were to occur for purposes of Section 382, we would be required to calculate an annual limitation on the amount of our taxable income that may be offset by NOLs arising prior to such ownership change. That limitation would apply to all of our current NOLs. The annual limitation would be calculated based upon the fair market value of our equity at the time of such ownership change, multiplied by a federal long-term tax exempt rate (currently 4.33%), and the annual restriction would eliminate our ability to use a substantial portion of our NOLs to offset future taxable income. Additionally, the writedown of our deferred tax assets that would occur in the event of an ownership change for purposes of Section 382 would likely cause us to breach the debt to equity covenant of our senior credit agreement.

The value of our deferred tax assets may be impaired to the extent our future profits are less than we have projected; and such impairment may have a material adverse effect on our results of operations and our financial condition.

As of September 30, 2009, we had deferred tax assets of $1.1 billion. In the first nine months of 2009, we increased the deferred tax valuation allowance by $33.7 million, of which $20.0 million related to our reassessment of the recovery of our deferred tax assets following the completion of a reinsurance transaction in the third quarter of 2009; and $13.7 million was associated with capital loss carry-forwards recognized in 2009. During 2008, we increased the deferred tax valuation allowance by $856.2 million. The $856.2 million increase to our valuation allowance during 2008 included increases of:

- $452 million of deferred tax assets related to Senior Health, which was transferred to an independent trust during 2008;
- $298 million related to our reassessment of the recovery of our deferred tax assets in accordance with GAAP, following the additional losses incurred as a result of the transfer of Senior Health to an independent trust;
- $60 million related to the recognition of additional realized investment losses for which we are unlikely to receive any tax benefit; and
- $45 million related to the projected additional future expense following the modifications to our senior credit agreement.

Our income tax expense includes deferred income taxes arising from temporary differences between the financial reporting and tax bases of assets and liabilities, capital loss carry-forwards and NOLs. We evaluate the realizability of our deferred income tax assets and assess the need for a valuation allowance on an ongoing basis. In evaluating our deferred income tax assets, we consider whether it is more likely than not that the deferred income tax assets will be realized. The ultimate realization of our deferred income tax assets depends upon generating sufficient future taxable income during the periods in which our temporary differences become deductible and before our capital loss carry-forwards and NOLs expire. Additionally, the value of our deferred tax assets would be significantly impaired if we were to undergo a 50% “ownership change” for purposes of Section 382 of the Code, as discussed under “— Our ability to use our existing NOLs may be materially impaired by this or other transactions, in which case we would also likely breach the debt to equity covenant of our senior credit agreement” above. Our assessment of the realizability of our deferred income tax assets requires significant judgment. However, recovery is dependent on achieving such projections and failure to do so would result in an increase in the valuation allowance in a future period. Any future increase in the valuation allowance would result in additional income tax expense which could have a material adverse effect upon our earnings in the future, and reduce shareholders’ equity.

Concentration of our investment portfolios in any particular sector of the economy or type of asset may have an adverse effect on our financial position or results of operations.

The concentration of our investment portfolios in any particular industry, group of related industries, asset classes (such as residential mortgage-backed securities and other asset-backed securities), or geographic area could have an adverse effect on its value and performance and, consequently, on our results of operations and financial position. While we seek to mitigate this risk by having a broadly diversified portfolio, events or developments that have a negative impact on any particular industry, group of related industries or geographic area may have an adverse effect on the investment portfolios to the extent that the portfolios are concentrated.

Our business is subject to extensive regulation, which limits our operating flexibility and could result in our insurance subsidiaries being placed under regulatory control or otherwise negatively impact our financial results.

Our insurance business is subject to extensive regulation and supervision in the jurisdictions in which we operate. Our insurance subsidiaries are subject to state insurance laws that establish supervisory agencies. Such agencies have broad administrative powers including the power to:

- grant and revoke business licenses;
- regulate and supervise sales practices and market conduct;
- establish guaranty associations;
- license agents;
- approve policy forms;
- approve premium rates for some lines of business such as long-term care and Medicare supplement;
- establish reserve requirements;
- prescribe the form and content of required financial statements and reports;
- determine the reasonableness and adequacy of statutory capital and surplus;
- perform financial, market conduct and other examinations;
- define acceptable accounting principles; and
- regulate the types and amounts of permitted investments.

The regulations issued by state insurance agencies can be complex and subject to differing interpretations. If a state insurance regulatory agency determines that one of our insurance company subsidiaries is not in compliance with applicable regulations, the subsidiary is subject to various potential administrative remedies including, without limitation, monetary penalties, restrictions on the subsidiary's ability to do business in that state and a return of a portion of policyholder premiums. In addition, regulatory action or investigations could cause us to suffer significant reputational harm, which could have an adverse effect on our business, financial condition and results of operations.

Our insurance subsidiaries are also subject to RBC requirements. These requirements were designed to evaluate the adequacy of statutory capital and surplus in relation to investment and insurance risks associated with asset quality, mortality and morbidity, asset and liability matching and other business factors. The requirements are used by states as an early warning tool to discover companies that may be weakly-capitalized for the purpose of initiating regulatory action. Generally, if an insurer's RBC falls below specified levels, the insurer is subject to different degrees of regulatory action depending upon the magnitude of the deficiency. The 2008 statutory annual statements filed with the state insurance regulators of each of our insurance subsidiaries reflected total adjusted capital in excess of the levels subjecting the subsidiaries to any regulatory action.

Our reserves for future insurance policy benefits and claims may prove to be inadequate, requiring us to increase liabilities which results in reduced net income and shareholders' equity.

Liabilities for insurance products are calculated using management's best judgments, based on our past experience and standard actuarial tables of mortality, morbidity, lapse rates, investment experience and expense levels. For our health insurance business, we establish an active life reserve, a liability for due and unpaid claims, claims in the course of settlement, incurred but not reported claims, and a reserve for the present value of amounts on incurred claims not yet due. We establish reserves based on assumptions and estimates of factors either established at the fresh-start date for business in-force then or considered when we set premium rates for business written after that date.

Many factors can affect these reserves and liabilities, such as economic and social conditions, inflation, hospital and pharmaceutical costs, changes in life expectancy, regulatory actions, changes in doctrines of legal liability and extra-contractual damage awards. Therefore, the reserves and liabilities we establish are necessarily based on estimates, assumptions, industry data and prior years' statistics. It is possible that actual claims will materially exceed our reserves and have a material adverse effect on our results of operations and financial condition. We have incurred significant losses beyond our estimates as a result of actual claim costs and persistency of our long-term care business included in our Bankers Life and Conseco Insurance Group segments. The benefit ratios for our long-term care products in our Bankers Life segment were 105.5% in the first nine months of 2009 and 107.6%, 102.0% and 94.5% in 2008, 2007 and 2006, respectively. The benefit ratios for our long-term care products in our Conseco Insurance Group segment were 182.6% in the first nine months of 2009 and 169.6%, 192.4% and 224.4% in 2008, 2007 and 2006, respectively. Our financial performance depends significantly upon the extent to which our actual claims experience and future expenses are consistent with the assumptions we used in setting our reserves. If our assumptions with respect to future claims are incorrect, and our reserves prove to be insufficient to cover our actual losses and expenses, we would be required to increase our liabilities, and our financial results could be adversely affected.

We may be required to accelerate the amortization of the cost of policies produced or the value of policies in-force at the Effective Date.

Cost of policies produced represent the costs that vary with, and are primarily related to, producing new insurance business. The value of policies in-force at the Effective Date represents the value assigned to the right to receive future cash flows from contracts existing at September 10, 2003, the effective date of our predecessor company's plan of reorganization. The balances of these accounts are amortized over the expected lives of the underlying insurance contracts. On an ongoing basis, we test these accounts recorded on our balance sheet to determine if these amounts are recoverable under current assumptions. In addition, we regularly review the estimates and assumptions underlying these accounts for those products for which we amortize the cost of policies produced or the value of insurance in-force at the Effective Date in proportion to gross profits or gross margins. If facts and circumstances change, these tests and reviews could lead to reduction in the balance of those accounts that could have an adverse effect on the results of our operations and our financial condition.

Our operating results will suffer if policyholder surrender levels differ significantly from our assumptions.

Surrenders of our annuities and life insurance products can result in losses and decreased revenues if surrender levels differ significantly from assumed levels. At December 31, 2008, approximately 20% of our total insurance liabilities, or approximately $4.8 billion, could be surrendered by the policyholder without penalty. The surrender charges that are imposed on our fixed rate annuities typically decline during a penalty period, which ranges from five to twelve years after the date the policy is issued. Surrender charges are eliminated after the penalty period. Surrenders and redemptions could require us to dispose of assets earlier than we had planned, possibly at a loss. Moreover, surrenders and redemptions require faster amortization of either the acquisition costs or the commissions associated with the original sale of a product, thus reducing our net income. We believe policyholders are generally more likely to surrender their policies if they believe the issuer is having financial difficulties, or if they are able to reinvest the policy's value at a higher rate of return in an alternative insurance or investment product.

Changing interest rates may adversely affect our results of operations.

Our profitability is affected by fluctuating interest rates. While we monitor the interest rate environment and, in some cases, employ hedging strategies to mitigate such impact, our financial results could be adversely affected by changes in interest rates. Our spread-based insurance and annuity business is subject to several inherent risks arising from movements in interest rates, especially if we fail to anticipate or respond to such movements. First, interest rate changes can cause compression of our net spread between interest earned on investments and interest credited to customer deposits. Our ability to adjust for such a compression is limited by the guaranteed minimum rates that we must credit to policyholders on certain products, as well as the terms on most of our other products that limit reductions in the crediting rates to pre-established intervals. As of December 31, 2008, approximately 41% of our insurance liabilities were subject to interest rates that may be reset annually; 40% had a fixed explicit interest rate for the duration of the contract; 14% had credited rates that approximate the income we earn; and the remainder had no explicit interest rates. Second, if interest rate changes produce an unanticipated increase in surrenders of our spread-based products, we may be forced to sell invested assets at a loss in order to fund such surrenders. Third, the profits from many non-spread-based insurance products, such as long-term care policies, can be adversely affected when interest rates decline because we may be unable to reinvest the cash from premiums received at the interest rates anticipated when we sold the policies. Finally, changes in interest rates can have significant effects on the market value and performance of our investments in general and specifically on the performance of our structured securities portfolio, including collateralized mortgage obligations, as a result of changes in the prepayment rate of the loans underlying such securities.

We employ asset/liability strategies that are designed to mitigate the effects of interest rate changes on our profitability but do not currently extensively employ derivative instruments for this purpose. We may not be successful in implementing these strategies and achieving adequate investment spreads.

We use computer models to simulate our cash flows expected from existing business under various interest rate scenarios. These simulations help us measure the potential gain or loss in fair value of our interest-sensitive financial instruments. With such estimates, we seek to manage the relationship between the duration of our assets and the expected duration of our liabilities. When the estimated durations of assets and liabilities are similar, exposure to interest rate risk is minimized because a change in the value of assets should be largely offset by a change in the value of liabilities. At December 31, 2008, the duration of our fixed maturity investments (as modified to reflect prepayments and potential calls) was approximately 7.6 years, and the duration of our insurance liabilities was approximately 7.8 years. We estimate that our fixed maturity securities and short-term investments, net of corresponding changes in insurance acquisition costs, would decline in fair value by approximately $185 million if interest rates were to increase by 10% from rates as of December 31, 2008. This compares to a decline in fair value of $490 million based on amounts and rates at December 31, 2007. The calculations involved in our computer simulations incorporate numerous assumptions, require significant estimates and assume an immediate change in interest rates without any management reaction to such change. Consequently, potential changes in the values of our financial instruments indicated by the simulations will likely be different from the actual changes experienced under given interest rate scenarios, and the differences may be material. Because we actively manage our investments and liabilities, our net exposure to interest rates can vary over time.

General market conditions affect investments and investment income.

The performance of our investment portfolio depends in part upon the level of and changes in interest rates, risk spreads, real estate values, market volatility, the performance of the economy in general, the performance of the specific obligors included in our portfolio and other factors that are beyond our control. Changes in these factors can affect our net investment income in any period, and such changes can be substantial.

Financial market conditions can also affect our realized and unrealized investment gains (losses). During periods of rising interest rates, the fair values of our investments will typically decline. Conversely, during periods of falling interest rates, the fair values of our investments will typically rise.

Our results of operations may be negatively impacted if our initiatives to restructure our insurance operations are unsuccessful or if our planned conversions result in valuation differences.

Our Conseco Insurance Group segment has experienced decreases in premium revenues and new annualized premiums in recent years as well as expense levels that exceed product pricing expense assumptions. We have implemented several initiatives to improve operating results, including: (i) focusing sales efforts on higher margin products; (ii) reducing operating expenses by eliminating or reducing marketing costs of certain products; (iii) streamlining administrative procedures and reducing personnel; and (iv) increasing retention rates on our more profitable blocks of in-force business. Many of our initiatives address issues resulting from the substantial number of acquisitions of our predecessor company. Between 1982 and 1997, our predecessor company completed 19 transactions involving the acquisitions of 44 separate insurance companies. Our efforts involve improvements to our policy administration procedures and significant systems conversions, such as the elimination of duplicate processing systems for similar business. These initiatives may result in unforeseen expenses, complications or delays, and may be inadequate to address all issues. Some of these initiatives have only recently begun to be executed, and may not ultimately be successfully completed. While our future operating performance depends greatly on the success of these efforts, even if we successfully implement these measures, they alone may not sufficiently improve our results of operations.

Conversions to new systems can result in valuation differences between the prior system and the new system. We have recognized such differences in the past. Our planned conversions could result in future valuation adjustments, and these adjustments may have a material adverse effect on future earnings.

Our financial position may be negatively impacted if we are unable to achieve our goals.

We have identified a number of goals, including maintaining strong growth at Bankers Life, improving earnings stability and reducing volatility and reducing our enterprise exposure to long-term care business. The most consistent components of our operations in recent years have been Bankers Life and Colonial Penn, and the continued growth and profitability of those businesses is critical to our overall results. The failure to achieve these and our other goals could have a material adverse effect on our results of operations, financial condition and the price of our common stock.

A failure to improve the financial strength ratings of our insurance subsidiaries or a decline from the current ratings could cause us to experience decreased sales, increased agent attrition and increased policyholder lapses and redemptions.

An important competitive factor for our insurance subsidiaries is the ratings they receive from nationally recognized rating organizations. Agents, insurance brokers and marketing companies who market our products, and prospective policyholders view ratings as an important factor in evaluating an insurer’s products. This is especially true for annuity, interest-sensitive life insurance and long-term care products. The current financial strength ratings of our primary insurance subsidiaries from A.M. Best, S&P and Moody’s are “B (Fair),” “BB — ” and “Ba2,” respectively. A.M. Best has 16 possible ratings. There are six ratings above our “B” rating and nine ratings that are below our rating. S&P has 21 possible ratings. There are twelve ratings above our “BB — ” rating and eight ratings that are below our rating. Moody’s has 21 possible ratings. There are 11 ratings above our “Ba2” rating and nine ratings that are below our rating. Most of our competitors have higher financial strength ratings and, to be competitive over the long term, we believe it is critical to achieve improved ratings.

If we fail to achieve ratings upgrades from A.M. Best or if our ratings are further downgraded, we may experience declining sales of certain of our insurance products, defections of our independent and career sales force, and increased policies being redeemed or allowed to lapse. These events would adversely affect our financial results, which could then lead to ratings downgrades.

Competition from companies that have greater market share, higher ratings, greater financial resources and stronger brand recognition, may impair our ability to retain existing customers and sales representatives, attract new customers and sales representatives and maintain or improve our financial results.

The supplemental health insurance, annuity and individual life insurance markets are highly competitive. Competitors include other life and accident and health insurers, commercial banks, thrifts, mutual funds and broker-dealers.

Our principal competitors vary by product line. Our main competitors for agent sold long-term care insurance products include Genworth Financial, John Hancock Financial Services and MetLife. Our main competitors for agent sold Medicare supplement insurance products include United HealthCare, Blue Cross and Blue Shield Plans, Mutual of Omaha and United American.

In some of our product lines, such as life insurance and fixed annuities, we have a relatively small market share. Even in some of the lines in which we are one of the top five writers, our market share is relatively small. For example, while our Bankers Life segment ranked fourth in annualized premiums of individual long-term care insurance in 2008 with a market share of approximately 4.6%, the top three writers of individual long-term care insurance had annualized premiums with a combined market share of approximately 57% during the period. In addition, while our Bankers Life segment was ranked fourth in direct premiums earned for individual Medicare supplement insurance in 2008 with a market share of 3.7%, the top writer of individual Medicare supplement insurance had direct premiums with a market share of 16.1% during the period.

Virtually all of our major competitors have higher financial strength ratings than we do. Many of our competitors are larger companies that have greater capital, technological and marketing resources and have access to capital at a lower cost. Recent industry consolidation, including business combinations among insurance and other financial services companies, has resulted in larger competitors with even greater financial resources. Furthermore, changes in federal law have narrowed the historical separation between banks and insurance companies, enabling traditional banking institutions to enter the insurance and annuity markets and further increase competition. This increased competition may harm our ability to maintain or improve our profitability.

In addition, because the actual cost of products is unknown when they are sold, we are subject to competitors who may sell a product at a price that does not cover its actual cost. Accordingly, if we do not also lower our prices for similar products, we may lose market share to these competitors. If we lower our prices to maintain market share, our profitability will decline.

We must attract and retain sales representatives to sell our insurance and annuity products. Strong competition exists among insurance and financial services companies for sales representatives. We compete for sales representatives primarily on the basis of our financial position, financial strength ratings, support services, compensation, products and product features. Our competitiveness for such agents also depends upon the relationships we develop with these agents. Our predecessor company’s bankruptcy continues to be an adverse factor in developing relationships with certain agents. If we are unable to attract and retain sufficient numbers of sales representatives to sell our products, our ability to compete and our revenues and profitability would suffer.

Volatility in the securities markets, and other economic factors, may adversely affect our business, particularly our sales of certain life insurance products and annuities.

Fluctuations in the securities markets and other economic factors may adversely affect sales and/or policy surrenders of our annuities and life insurance policies. For example, volatility in the equity markets may deter potential purchasers from investing in equity-indexed annuities and may cause current policyholders to surrender their policies for the cash value or to reduce their investments. In addition, significant or unusual volatility in the general level of interest rates could negatively impact sales and/or lapse rates on certain types of insurance products.

Federal and state legislation could adversely affect the financial performance of our insurance operations.

During recent years, the health insurance industry has experienced substantial changes, including those caused by healthcare legislation. Recent federal and state legislation and pending legislative proposals concerning healthcare reform contain features that could severely limit, or eliminate, our ability to vary pricing terms or apply medical underwriting standards to individuals, thereby potentially increasing our benefit ratios and adversely impacting our financial results. In particular, Medicare reform could affect our ability to price or sell our products or profitably maintain our blocks in-force. For example, the Medicare Advantage program provides incentives for health plans to offer managed care plans to seniors. The growth of managed care plans under this program could decrease sales of the traditional Medicare supplement products we sell.

Proposals currently pending in Congress and some state legislatures may also affect our financial results. These proposals include the implementation of minimum consumer protection standards in all long-term care policies, including: guaranteed premium rates; protection against inflation; limitations on waiting periods for pre-existing conditions; setting standards for sales practices for long-term care insurance; and guaranteed consumer access to information about insurers, including information regarding lapse and replacement rates for policies and the percentage of claims denied. Enactment of any proposal that would limit the amount we can charge for our products, such as guaranteed premium rates, or that would increase the benefits we must pay, such as limitations on waiting periods, or that would otherwise increase the costs of our business, could adversely affect our financial results.

Tax law changes could adversely affect our insurance product sales and profitability.

We sell deferred annuities and some forms of life insurance that are attractive, in part, because policyholders generally are not subject to U.S. federal income tax on increases in policy values until some form of distribution is made. Congress has enacted legislation to lower marginal tax rates, to reduce the U.S. federal estate tax gradually over a ten-year period (with total elimination of the U.S. federal estate tax in 2010) and to increase contributions that may be made to individual retirement accounts and 401(k) accounts. While these tax law changes are scheduled to expire at the beginning of 2011 absent future congressional action, they could in the interim diminish the appeal of our annuity and life insurance products because the benefit of tax deferral is lessened when tax rates are lower and because fewer people may purchase these products when they can contribute more to individual retirement accounts and 401(k) accounts. Additionally, Congress has considered, from time to time, other possible changes to U.S. tax laws, including elimination of the tax deferral on the accretion of value within certain annuities and life insurance products. Such a change would make these products less attractive to prospective purchasers and therefore would likely cause our sales of these products to decline.

We face risk with respect to our reinsurance agreements.

We transfer exposure to certain risks to others through reinsurance arrangements. Under these arrangements, other insurers assume a portion of our losses and expenses associated with reported and unreported claims in exchange for a portion of policy premiums. The availability, amount and cost of reinsurance depend on general market conditions and may vary significantly. As of December 31, 2008, our reinsurance receivables totaled $3.3 billion. Our ceded life insurance in-force totaled $13.8 billion. Our nine largest reinsurers accounted for 88% of our ceded life insurance in-force. We face credit risk with respect to reinsurance. When we obtain reinsurance, we are still liable for those transferred risks if the reinsurer cannot meet its obligations. Therefore, the inability of our reinsurers to meet their financial obligations may require us to increase liabilities, thereby reducing our net income and shareholders' equity.

Our insurance subsidiaries may be required to pay assessments to fund other companies' policyholder losses or liabilities and this may negatively impact our financial results.

The solvency or guaranty laws of most states in which an insurance company does business may require that company to pay assessments up to certain prescribed limits to fund policyholder losses or liabilities of other insurance companies that become insolvent. Insolvencies of insurance companies increase the possibility that these assessments may be required. These assessments may be deferred or forgiven under most guaranty laws if they would threaten an insurer's financial strength and, in certain instances, may be offset against future premium taxes. We cannot estimate the likelihood and amount of future assessments. Although past assessments have not been material, if there were a number of large insolvencies, future assessments could be material and could have a material adverse effect on our operating results and financial position.

Risks Related to this Offering and Ownership of Our Common Stock

The trading price of our common stock may fluctuate significantly, and holders could lose all or part of their investment.

The trading price of our common stock has been subject to significant fluctuations and volatility and may continue to fluctuate for various reasons which include:

- our quarterly or annual earnings or those of other companies in our industry;
- liquidity and credit agreement covenant compliance concerns;
- the public's reaction to our press releases, our other public announcements and our filings with the SEC;
- changes in earnings estimates or recommendations by research analysts who track our common stock or the stocks of other companies in our industry;
- new laws or regulations or new interpretations of laws or regulations applicable to our business;
- changes in accounting standards, policies, guidance, interpretations or principles;
- changes in general conditions in the U.S. and global economies or financial markets, including those resulting from war, incidents of terrorism or responses to such events; and
- sales of common stock by our directors and executive officers.

In addition, the stock markets have recently experienced extreme price and volume fluctuations. This volatility has had a significant impact on the market price of securities issued by many companies, including companies in the insurance industry. The changes frequently appear to occur without regard to the operating performance of these companies. The price of our common stock could drop materially based upon factors that have little or nothing to do with us.

In addition to the factors described above, the price of our common stock also could be affected by possible sales of our common stock by investors who view our new debentures as a more attractive means of equity participation in our company and by hedging or arbitrage activity involving our common stock as a result of the issuance of the new debentures.

The liquidity of the market for shares of our common stock and the prices at which our stock trades will depend upon the amount outstanding, the number of holders thereof, the interest of securities dealers in maintaining a market in the securities and other factors beyond our control.

Issuance of additional common stock, or securities convertible into common stock, or preferred stock could adversely affect holders of our common stock.

We may issue additional shares of common stock in the future, either in subsequent offerings, in connection with future acquisitions or business combinations or upon exercise, conversion or exchange of other securities. We may also issue additional securities that are convertible, exchangeable or exercisable into shares of our common stock. The number of shares of common stock that may be issuable, with or without stockholder approval, may be significant.

After the completion of this offering, we will have outstanding shares of common stock, or shares if the underwriters exercise in full their option to purchase additional shares. This number includes shares that we are selling in this offering, assuming the underwriters exercise in full their option to purchase additional shares, which may be resold immediately in the public market.

We issued $176.5 million aggregate principal amount of new debentures on November 13, 2009 in the initial closing of the new debenture offering and we have a commitment from Morgan Stanley, pursuant to the purchase agreement, to purchase up to $116.5 million additional aggregate principal amount of new debentures. The new debentures are not convertible, except under limited circumstances, prior to June 30, 2013. Commencing on June 30, 2013, the new debentures will be convertible into shares of our common stock at the option of the holder at any time, subject to certain exceptions and subject to our right to terminate such conversion rights under certain circumstances relating to the sale price of our common stock. Initially, the new debentures will be convertible into 182.1494 shares of our common stock for each $1,000 principal amount of new debentures (or, approximately 53.4 million shares of common stock in the aggregate), which conversion rate is subject to adjustment following the occurrence of certain events in accordance with the terms of the indenture governing the new debentures. On November 13, 2009, we issued to Paulson warrants exercisable into 5.0 million shares of common stock. The warrants will have an exercise price of $6.50 per share of common stock, subject to customary anti-dilution adjustments. The warrants are not exercisable, except under limited circumstances, prior to June 30, 2013. Commencing on June 30, 2013, the warrants will be exercisable for shares of our common stock at the option of the holder at any time, subject to certain exceptions.

Moreover, our board of directors is authorized to issue preferred stock without any action on the part of our stockholders. Our board of directors also has the power, without stockholder approval, to set the terms of any such preferred stock that may be issued, including voting rights, conversion rights, dividend rights, preferences over our common stock with respect to dividends or if we liquidate, dissolve or wind up our business and other terms. If we issue cumulative preferred stock in the future, including shares of our Series A Junior Participating Preferred Stock that are issuable upon exercise of outstanding preferred share purchase rights distributed in connection with our Section 382 Rights Agreement, that has preference over our common stock with respect to the payment of dividends or upon our liquidation, dissolution or winding up, or if we issue preferred stock with voting rights that dilute the voting power of our common stock, the market price of our common stock could decrease.

We also consider from time to time various strategic alternatives that could involve issuances of additional common stock, including but not limited to acquisitions and business combinations, but do not currently have any definitive plans to enter into any of these transactions.

The issuance of additional common stock or securities convertible into common stock would result in dilution of existing stockholders’ equity interests in us. Issuances of substantial amounts of our common stock, or the perception that such issuances could occur, may adversely affect prevailing market prices for our common stock.

The market price of our common stock could be affected by the substantial number of shares that are eligible for future sale.

As of November 10, 2009, we had 185,563,716 shares of common stock outstanding, including 677,500 shares of restricted common stock issued but not yet vested under our amended and restated long-term incentive plan but excluding 23,709,936 shares reserved for issuance pursuant to our stock plans. The market price of our common stock may be adversely affected by future issuances of common stock, including those resulting from conversions by holders of our new debentures, our existing debentures or the warrants issued to Paulson, which could decrease our common stock price. In addition, the possibility that shares of our common stock will be issued in connection with any conversion of the new debentures or the existing debentures, the exercise of the warrants issued to Paulson or pursuant to our stock plans may encourage short selling by market participants because the issuance of shares of common stock pursuant to the terms of those securities or plans could depress the price of our common stock.

We have no plans to pay dividends on our common stock, and you may not receive funds without selling your common stock.

We have not declared or paid any cash dividends on our common stock since our emergence from bankruptcy, nor do we expect to pay any cash dividends on our common stock for the foreseeable future. We currently intend to retain any additional future earnings to finance our operations and growth. Any future determination to pay cash dividends on our common stock will be at the discretion of our board of directors and will be dependent on our earnings, financial condition, operating results, capital requirements, any contractual restrictions, regulatory and other restrictions on the payment of dividends by our subsidiaries to us, and other factors that our board of directors deems relevant. In addition, our senior credit agreement contains limitations on our ability to declare and pay cash dividends. Furthermore, as a condition of the order from the Pennsylvania Insurance Department approving the transfer of the stock of Senior Health, we agreed that we would not pay cash dividends on our common stock while any portion of the $125.0 million Senior Health note remained outstanding.

Accordingly, you may have to sell some or all of your common stock in order to generate cash from your investment. You may not receive a gain on your investment when you sell our common stock and may lose the entire amount of your investment.

The concentration of our capital stock ownership with Paulson could limit your ability to influence corporate matters.

After giving effect to the private sale of common stock described in "Summary — Recent Developments — Issuance of Common Stock and Warrants to Paulson", Paulson has informed us that it owns approximately 9.9% of our outstanding shares of common stock, including shares that Paulson previously acquired in open market transactions. In addition, assuming we sell shares in this offering and Paulson obtained required regulatory approvals, Paulson would own approximately % of our outstanding shares of common stock if Paulson converts all of the $200 million aggregate principal amount of debentures it committed to purchase (of which it has already purchased $120.5 million aggregate principal amount) and exercises all of the 5.0 million warrants it purchased. Pursuant to the investor rights agreement, if Paulson acquires more than 19.9% of our outstanding shares of common stock, Paulson has agreed, and will cause its affiliates to agree, not to vote shares collectively exceeding 19.9% of our voting power at any meeting of our stockholders or in connection with any written consent of our stockholders, unless otherwise consented by our board of directors. In such case, Paulson has also agreed to refrain from taking certain actions with respect to our ownership and management, including, among other things:

- conducting or participating in transactions to acquire control, either by accumulation of shares, solicitation of proxies, or otherwise;
- proposing matters for stockholder consideration;
- seeking to nominate or remove any director;
- granting proxies with respect to the vote of any of our equity securities;
- forming, joining or participating in a "group" (as such term is used in Section 13(d)(3) of the Exchange Act) with respect to our equity securities, or entering into a voting trust or voting agreement; and
- taking any other action to seek to control us, our board or our management, including through public statements.

Notwithstanding these limitations, Paulson still owns a concentration of our capital stock which could limit your ability to influence certain corporate matters and, as a result, we may not take actions that our other stockholders view as beneficial. As a result, the market price of our common stock could be adversely affected.

We have adopted anti-takeover provisions that could make it more difficult for a third party to acquire us, even if the acquisition would be favorable to holders of our common stock.

Provisions in our amended and restated certificate of incorporation and our amended and restated by-laws may make it more difficult and expensive for investors to acquire us, even if doing so would be beneficial to our shareholders. In addition, we adopted our Section 382 Rights Agreement in January 2009, which could make it considerably more difficult or costly for a person or group to acquire control of us in a transaction that our board of directors opposes. These provisions, alone or in combination with each other, may discourage transactions involving actual or potential changes of control, including transactions that otherwise could involve payment of a premium over prevailing market prices to holders of our common stock, or could limit the ability of our shareholders to approve transactions that they may deem to be in their best interests.

State insurance laws may delay, deter or prevent a takeover attempt that may be in the best interests of stockholders.

State insurance laws include provisions that may delay, deter or prevent a takeover attempt that may be in the best interests of stockholders. For example, under applicable state insurance holding company laws and regulations, no person may acquire control of us, and thus indirect control of our insurance subsidiaries, unless the person has provided required information to, and the acquisition is approved or not disapproved by, the appropriate insurance regulatory authorities. Under applicable laws and regulations, any person acquiring, directly by stock ownership or indirectly (by revocable proxy or otherwise) 10% or more of the voting power of our capital stock would be presumed to have acquired control of us, and a person who beneficially acquires 10% or more of our shares of common stock without obtaining the approval of the appropriate state insurance commissioners would be in violation of state insurance holding company statutes and would be subject to injunctive action requiring disposition or seizure of the shares and prohibiting the voting of such shares, as well as other action determined by the state insurance commissioners, unless the appropriate insurance regulatory authorities, upon advance application, determine otherwise. Even in the absence of a takeover attempt, the existence of these provisions may adversely affect the prevailing market price of our common stock.

USE OF PROCEEDS

We estimate that our net proceeds from the sale of our common stock in this offering will be approximately $ million, or $ million if the underwriters exercise their over-allotment option in full, after deducting underwriting discounts and commissions and our estimated offering expenses. These estimated amounts assume an offering price of $ per share. A $1.00 increase (decrease) in the assumed offering price of $ per share would increase (decrease) the net proceeds to us from this offering by $ million, or $ million if the underwriters exercise their over-allotment option in full, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting underwriting discounts and commissions and estimated offering expenses.

We intend to use 50% of the net proceeds to repay indebtedness under our senior credit agreement, as required by our senior credit agreement. We intend to use the remaining net proceeds for general corporate purposes.

As of September 30, 2009, we had outstanding $854.6 million of borrowings under our senior credit agreement. The indebtedness under our senior credit agreement is scheduled to mature in October 2013. The borrowings under our senior credit agreement bear interest based on either a Eurodollar rate or a base rate. The Eurodollar rate is equal to LIBOR plus 4% with a minimum LIBOR rate of 2.5%. The base rate is equal to 2.5% plus the greater of: (i) the Federal funds rate plus 0.50% or (ii) Bank of America's prime rate. In addition, the senior credit agreement requires us to pay a fee equal to 1% of the outstanding principal balance under the senior credit agreement, which fee will be added to the principal balance outstanding and will be payable at the maturity of the facility ($4.4 million has been added to the outstanding principal balance in 2009). As of September 30, 2009, the interest rate on the term loan under the senior credit agreement was 7.5%.

PRICE RANGE OF COMMON STOCK AND DIVIDEND POLICY

Price Range of Our Common Stock

Our common stock trades on the NYSE under the symbol "CNO." The high and low sale prices of our common stock, as reported on the NYSE, for the quarterly periods beginning January 1, 2007, are set forth below. On November 17, 2009, the last reported sale price of our common stock on the NYSE was $5.30. As of November 13, 2009, there were 201,963,716 shares of our common stock outstanding held by approximately 250 record holders.

	Conseco Common Stock	
	High	Low
2007		
First Quarter	$20.46	$16.56
Second Quarter	21.25	17.25
Third Quarter	21.02	13.25
Fourth Quarter	16.26	12.05
2008		
First Quarter	$12.64	$ 8.71
Second Quarter	12.34	9.62
Third Quarter	10.16	3.06
Fourth Quarter	5.21	1.31
2009		
First Quarter	$ 5.10	$ 0.26
Second Quarter	3.90	0.82
Third Quarter	6.31	1.79
Fourth Quarter (through November 17, 2009)	6.85	4.75

Dividend Policy

We have not declared or paid any cash dividends on our common stock since our emergence from bankruptcy, nor do we expect to pay any cash dividends on our common stock for the foreseeable future. We currently intend to retain any additional future earnings to finance our operations and growth. Any future determination to pay cash dividends on our common stock will be at the discretion of our board of directors and will be dependent on our earnings, financial condition, operating results, capital requirements, any contractual restrictions, regulatory and other restrictions on the payment of dividends by our subsidiaries to us, and other factors that our board of directors deems relevant. In addition, our senior credit agreement contains limitations on our ability to declare and pay cash dividends. Furthermore, as a condition of the order from the Pennsylvania Insurance Department approving the transfer of the stock of Senior Health, we agreed that we would not pay cash dividends on our common stock while any portion of the $125.0 million Senior Health note remained outstanding.

As an insurance holding company, the assets of which consist primarily of direct and indirect equity interests in our insurance company subsidiaries, our ability to pay dividends to our stockholders and meet our other obligations, including operating expenses and debt service, depends primarily on the receipt of dividends and other payments from our insurance company subsidiaries. The payment of dividends by our insurance subsidiaries is regulated under the insurance laws of the states in which they are organized. These regulations generally permit dividends to be paid from statutory earned surplus of the relevant insurance company for any 12-month period in amounts equal to the greater of, or in a few states, the lesser of:

- statutory net gain from operations or statutory net income for the prior year; or
- 10% of statutory capital and surplus as of the end of the preceding year.

Any dividends in excess of these levels require the approval of the director or commissioner of the applicable state insurance department.

CAPITALIZATION

The following table sets forth as of September 30, 2009 our consolidated capitalization on an actual basis and, using all of the assumptions set forth in the bullet points below and the notes to the table:

- on an as adjusted basis to give effect to the following events on November 13, 2009: (1) our purchase of $176.5 million aggregate principal amount of existing debentures in the Tender Offer and the cancellation thereof, (2) our issuance of $176.5 million aggregate principal amount of new debentures; (3) our issuance of 16.4 million shares of our common stock and warrants to purchase 5.0 million shares of our common stock to Paulson for an aggregate purchase price of $77.9 million; and (4) our repayment of outstanding borrowings under our senior credit agreement of $36.8 million, an amount equal to half of the net proceeds from the private placement of common stock and warrants to Paulson, as required by our senior credit agreement; and
- on a further adjusted basis to give effect to: (1) our sale of million shares of our common stock in this offering at an offering price of $ per share, after deducting underwriting discounts and commissions and our estimated offering expenses and (2) our repayment of outstanding borrowings under our senior credit agreement of an amount equal to half of the net proceeds from this offering, as required by our senior credit agreement.

This table should be read in conjunction with the information set forth under "Use of Proceeds" in this prospectus and "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and notes thereto contained in the documents incorporated by reference in this prospectus.

	Actual	As Adjusted	As Further Adjusted
	(dollars in millions)		
Debt:			
3.50% Convertible Debentures due 2035	$ 293.0	$ 116.5 (1)	—
Unamortized discount on 3.50% Convertible Debentures due 2035	(10.7)	(4.3) (2)	—
7.0% Convertible Senior Debentures due 2016 (3)	—	176.5 (2)	—
Unamortized discount on 7.0% Convertible Senior Debentures due 2016	—	(4.5) (2)	—
Senior Credit Agreement	854.6	817.8 (4)	
6% Senior Health Note	125.0	125.0	—
Total debt	$1,261.9	$ 1,227.0	$
Shareholders' equity:			
Common stock ($.01 par value, 8,000,000,000 shares authorized); 184,886,216 shares issued and outstanding on an actual basis, 201,286,216 shares issued and outstanding on an as adjusted basis, and shares issued and outstanding on a further adjusted basis (5)	$ 1.9	$ 2.0 (6)	$
Additional paid-in capital (3)	4,110.6	4,184.2 (6)	
Accumulated other comprehensive loss	(146.0)	(146.0)	
Accumulated deficit	(632.8)	(639.9) (7)	
Total shareholders' equity	$3,333.7	$ 3,400.3	$
Total capitalization	$4,595.6	$ 4,627.3	$

(footnotes appear on following page)

(1) The following summarizes the accounting effects of our purchase of $176.5 million aggregate principal amount of existing debentures in the Tender Offer:

	Repurchased Pursuant to Tender Offer
Principal amount of existing debentures	$ 176.5
Loss on extinguishment of debt:	
Unamortized discount and issuance costs	$ (7.2)
Dealer manager fees	(2.9)
Other issuance costs	(.5)
Total loss on extinguishment of debt	$ (10.6)

(2) The following summarizes the accounting effects of the initial closing of our new debentures offering:

	Issued on November 13, 2009
Aggregate principal amount of debentures	$ 176.5
Reduction in offering price	(1.0)*
Initial purchaser's discounts and commissions	(3.5)
Total proceeds from the offering of debentures	$ 172.0
Issuance costs	$ (2.6)**

* In accordance with the terms of the new debentures, the offering price of each $1,000 principal amount debenture equals $1,000 less an amount equal to 7.0% per annum of such $1,000 principal amount based on (i) the actual number of days elapsed during the period from, and including, the deposit funding date to, and excluding, the issuance date of such debenture and (ii) a 365-day year. There were 28 days between the deposit funding date (October 16, 2009) and the issuance date (November 13, 2009) for the $176.5 million principal amount of new debentures. The reduction in offering price together with the initial purchaser's discounts and commissions described above will be treated as a discount that is amortized over the term of the new debentures.

** Total issuance costs will be amortized to expense over the term of the new debentures.

(3) Holders of the existing debentures who did not tender their debentures in the Tender Offer have the right to require us to repurchase their debentures for cash on September 30, 2010. If any existing debentures remain outstanding after September 30, 2010, we will have the right to redeem such debentures on October 5, 2010 for cash. As of November 13, 2009, there are $116.5 million in aggregate principal amount of existing debentures outstanding. We have commitments from Morgan Stanley to purchase an additional aggregate principal amount of new debentures equal to the aggregate principal amount of existing debentures: (i) that we may purchase pursuant to any subsequent tender order that expires before October 5, 2010: (ii) that holders thereof require us to repurchase on September 30, 2010; or (iii) for any existing debentures that remain outstanding on October 5, 2010 that we elect to redeem.

In accordance with generally accepted accounting principles, we are required to consider on each issuance date whether the debentures issued on such date are issued with a beneficial conversion feature. A beneficial conversion feature will exist if the debentures may be convertible into common stock at an effective conversion price (calculated by dividing the proceeds from the issuance of debentures issued on that date (per $1,000 principal amount of debentures) by the then effective conversion rate) that is lower than the market price of a share of common stock on the date when all significant terms, including the quantity and timing of the issuance, are known. When a beneficial conversion feature exists, we are required to separately recognize the beneficial conversion feature at issuance by allocating a portion of the proceeds to the intrinsic value of that feature. The value of the beneficial conversion feature is recorded, net of taxes, as an increase to additional paid-in capital.

If a beneficial conversion feature exists on the actual date(s) of issuance, a discount equal to the intrinsic value of the beneficial conversion feature will be recorded against the carrying value of the debentures. Such discount will be amortized from the actual date(s) of issuance to the stated maturity date of the debentures using the effective interest method. Accordingly, the interest expense we recognize related to the debentures will be dependent upon whether a beneficial conversion feature exists on the actual date(s) of issuance and the amount by which the market price(s) of our common stock exceeds the effective conversion price on such actual date(s) of issuance.

(footnotes continued on following page)

On November 13, 2009, the market price of our common stock was $5.33 (the closing market price on November 12, 2009). Because this amount is less than the effective conversion price of $5.35 on that date, a beneficial conversion feature did not exist with respect to debentures issued on that date.
We cannot predict the subsequent date(s) of issuance or the market price of a share of our common stock on such date(s) of issuance, and accordingly, we cannot predict whether a beneficial conversion feature will exist on such date(s) of issuance and, if so, what value(s) would be recorded.

The following summarizes the accounting effects with respect to the beneficial conversion feature if the assumed date of issuance of the entire $116.5 million principal amount of the remaining new debentures that may be issued pursuant to Morgan Stanley's commitment was October 5, 2010 (the latest possible closing date), assuming an effective conversion price of $5.01 based on various assumed market prices of a share of our common stock (dollars in millions, except assumed market prices per share):

Assumed market price of a share of our common stock on assumed issuance date	$ 5.00	$6.00	$7.00	$8.00
Beneficial conversion feature	None	$21.0	$42.2	$63.4
Proceeds allocated to additional paid-in capital (net of tax)	None	$13.7	$27.5	$41.2
Proceeds allocated to debentures (net of unamortized discount)	$106.2	$85.2	$64.0	$42.8
Effective interest rate on the debentures	8.7%	12.7%	18.3%	27.1%

(4) The following summarizes the accounting effects of the repayment of outstanding borrowings under our senior credit agreement as if such repayment had been completed on September 30, 2009:

	Restructuring Transaction Adjustments (dollars in millions)
Net proceeds from the private placement of common stock and warrants	$ 73.7
Percentage of such proceeds used to repay outstanding borrowings under our senior credit agreement	50%
Repayment of outstanding borrowings under our senior credit agreement	$ 36.8
Unamortized debt issuance costs related to extinguished borrowings under our senior credit agreement (recognized as a loss on extinguishment of debt)	$ 0.2

(5) The number of outstanding shares of our common stock on an actual as adjusted and further adjusted basis excludes (a) 677,500 shares of restricted stock issued but not yet vested under our amended and restated long-term incentive plan; (b) the shares of our common stock issuable upon conversion of the existing debentures; (c) the 53,369,775 shares of our common stock issuable upon conversion of the new debentures (not including any additional shares issued upon conversion in connection with a make whole adjustment event); and (d) the 5.0 million shares of our common stock issuable upon exercise of the warrants issued to Paulson.

(6) The following summarizes the accounting effects of the private placement of common stock and warrants as if such private placement had occurred on September 30, 2009:

	Restructuring Transaction Adjustments (dollars in millions)
Proceeds from the private placement of stock and warrants	$ 77.9
Financial advisory fees in connection with the private placement	(3.1)
Estimated expenses	(1.1)
Net proceeds from the private placement of common stock and warrants	$ 73.7
Net proceeds from the private placement of common stock and warrants allocated to:	
Common stock	$ 0.1
Additional paid-in capital	73.6
Total	$ 73.7

(7) The accumulated deficit adjustments reflect the recognition of: (i) a $6.9 million after-tax loss on the extinguishment of $176.5 million aggregate principal amount of the existing debentures tendered in the Tender Offer and (ii) a $0.2 million after-tax loss related to the writedown of deferred issuance costs associated with the repayment of certain outstanding borrowings under our senior credit agreement.

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table lists certain information, as of November 13, 2009, regarding the beneficial ownership of our outstanding common stock by:

- the persons known to us to beneficially own 5% or more of our outstanding shares of common stock;
- each of our directors and named executive officers; and
- our directors and executive officers as a group.

Beneficial ownership is determined in accordance with the rules of the SEC and generally includes voting or investment power with respect to securities. Unless otherwise indicated below, to our knowledge, the persons and entities named in the table have sole voting and sole investment power with respect to all shares beneficially owned by them, subject to community property laws where applicable. Shares of our common stock subject to options that are currently exercisable or exercisable within 60 days of November 13, 2009 are deemed to be outstanding and to be beneficially owned by the person holding the options for the purpose of computing the percentage ownership of that person but are not treated as outstanding for the purpose of computing the percentage ownership of any other person.

	Shares Beneficially Owned	
Name of Beneficial Owner	**Number**	**Percentage**
Columbia Wanger Asset Management, L.P. (1)	26,489,000	13.1%
Paulson & Co. Inc. (2)	20,000,000	9.9
R. Glenn Hilliard (3)	1,586,785	*
Donna A. James	33,088	*
R. Keith Long (4)	1,439,331	*
Debra J. Perry (5)	52,662	*
C. James Prieur (6)	1,270,000	*
Neal C. Schneider (5)	53,688	*
Michael T. Tokarz (5)	51,188	*
John G. Turner (5)	59,188	*
Doreen A. Wright	24,588	*
Edward J. Bonach (7)	182,000	*
Eric R. Johnson (8)	242,237	*
Scott R. Perry (9)	174,148	*
Steven M. Stecher (10)	129,475	*
All directors and executive officers as a group (18 persons) (11)	5,918,481	2.9

* Less than 1%.

(1) Based solely on the Amendment No. 3 to Schedule 13G filed with the SEC on January 27, 2009 by Columbia Wanger Asset Management, L.P. The Amendment No. 3 to Schedule 13G reports sole power to vote or direct the vote of 26,104,000 shares and sole power to dispose or direct the disposition of 26,489,000 shares. The business address for Columbia Wanger Asset Management, L.P. is 227 West Monroe Street, Suite 3000, Chicago, IL 60606.

(2) We have been informed by Paulson that they beneficially own 20,000,000 shares of our common stock. We have been informed that John Paulson has the power to vote and to dispose or direct the vote and disposition of all of the reported shares.

(3) Includes 98,119 shares held by a family charitable foundation, of which Mr. Hilliard is a trustee. He disclaims beneficial ownership of such shares. Also includes options, exercisable currently or within 60 days of November 13, 2009, to purchase 755,000 shares of common stock.

(4) As of November 13, 2009, Otter Creek Partners beneficially owned 610,450 shares of common stock. Otter Creek Inc., as the general partner of Otter Creek Partners, may be deemed to be the beneficial owner of the 610,450 shares of common stock owned by Otter Creek

(footnotes appear on following page)

Partners. Mr. Long is the sole stockholder of Otter Creek Inc. As of November 13, 2009, Mr. Long directly owned 112,281 shares of common stock and by virtue of his ownership of Otter Creek Inc. had the power to vote and dispose of the shares owned by Otter Creek Partners and therefore, may be deemed to be the beneficial owner of the 610,450 shares of common stock owned by Otter Creek Partners. As of November 13, 2009, Otter Creek International beneficially owned 716,600 shares of common stock. Otter Creek Inc., as an investment advisor of Otter Creek International, may be deemed to be the beneficial owner of the 716,600 Shares owned by Otter Creek International. Mr. Long, Otter Creek Partners and Otter Creek Inc. expressly disclaim beneficial ownership of the shares of common stock owned by Otter Creek International.

(5) Includes options, exercisable currently or within 60 days of November 13, 2009, to purchase 15,400 shares of common stock.

(6) Includes options, exercisable currently or within 60 days of November 13, 2009, to purchase 400,000 shares of common stock.

(7) Includes options, exercisable currently or within 60 days of November 13, 2009, to purchase 40,000 shares of common stock.

(8) Includes options, exercisable currently or within 60 days of November 13, 2009, to purchase 194,000 shares of common stock.

(9) Includes options, exercisable currently or within 60 days of November 13, 2009, to purchase 116,750 shares of common stock.

(10) Includes options, exercisable currently or within 60 days of November 13, 2009, to purchase 94,000 shares of common stock.

(11) Includes options, exercisable currently or within 60 days of November 13, 2009, to purchase an aggregate of 2,053,975 shares of common stock held by directors and executive officers.

RELATED PARTY TRANSACTIONS

Our director, R. Keith Long, is a principal at Otter Creek Partners I and certain of its affiliates ("Otter Creek"), which previously owned $19,443,000 in aggregate principal amount of existing debentures, representing approximately 6.6% of the aggregate principal amount of outstanding existing debentures on November 12, 2009. Mr. Long is also a director and minority shareholder of Homestead Insurance Company, which previously beneficially owned $500,000 in aggregate principal amount of existing debentures, representing less than 1% of the aggregate principal amount of outstanding existing debentures on November 12, 2009. Each of Otter Creek and Homestead Insurance Company tendered $19,443,000 and $500,000, respectively, in principal amount of the existing debentures in the Tender Offer and participated in the Tender Offer on the same basis as the other holders of existing debentures who participated in the Tender Offer.

DESCRIPTION OF CAPITAL STOCK

General

Our amended and restated certificate of incorporation authorizes us to issue 8,000,000,000 shares of common stock, par value $0.01 per share, and 265,000,000 shares of preferred stock, par value $0.01 per share. Of the authorized preferred shares, 2,000,000 are designated as Series A Junior Participating Preferred Stock, par value $0.01 per share ("Series A Preferred Stock"). See "— Preferred Stock" and "— Section 382 Rights Agreement" below.

The following description of our capital stock is a summary. It summarizes only those aspects of our capital stock that we believe will be most important to your decision to invest in our common stock. You should keep in mind, however, that it is our amended and restated certificate of incorporation, including any certificates of designations that are a part of our amended and restated certificate of incorporation, and our amended and restated by-laws and Delaware law, and not this summary, which define your rights as a security holder. There may be other provisions in these documents that are also important to you. You should read these documents for a full description of the terms of our capital stock.

Common Stock

As of November 13, 2009 there were 201,963,716 shares of our common stock outstanding, including 677,500 shares of restricted stock issued but not yet vested under our amended and restated long-term incentive plan. Our common stock is listed on the NYSE under the symbol "CNO." American Stock Transfer and Trust Company, LLC is the transfer agent and registrar for our common stock. All outstanding shares of common stock are fully paid and non-assessable.

In accordance with our Section 382 Rights Agreement, each of our outstanding shares of common stock has associated with it the right to purchase a one one-thousandth of a share of our Series A Preferred Stock and each share of common stock that we issue prior to the earlier of (i) the date the preferred share purchase rights become exercisable and (ii) the expiration date of the Section 382 Rights Agreement, will be issued with an associated preferred share purchase right. See "— Section 382 Rights Agreement" below.

Dividends. Except as otherwise provided by Delaware law or our amended and restated certificate of incorporation, and subject to all rights and preferences of holders of any outstanding shares of preferred stock, holders of common stock share ratably in all dividends and distributions, whether upon liquidation or dissolution or otherwise. Our common stock is subject to certain restrictions on paying dividends. See "Price Range of Common Stock and Dividend Policy" and "Risk Factors — Risks Related to this Offering and Ownership of Our Common Stock — We have no plans to pay dividends on our common stock, and you may not receive funds without selling your common stock."

Voting. Except as otherwise provided by Delaware law or our amended and restated certificate of incorporation and subject to the rights of holders of any outstanding shares of preferred stock, all of the voting power of our stockholders is vested in the holders of our common stock, and each holder of common stock has one vote for each share held by such holder on all matters voted upon by our stockholders.

Notwithstanding the voting rights granted to holders of common stock and preferred stock in our amended and restated certificate of incorporation or in any certificate of designations relating to any preferred stock, the voting rights of any stock held by any holder as of September 10, 2003, the effective date of our predecessor company's plan of reorganization, are automatically reduced with respect to any particular stockholder vote or action by written consent to the extent, if any, required to avoid a presumption of control arising from the beneficial ownership of voting securities under the insurance statutes or regulations applicable to any of our direct or indirect insurance company subsidiaries, *provided* that no such reduction reduces such voting rights, without such holder's written consent:

- by more than the minimum amount required to reduce such voting rights to less than 10% of the aggregate voting rights of all stock entitled to vote or consent with respect to such vote or action, or

- to the extent that such holder's acquisition of control or deemed acquisition of control of our direct and indirect insurance company subsidiaries has been approved under, or is exempt from the approval requirements of, all insurance statutes and regulations applicable to our direct and indirect insurance company subsidiaries.

Board of Directors. Except as otherwise provided in our amended and restated certificate of incorporation or any duly authorized certificate of designations of any series of preferred stock, directors are elected in accordance with the procedures and requirements prescribed by our amended and restated by-laws. Our amended and restated by-laws provide that, except in the case of vacancies and newly created directorships resulting from any increase in the total number of directors, each director shall be elected by the vote of the majority of the votes cast (where the number of votes cast "for" a director exceeds the number of votes cast "against" that director) with respect to the directors at any meeting for the election of directors at which a quorum is present, *provided* that, if the number of nominees exceeds the number of directors to be elected, the directors shall be elected by a plurality of the shares represented in person or by proxy at any such meeting and entitled to vote on the election of directors.

Other. Our common stock is not convertible into, or exchangeable for, any other class or series of our capital stock. Except as contemplated by our Section 382 Rights Agreement, holders of common stock have no preemptive or other rights to subscribe for or purchase additional securities of ours. Shares of our common stock are not subject to calls or assessments.

Preferred Stock

As of the date of this prospectus, we do not have any outstanding shares of preferred stock. However, each of our outstanding shares of common stock has associated with it the right to purchase a one one-thousandth of a share of our Series A Preferred Stock and each share of common stock that we issue prior to the earlier of the date such preferred share purchase rights become exercisable and the expiration date of the Section 382 Rights Agreement will be issued with an associated preferred share purchase right. See "— Section 382 Rights Agreement" below.

Section 382 Rights Agreement

On January 20, 2009, our board of directors declared a dividend of one preferred share purchase right (each, a "Right") for each share of our common stock that was outstanding as of the close of business on January 30, 2009 in connection with the Section 382 Rights Agreement that was adopted by our board of directors on January 20, 2009 and approved by a vote at our annual meeting of shareholders on May 12, 2009. The following summary of the Section 382 Rights Agreement and the Rights is not complete. You should read the Section 382 Rights Agreement, which is an Exhibit to the Registration Statement, for a full description of its terms.

The Section 382 Rights Agreement is intended to help protect our NOLs by acting as a deterrent to any person or group (subject to certain exemptions) from becoming or obtaining the right to become, a "5-percent shareholder" (as such term is used in Section 382 of the Code, and the Treasury Regulations promulgated thereunder) (an "Acquiring Person"), without the approval of our board of directors. Stockholders who owned 5% or more of our outstanding common stock as of the close of business on January 20, 2009 will not trigger the Section 382 Rights Agreement so long as they do not acquire additional shares of common stock that equal more than 1% of the shares then outstanding without the approval of the board of directors. Any Rights owned by or transferred to any person who is or becomes an Acquiring Person will become null and void. Our board of directors may, in its sole discretion, exempt any person or group from being deemed an Acquiring Person for purposes of the Section 382 Rights Agreement.

Prior to entry into our agreement on October 13, 2009 with Paulson to sell common stock and warrants to Paulson, our board of directors deemed Paulson an Exempted Entity (as defined in the Section 382 Rights Agreement), and therefore not an Acquiring Person for purposes of the Section 382 Rights Agreement, solely with respect to:

- the number of shares of our common stock and securities convertible into common stock or exchangeable or exercisable for common stock owned by Paulson and its affiliates as of the date of the stock and warrant purchase agreement;

- the entry by us and Paulson into the stock and warrant purchase agreement, the performance of our respective obligations thereunder and the consummation of the transactions contemplated thereby (including ownership of any shares of common stock issued upon exercise of the warrants); and
- the acquisition by Paulson of any aggregate principal amount of our new debentures or thereafter and any shares of common stock issued upon conversion of such new debentures.

See our current report on Form 8-K filed on October 13, 2009 for a more detailed description of the agreements related to the Paulson transaction.

The Rights. Our board of directors declared a dividend of one Right per each outstanding share of common stock payable to our stockholders of record as of January 30, 2009. In accordance with the Section 382 Rights Agreement, Rights have been and will continue to be issued in respect of all shares of common stock issued or disposed of (including, without limitation, upon disposition of common stock out of treasury stock or issuance or reissuance of common stock out of authorized but unissued shares) after the January 30, 2009 record date but prior to the earlier of (i) the date the Rights become exercisable and (ii) the expiration date of the Rights Agreement and the associated Rights.

Subject to the terms, provisions and conditions of the Section 382 Rights Agreement, if the Rights become exercisable, each Right would initially represent the right to purchase from us one one-thousandth of a share of our Series A Preferred Stock, for a purchase price of $20.00 (the "Purchase Price") (subject to adjustment). Because of the nature of the Series A Preferred Stock's dividend, liquidation and voting rights, the value of the one one-thousandth interest in a share of Series A Preferred Stock purchasable upon exercise of each Right should approximate the value of one share of our common stock. However, prior to exercise, a Right does not give its holder any rights as a stockholder, including without limitation any dividend, voting or liquidation rights.

Exercisability. The Rights will not be exercisable until the earlier of (i) the 10th business day after the first date of a public announcement that a person or group (subject to certain exceptions) has become an Acquiring Person and (ii) the 10th business day (or such later date as may be determined by our board of directors prior to such time as any person or group becomes an Acquiring Person) after the commencement of, or the first public announcement of an intention to commence a tender or exchange offer, the consummation of which would result in any person or group (subject to certain exceptions) becoming an Acquiring Person (the earlier of such dates, the "Distribution Date"). Any transfer of shares of common stock prior to the Distribution Date will constitute a transfer of the associated Rights. After the Distribution Date, the Rights may be transferred other than in connection with the transfer of the underlying shares of common stock.

After the Distribution Date, each holder of a Right, other than Rights beneficially owned by any Acquiring Person (which will thereupon become void), will thereafter have the right to receive upon exercise of a Right and payment of the Purchase Price, that number of shares of common stock having a market value of two times the Purchase Price.

Exchange. At any time after any person or group first becomes an Acquiring Person and prior to the acquisition by such person or group of 50% or more of the outstanding shares of our common stock or the occurrence of an event described in the prior paragraph, our board of directors may, at its option, exchange the Rights (other than Rights owned by such person or group which will have become void), in whole or in part, at an exchange ratio of one share of common stock, or a fractional share of Series A Preferred Stock (or of a share of a similar class or series of our preferred stock having similar rights, preferences and privileges) of equivalent value, per Right (subject to adjustment).

Expiration. The Rights will expire on the earliest of (i) the close of business on January 20, 2012, (ii) the time at which the Rights are redeemed pursuant to the Section 382 Rights Agreement (as described below), (iii) the time at which the Rights are exchanged pursuant to the Section 382 Rights Agreement, (iv) our board of directors' determination that the Section 382 Rights Agreement is no longer necessary for the preservation of the NOLs because of the repeal of Section 382 or any successor statute and (v) the beginning of a taxable year of ours to which our board of directors determines that no tax benefits may be carried forward.

Redemption. At any time prior to the time an Acquiring Person becomes such, our board of directors may redeem all but not less than all the then-outstanding Rights at a price of $0.01 per Right (the “Redemption Price”) (subject to adjustment). The redemption of the Rights may be made effective at such time, on such basis and with such conditions as our board of directors in its sole discretion may establish. Immediately upon any redemption of the Rights, the right to exercise the Rights will terminate and the only right of the holders of Rights will be to receive the Redemption Price.

Anti-Dilution Provisions. The Purchase Price of the Series A Preferred Stock, the number shares of Series A Preferred Stock issuable and the number of outstanding Rights are subject to adjustment to prevent dilution that may occur as a result of certain events, including among others, a stock dividend, a stock split or a reclassification of the Series A Preferred Stock or our common stock. With certain exceptions, no adjustment in the Purchase Price will be required until cumulative adjustments require an adjustment of at least 1% in such Purchase Price.

Amendments. For so long as the Rights are then redeemable, we may amend or supplement any provision of the Section 382 Rights Agreement without the consent of the holders of the Rights. At any time when the Rights are no longer redeemable, our board of directors may amend or supplement the Section 382 Rights Agreement only to cure an ambiguity, to alter time period provisions, to correct inconsistent provisions, or to make any additional changes to the Section 382 Rights Agreement, but only to the extent that those changes do not impair or adversely affect any Rights holder.

Reorganization, Merger or Sale. In the event that, after a person or group has become an Acquiring Person, we are acquired in a merger or other business combination transaction or 50% or more of our consolidated assets or earning power are sold, proper provision will be made so that each holder of a Right (other than Rights beneficially owned by an Acquiring Person which will have become void) will thereafter have the right to receive, upon the exercise thereof at the then-current exercise price of the Right, that number of shares of common stock of the person with whom we have engaged in the foregoing transaction (or its parent), which number of shares at the time of such transaction will have a market value of two times the Purchase Price.

Anti-Takeover Provisions of our Amended and Restated Certificate of Incorporation and Amended and Restated By-laws

In addition to shares of Series A Preferred Stock authorized in connection with our Section 382 Rights Agreement, our amended and restated certificate of incorporation and amended and restated by-laws contain certain provisions that are intended to enhance the likelihood of continuity and stability in the composition of our board of directors and which may have the effect of delaying, deferring or preventing our future takeover or change of control unless the takeover or change of control is approved by our board of directors. These provisions may also render the removal of the current board of directors and of management more difficult. These provisions include:

- advance notice requirements for stockholder proposals and nominations; and
- the authority of our board of directors to issue, without stockholder approval, certain series of preferred stock with such terms as the board of directors may determine.

Anti-Takeover Effects of Certain Insurance Laws

The insurance laws and regulations of the jurisdictions in which we or our insurance subsidiaries do business may impede or delay a business combination involving us. State insurance holding company laws and regulations applicable to us generally provide that no person may acquire control of a company, and thus indirect control of its insurance subsidiaries, unless the person has provided required information to, and the acquisition is approved or not disapproved by, the appropriate insurance regulatory authorities. Generally, any person acquiring beneficial ownership of 10% or more of the voting power of our capital stock would be presumed to have acquired control, unless the appropriate insurance regulatory authorities upon advance application determine otherwise.

MATERIAL UNITED STATES FEDERAL INCOME AND ESTATE TAX CONSIDERATIONS TO NON-U.S. HOLDERS

The following is a summary of material United States federal income and estate tax consequences of the purchase, ownership and disposition of our common stock as of the date hereof. Except where noted, this summary deals only with common stock that is held as a capital asset by a non-U.S. holder.

A "non-U.S. holder" means a person (other than a partnership) that is not for United States federal income tax purposes any of the following:

- an individual citizen or resident of the United States;
- a corporation (or any other entity treated as a corporation for United States federal income tax purposes) created or organized in or under the laws of the United States, any state thereof or the District of Columbia;
- an estate the income of which is subject to United States federal income taxation regardless of its source; or
- a trust if it (1) is subject to the primary supervision of a court within the United States and one or more United States persons have the authority to control all substantial decisions of the trust or (2) has a valid election in effect under applicable United States Treasury regulations to be treated as a United States person.

This summary is based upon provisions of the Code, and regulations, rulings and judicial decisions as of the date hereof. Those authorities may be changed, perhaps retroactively, so as to result in United States federal income and estate tax consequences different from those summarized below. This summary does not address all aspects of United States federal income and estate taxes and does not deal with foreign, state, local or other tax considerations that may be relevant to non-U.S. holders in light of their personal circumstances. In addition, it does not represent a detailed description of the United States federal income tax consequences applicable to you if you are subject to special treatment under the United States federal income tax laws (including if you are a United States expatriate, "controlled foreign corporation," "passive foreign investment company" or a partnership or other pass-through entity for United States federal income tax purposes). We cannot assure you that a change in law will not alter significantly the tax considerations that we describe in this summary.

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

If you are considering the purchase of our common stock, you should consult your own tax advisors concerning the particular United States federal income and estate tax consequences to you of the ownership of the common stock, as well as the consequences to you arising under the laws of any other taxing jurisdiction.

Dividends

Dividends paid to a non-U.S. holder of our common stock generally will be subject to withholding of United States federal income tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty. However, dividends that are effectively connected with the conduct of a trade or business by the non-U.S. holder within the United States (and, if required by an applicable income tax treaty, are attributable to a United States permanent establishment) are not subject to the withholding tax, *provided* certain certification and disclosure requirements are satisfied. Instead, such dividends are subject to United States federal income tax on a net income basis in the same manner as if the non-U.S. holder were a United States person as defined under the Code. Any such effectively connected dividends received by a foreign corporation may be subject to an additional "branch profits tax" at a 30% rate or such lower rate as may be specified by an applicable income tax treaty.

A non-U.S. holder of our common stock who wishes to claim the benefit of an applicable treaty rate and avoid backup withholding, as discussed below, for dividends will be required (a) to complete Internal Revenue Service Form W-8BEN (or other applicable form) and certify under penalty of perjury that such holder is not a United States person as defined under the Code and is eligible for treaty benefits or (b) if our common stock is held through certain foreign intermediaries, to satisfy the relevant certification requirements of applicable United States Treasury regulations. Special certification and other requirements apply to certain non-U.S. holders that are pass-through entities rather than corporations or individuals.

A non-U.S. holder of our common stock eligible for a reduced rate of United States withholding tax pursuant to an income tax treaty may obtain a refund of any excess amounts withheld by filing an appropriate claim for refund with the Internal Revenue Service.

Gain on Disposition of Common Stock

Any gain realized on the disposition of our common stock generally will not be subject to United States federal income tax unless:

- the gain is effectively connected with a trade or business of the non-U.S. holder in the United States (and, if required by an applicable income tax treaty, is attributable to a United States permanent establishment of the non-U.S. holder);
- the non-U.S. holder is an individual who is present in the United States for 183 days or more in the taxable year of that disposition, and certain other conditions are met; or
- we are or have been a "United States real property holding corporation" for United States federal income tax purposes.

An individual non-U.S. holder described in the first bullet point immediately above will be subject to tax on the net gain derived from the sale under regular graduated United States federal income tax rates. An individual non-U.S. holder described in the second bullet point immediately above will be subject to a flat 30% tax on the gain derived from the sale, which may be offset by United States source capital losses, even though the individual is not considered a resident of the United States. If a non-U.S. holder that is a foreign corporation falls under the first bullet point immediately above, it will be subject to tax on its net gain in the same manner as if it were a United States person as defined under the Code and, in addition, may be subject to the branch profits tax equal to 30% of its effectively connected earnings and profits or at such lower rate as may be specified by an applicable income tax treaty.

We believe that we are not and do not anticipate becoming a "United States real property holding corporation" for United States federal income tax purposes.

Federal Estate Tax

Common stock held by an individual non-U.S. holder at the time of death will be included in such holder's gross estate for United States federal estate tax purposes, unless an applicable estate tax treaty provides otherwise.

Information Reporting and Backup Withholding

We must report annually to the Internal Revenue Service and to each non-U.S. holder the amount of dividends paid to such holder and the tax withheld with respect to such dividends, regardless of whether withholding was required. Copies of the information returns reporting such dividends and withholding may also be made available to the tax authorities in the country in which the non-U.S. holder resides under the provisions of an applicable income tax treaty.

A non-U.S. holder will be subject to backup withholding for dividends paid to such holder unless such holder certifies under penalty of perjury that it is a non-U.S. holder (and the payor does not have actual knowledge or reason to know that such holder is a United States person as defined under the Code), or such holder otherwise establishes an exemption.

Information reporting and, depending on the circumstances, backup withholding will apply to the proceeds of a sale of our common stock within the United States or conducted through certain United States-related financial intermediaries, unless the beneficial owner certifies under penalty of perjury that it is a non-U.S. holder (and the payor does not have actual knowledge or reason to know that the beneficial owner is a United States person as defined under the Code), or such owner otherwise establishes an exemption.

Any amounts withheld under the backup withholding rules will be allowed as a refund or a credit against a non-U.S. holder's United States federal income tax liability *provided* the required information is timely furnished to the Internal Revenue Service.

CERTAIN ERISA CONSIDERATIONS

The following is a summary of certain considerations associated with the purchase of our common stock by employee benefit plans that are subject to Title I of the U.S. Employee Retirement Income Security Act of 1974, as amended, or ERISA, plans, individual retirement accounts and other arrangements that are subject to Section 4975 of the Code or provisions under any federal, state, local, non-U.S. or other laws or regulations that are similar to such provisions of ERISA or the Code, collectively referred to as Similar Laws, and entities whose underlying assets are considered to include "plan assets" of such plans, accounts and arrangements, each referred to as a Plan.

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

In considering an investment in our common stock using a portion of the assets of any Plan, a fiduciary should determine whether the investment is in accordance with the documents and instruments governing the Plan and the applicable provisions of ERISA, the Code or any Similar Law relating to a fiduciary's duties to the Plan including, without limitation, the prudence, diversification, delegation of control and prohibited transaction provisions of ERISA, the Code and any other applicable Similar Laws.

Representation

Accordingly, by acceptance of the common stock, each buyer and subsequent transferee of the common stock will be deemed to have represented and warranted that either (A) no portion of the assets used by such buyer or transferee to acquire and hold the common stock constitutes assets of any Plan or (B) the purchase and holding of the common stock by such buyer or transferee will not constitute a non-exempt prohibited transaction under ERISA or the Code or a similar violation of any applicable Similar Laws.

The foregoing discussion is general in nature and is not intended to be all-inclusive. Due to the complexity of these rules and the penalties that may be imposed upon persons involved in non-exempt prohibited transactions, it is particularly important that fiduciaries, or other persons considering purchasing the common stock on behalf of, or with the assets of, any Plan, consult with their counsel regarding the matters described herein.

UNDERWRITING

Under the terms and subject to the conditions in an underwriting agreement dated the date of this prospectus, Morgan Stanley & Co. Incorporated, as sole underwriter, has agreed to purchase, and we have agreed to sell to it, the number of shares indicated below:

Name	Number of Shares
Morgan Stanley & Co. Incorporated	
Total:	

The underwriter is offering the shares of common stock subject to its acceptance of the shares from us and subject to prior sale. The underwriting agreement provides that the obligations of the underwriter to pay for and accept delivery of the shares of common stock offered by this prospectus are subject to the approval of certain legal matters by its counsel and to certain other conditions. The underwriter is obligated to take and pay for all of the shares of common stock offered by this prospectus if any such shares are taken. However, the underwriter is not required to take or pay for the shares covered by the underwriter's over-allotment option described below.

The underwriter initially proposes to offer part of the shares of common stock directly to the public at the offering price listed on the cover page of this prospectus and part to certain dealers. After the initial offering of the shares of common stock, the offering price and other selling terms may from time to time be varied by the underwriter.

We have granted to the underwriter an option, exercisable for 30 days from the date of this prospectus, to purchase up to additional shares of common stock at the public offering price listed on the cover page of this prospectus, less underwriting discounts and commissions. The underwriter may exercise this option solely for the purpose of covering over-allotments, if any, made in connection with the offering of the shares of common stock offered by this prospectus. To the extent the option is exercised, in whole or in part, the underwriter will become obligated, subject to certain conditions, to purchase such additional shares of common stock.

The following table shows the per share and total public offering price, underwriting discounts and commissions, and proceeds before expenses to us. These amounts are shown assuming both no exercise and full exercise of the underwriter's option to purchase up to an additional shares of common stock.

		Total	
	Per Share	No Exercise	Full Exercise
Public offering price	$	$	$
Underwriting discounts and commissions to be paid by us	$	$	$
Proceeds, before expenses, to us	$	$	$

The estimated offering expenses payable by us, exclusive of the underwriting discounts and commissions, are approximately $.

The underwriter has informed us that it does not intend sales to discretionary accounts to exceed 5% of the total number of shares of common stock offered by it.

Our common stock is listed on the New York Stock Exchange under the trading symbol "CNO".

Lock-Up Agreements

We have agreed that, without the prior written consent of the underwriter, we will not, during the period ending 90 days after the date of this prospectus:

- offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase lend or otherwise transfer or dispose of, directly or indirectly, any shares of our common stock beneficially owned (as such term is used in Rule 13d-3 of the Exchange Act) or any other securities so owned convertible into or exercisable or exchangeable for shares of our common stock;

- enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the common stock, whether any such transaction described in this paragraph or the immediately preceding paragraph is to be settled by delivery of common stock or such other securities, in cash or otherwise; or
- file any registration statement with the SEC relating to the offering of any shares of our common stock or any securities convertible into or exercisable or exchangeable for our common stock.

The restrictions described in the immediately preceding paragraph do not apply to:

- the sale by us of shares to the underwriter pursuant to this offering;
- the issuance by us of shares of common stock upon the exercise of an option or warrant or the conversion of a security outstanding on the date hereof of which the underwriter has been advised in writing;
- grants by us of employee stock options or other equity-based compensation pursuant to the terms of a plan in effect on the date of this prospectus; or
- the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act for the transfer of shares of our common stock, *provided* that such plan does not provide for the transfer of common stock during the 90-day restricted period.

Each of our directors and executive officers, and Paulson, have agreed that, without the prior written consent of the underwriter, they will not, during the period ending 90 days after the date of this prospectus:

- offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase lend or otherwise transfer or dispose of, directly or indirectly, any shares of common stock beneficially owned (as such term is used in Rule 13d-3 of the Exchange Act) by each of our directors and executive officers, and Paulson, or any other securities so owned convertible into or exercisable or exchangeable for shares of our common stock; or
- enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the common stock, whether any such transaction described in this bullet point or the immediately preceding bullet point is to be settled by delivery of common stock or such other securities, in cash or otherwise.

The restrictions described in the immediately preceding paragraph do not apply in the case of our directors and executive officers to:

- transactions relating to shares of common stock or other securities acquired in open market transactions after the completion of the public offering, *provided* that no filing under Section 16(a) of the Exchange Act shall be required or shall be voluntarily made in connection with subsequent sales of our common stock or other securities acquired in such open market transactions;
- transfers of shares of common stock or any security convertible into our common stock as a bona fide gift; provided that no filing under Section 16(a) of the Exchange Act, reporting a reduction in beneficial ownership of shares of our common stock, will be required or will be voluntarily made during the restricted period;
- transfers to an immediate family member of each of our directors and executive officers;
- transfers to any trust for the direct or indirect benefit of each of our directors and executive officers, *provided* that the trustee of the trust agrees to be bound in writing by the restrictions set forth herein, and *provided further* that any such transfer shall not involve a disposition for value;
- transfers to an affiliate (as that term is defined in Rule 405 under the Securities Act of 1933, as amended) of each of our directors and executive officers; provided that no filing under Section 16(a) of the Exchange Act, reporting a reduction in beneficial ownership of shares of our common stock, will be required or will be voluntarily made during the restricted period;
- distributions of shares of common stock or any security convertible into common stock to limited partners or stockholders;provided that no filing under Section 16(a) of the Exchange Act, reporting a reduction in

beneficial ownership of shares of our common stock, shall be required or shall be voluntarily made during the restricted period; or

- the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act for the transfer of shares of common stock, *provided* that such plan does not provide for the transfer of our common stock during the 90-day restricted period.

The restrictions described above do not apply, in the case of Paulson, to:

- transactions relating to shares of our common stock or other securities acquired in open market transactions after the completion of the public offering;
- transfers of shares of our common stock or any security convertible into our common stock as a *bona fide* gift;
- transfers to an immediate family member;
- transfers to any trust for the direct or indirect benefit of such person or entity, *provided* that the trustee of the trust agrees to be bound in writing by the restrictions set forth herein, and *provided further* that any such transfer shall not involve a disposition for value;
- transfers to an affiliate (as that term is defined in Rule 405 under the Securities Act) of such entity;
- distributions of shares of our common stock or any security convertible into our common stock to limited partners or stockholders;
- the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act for the transfer of shares of our common stock, *provided* that such plan does not provide for the transfer of our common stock during the 90-day restricted period;
- transfers of our capital stock to any wholly-owned subsidiary, *provided* that there will be no further transfer of such capital stock except in accordance with the restrictions described herein, and that any such transfer will not involve a disposition for value;
- transfers in connection with mergers, tender offers, exchange offers or business combinations; or
- transfers or sales to reduce Paulson's beneficial ownership in common stock to 9.9%.

The exceptions to the restrictions described above apply only if, in each applicable case, any distributee, transferee or donee agrees to be bound by the transfer restrictions described here.

Each of our directors and executive officers, and Paulson, have also agreed that, without the prior written consent of the underwriter, they will not, during the period commencing on the date hereof and ending 90 days after the date of the prospectus, make any demand for or exercise any right with respect to, the registration of any shares of our common stock or any security convertible into or exercisable or exchangeable for our common stock.

Notwithstanding the foregoing, Paulson is entitled to enforce its rights under the investor rights agreement, but such enforcement right shall not be construed to permit Paulson to engage in any transaction prohibited above during the 90-day restricted period.

We agree to issue stop transfer instructions to the transfer agent for our common stock with respect to any transaction or contemplated transaction that would constitute a breach of the above restrictions, and each of our directors and executive officers, and Paulson, agree to consent to such issuance of stop transfer instructions.

Stabilization; Indemnity

In order to facilitate the offering of the common stock, the underwriter may engage in transactions that stabilize, maintain or otherwise affect the price of the common stock. Specifically, the underwriter may sell more shares than it is obligated to purchase under the underwriting agreement, creating a short position. A short sale is covered if the short position is no greater than the number of shares available for purchase by the underwriter under the over-allotment option. The underwriter can close out a covered short sale by exercising the over-allotment option or purchasing shares in the open market. In determining the source of shares to close out a covered short sale, the underwriter will consider, among other things, the open market price of shares compared to the price available under the over-allotment option. The underwriter may also sell shares in excess of the over-allotment option, creating a naked short position. The underwriter must close out any naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriter is concerned that there may be downward pressure on the price of the common stock in the open market after pricing that could adversely affect investors who purchase in this offering. As an additional means of facilitating this offering, the underwriter may bid for, and purchase, shares of common stock in the open market to stabilize the price of the common stock. These activities may raise or maintain the market price of the common stock above independent market levels or prevent or retard a decline in the market price of the common stock. The underwriter is not required to engage in these activities and may end any of these activities at any time.

We and the underwriter have agreed to indemnify each other against certain liabilities, including liabilities under the Securities Act.

A prospectus in electronic format may be made available on websites maintained by the underwriter. The underwriter may allocate a number of shares of common stock for sale to its online brokerage account holders. Internet distributions may be made by the underwriter on the same basis as other allocations.

Foreign Selling Restrictions

In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive, the underwriter has represented and agreed that with effect from and including the date on which the Prospectus Directive is implemented in that Member State it has not made and will not make an offer of shares to the public in that Member State, except that it may, with effect from and including such date, make an offer of shares to the public in that Member State:

- at any time to legal entities which are authorized or regulated to operate in the financial markets or, if not so authorized or regulated, whose corporate purpose is solely to invest in securities;
- at any time to any legal entity which has two or more of (1) an average of at least 250 employees during the last financial year; (2) a total balance sheet of more than €43,000,000 and (3) an annual net turnover of more than €50,000,000, as shown in its last annual or consolidated accounts; or
- at any time in any other circumstances which do not require the publication by us of a prospectus pursuant to Article 3 of the Prospectus Directive.

For the purposes of the above, the expression an “offer of shares to the public” in relation to any shares in any Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the shares to be offered so as to enable an investor to decide to purchase or subscribe the shares, as the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State and the expression Prospectus Directive means Directive 2003/71/EC and includes any relevant implementing measure in that Member State.

United Kingdom

The underwriter has represented and agreed that it has only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the Financial Services and Markets Act 2000) in connection with the issue or sale of the shares in circumstances in which Section 21(1) of such Act does not apply to us and it has complied and will comply with all applicable provisions of such Act with respect to anything done by it in relation to any shares in, from or otherwise involving the United Kingdom.

VALIDITY OF THE SHARES

Simpson Thacher & Bartlett LLP, New York, New York, will pass upon the validity of the shares of common stock offered hereby for us. Davis Polk & Wardwell LLP, New York, New York, will pass upon the validity of the shares of common stock on behalf of the underwriters.

EXPERTS

The consolidated financial statements and financial statement schedules incorporated in this prospectus by reference to Conseco, Inc.'s Current Report on Form 8-K dated October 13, 2009 and management's assessment of the effectiveness of internal control over financial reporting (which is included in Management's Report on Internal Control over Financial Reporting) incorporated in this prospectus by reference to the Annual Report on Form 10-K of Conseco, Inc. for the year ended December 31, 2008 have been so incorporated in reliance on the reports (which contain an emphasis of a matter paragraph based on certain events that occurred subsequent to December 31, 2008, which include an amendment to our senior credit agreement, certain rating agency downgrades and the obtainment of certain regulatory agency approvals and an adverse opinion on the effectiveness of internal control over financial reporting) of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. *Other Expenses of Issuance and Distribution.*

The following table sets forth the costs and expenses, other than underwriting discounts and commissions, payable solely by the registrant in connection with the offer and sale of the securities being registered. All amounts are estimates except the registration fee.

SEC registration fee	$12,834
FINRA filing fee	*
New York Stock Exchange supplemental listing fee	*
Blue Sky fees and expenses	*
Transfer agent's fee	*
Printing and engraving expenses	*
Legal fees and expenses	*
Accounting fees and expenses	*
Miscellaneous	*
Total	$ *

* To be completed by amendment.

Item 14. *Indemnification of Directors and Officers.*

We are incorporated under the laws of the State of Delaware. Our Amended and Restated Certificate of Incorporation provides, as authorized by Section 102(b)(7) of the Delaware General Corporation Law (the "DGCL"), that our directors will not be personally liable to us or our stockholders for monetary damages for breach of fiduciary duty as a director, except for liability: (i) for any transaction from which the director derives an improper personal benefit; (ii) for any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law; (iii) for any improper payment of dividends or redemption of shares; or (iv) for any breach of the director's duty of loyalty to us or our stockholders.

Our Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws further provide, as permitted by Section 145 of the DGCL, that each person who was, is or is threatened to be made a party to or is otherwise involved with any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a director or officer or, while a director or officer, is or was serving at the request of Conseco as a director, officer, employee or agent of another company or enterprise (an "indemnitee"), will be indemnified and held harmless by us to the fullest extent authorized by the DGCL, against all expense, liability and loss (including attorneys' fees), reasonably incurred or suffered by such indemnitee in connection therewith. This right of indemnification includes our obligation to provide an advance of expenses, although the indemnitee may be required to repay such an advance if there is a judicial determination that the indemnitee was not entitled to the indemnification.

As permitted by our Amended and Restated Bylaws, we and certain of our subsidiaries have entered into indemnification agreements with our directors, a form of which is filed as an exhibit to this Registration Statement on Form S-1 and is incorporated by reference herein.

The foregoing statements are subject to the detailed provisions of the DGCL, our Amended and Restated Certificate of Incorporation, our Amended and Restated Bylaws and the indemnification agreements.

Our directors and officers are covered under directors' and officers' liability insurance policies maintained by us.

Item 15. ***Recent Sales of Unregistered Securities.***

On October 14, 2009, we entered into a purchase agreement with Morgan Stanley & Co. Incorporated, as initial purchaser (the “Initial Purchaser”), in connection with the issuance and sale of up to $293.0 million aggregate principal amount of our 7.0% Convertible Senior Debentures due 2016 (the “New Debentures”). The New Debentures will not be convertible prior to June 30, 2013, except under limited circumstances. Commencing on June 30, 2013, the New Debentures will be convertible into shares of our common stock, par value $0.01 per share (the “Common Stock”), at the option of the holder at any time, subject to certain exceptions, based on an initial conversion rate of 182.1494 shares of Common Stock per $1,000 principal amount of New Debentures, which is equivalent to an initial conversion price of approximately $5.49 per share of Common Stock, which represents approximately a 10% premium to the closing sale price of the Common Stock on the New York Stock Exchange on October 13, 2009. In addition, holders of the New Debentures will under certain circumstances have the right to convert the New Debentures at an increased conversion rate.

Under the terms and subject to the conditions set forth in the purchase agreement for the New Debentures, we agreed to sell to the Initial Purchaser and the Initial Purchaser agreed to purchase from us, an aggregate principal amount of the New Debentures equal to the aggregate principal amount of our 3.50% Convertible Debentures due September 30, 2035 (the “Existing Debentures”) that:

- we purchased in the cash tender offer for our Existing Debentures that we commenced on October 15, 2009 (the “Tender Offer”) and in any subsequent issuer tender offer for the Existing Debentures that expires before October 5, 2010;
- we are required by holders of Existing Debentures to repurchase on September 30, 2010 pursuant to the terms of the Existing Debentures; and
- the aggregate principal amount of Existing Debentures redeemed by us on October 5, 2010, if any, pursuant to the terms of the Existing Debentures.

On November 13, 2009, in connection with the closing of the Tender Offer, we sold $176.5 million aggregate principal amount of New Debentures to the Initial Purchaser as part of the initial closing of the private placement of New Debentures.

The offer and sale of the New Debentures to the Initial Purchaser was not registered under the Securities Act in reliance upon the exemption from registration under Section 4(2) of the Securities Act. The Initial Purchaser then offered for resale the New Debentures to qualified institutional buyers pursuant to the exemption from registration provided by Rule 144A under the Securities Act. We relied on these exemptions from registration based in part on representations made by the Initial Purchaser.

On October 13, 2009, we entered into a stock and warrant purchase agreement (the “Stock and Warrant Purchase Agreement”) with Paulson & Co. Inc. on behalf of the several investment funds and accounts managed by it (“Paulson”) to issue and sell 16.4 million shares (the “Shares”) of our Common Stock and warrants to purchase, upon exercise, an aggregate of 5.0 million shares of Common Stock at an exercise price of $6.50 per share (subject to adjustment for certain events) (the “Warrants”). Paulson paid an aggregate purchase price of $77.9 million for the Shares and the Warrants. On November 13, 2009, in connection with the closing of the Tender Offer, we closed the private placement of Shares and Warrants to Paulson.

The Shares and Warrants were sold in the private placement in reliance upon the exemption from registration under Section 4(2) of the Securities Act, and the rules and regulations promulgated thereunder, including Regulation D. We relied on this exemption from registration based in part on representations made by Paulson in the Stock and Warrant Purchase Agreement.

Item 16. ***Exhibits and Financial Statement Schedules.***

(a) Exhibits

See the Exhibit Index immediately following the signature page hereto, which is incorporated by reference as if fully set forth herein.

(b) Financial Statement Schedules

All schedules are omitted because the required information is presented within our consolidated financial statements included with our current report on Form 8-K filed with the Securities and Exchange Commission (the "Commission") on October 13, 2009 (first filing) and are incorporated herein by reference.

Item 17. ***Undertakings.***

The undersigned registrant hereby undertakes that:

(1) for purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this Registration Statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this Registration Statement as of the time it was declared effective.

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

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

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of Carmel, State of Indiana, on November 17, 2009.

CONSECO, INC.

By: /s/ **Edward J. Bonach**

Name: **Edward J. Bonach**
Title: **Executive Vice President and Chief Financial Officer**

SIGNATURES AND POWERS OF ATTORNEY

Each person whose signature appears below authorizes Edward J. Bonach, John R. Kline and Karl W. Kindig, or any of them, as his or her attorney in fact and agent, with full power of substitution and resubstitution, to execute, in his name and on his behalf, in any and all capacities, this Registration Statement on Form S-1 and any amendments including post-effective amendments thereto related to the securities described herein, and to file the same, with all the exhibits thereto, and all other documents in connection therewith, with the Securities and Exchange Commission, necessary or advisable to enable the registrant to comply with the Securities Act of 1933, and any rules, regulations and requirements of the Securities and Exchange Commission, in respect thereof, in connection with the registration of the securities described herein which are the subject of such Registration Statement, as the case may be, which amendments may make such changes in such Registration Statement, as the case may be, as such attorney may deem appropriate, and with full power and authority to perform and do any and all acts and things, whatsoever which any such attorney or substitute may deem necessary or advisable to be performed or done in connection with any or all of the above-described matters, as fully as each of the undersigned could do if personally present and acting, hereby ratifying and approving all acts of any such attorney or substitute.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on November 17, 2009.

Signature	Title
/s/ **C. James Prieur** **C. James Prieur**	Director and Chief Executive Officer (Principal Executive Officer)
/s/ **Edward J. Bonach** **Edward J. Bonach**	Executive Vice President and Chief Financial Officer (Principal Financial Officer)
/s/ **John R. Kline** **John R. Kline**	Senior Vice President and Chief Accounting Officer (Principal Accounting Officer)
/s/ **R. Glenn Hilliard** **R. Glenn Hilliard**	Chairman of the Board
/s/ **Donna A. James** **Donna A. James**	Director

Table of Contents

Signature	Title
/s/ **R. Keith Long** **R. Keith Long**	Director
/s/ **Debra J. Perry** **Debra J. Perry**	Director
/s/ **Neal C. Schneider** **Neal C. Schneider**	Director
/s/ **Michael T. Tokarz** **Michael T. Tokarz**	Director
John G. Turner	Director
/s/ **Doreen A. Wright** **Doreen A. Wright**	Director

Table of Contents

EXHIBIT INDEX

Exhibit No.	Description
1.1**	Form of Underwriting Agreement.
2.1	Sixth Amended Joint Plan of Reorganization of Conseco, Inc. and affiliated Debtors, incorporated by reference to Exhibit 2.2 of our Current Report on Form 8-K filed September 15, 2003.
2.2	Order Confirming Reorganizing Debtors' Sixth Amended Joint Plan of Reorganization, incorporated by reference to Exhibit 2.3 of our Current Report on Form 8-K filed September 15, 2003.
3.1	Amended and Restated Certificate of Incorporation of Conseco, Inc., incorporated by reference to Exhibit 3.1 of our Quarterly Report on Form 10-Q for the quarter ended June 30, 2008.
3.2	Amended and Restated Bylaws of Conseco, Inc. dated as of April 28, 2009, incorporated by reference to Exhibit 3.2 of our Quarterly Report on Form 10-Q for the quarter ended March 31, 2009.
4.1	Section 382 Rights Agreement, dated as of January 20, 2009, between the Company and American Stock Transfer & Trust Company, LLC, as Rights Agent, which includes the Certificate of Designations for the Series A Junior Participating Preferred Stock as Exhibit A, the Form of Right Certificate as Exhibit B and the Summary of Rights to Purchase Preferred Shares as Exhibit C, incorporated by reference to Exhibit 4.1 of our Current Report on Form 8-K filed January 20, 2009.
4.4	Indenture dated as of August 15, 2005 for 3.50% Convertible Debentures due September 30, 2035 between Conseco, Inc. and The Bank of New York Trust Company, N.A., as Trustee, incorporated by reference to Exhibit 4.4 of our Current Report on Form 8-K filed August 16, 2005.
4.5	Indenture, dated as of October 16, 2009, between Conseco, Inc. and The Bank of New York Mellon Trust Company, N.A., as trustee, incorporated by reference to Exhibit 4.1 of our Current Report on Form 8-K filed October 19, 2009.
4.6	Form of 7.0% Convertible Senior Debentures due 2016 incorporated by reference to Exhibit 4.1 of our Current Report on Form 8-K filed October 19, 2009.
5.1**	Opinion of Simpson Thacher & Bartlett LLP
10.1	Second Amended and Restated Credit Agreement dated as of October 10, 2006 among Conseco, Inc., Bank of America, N.A., as Agent, J.P. Morgan Chase Bank, N.A., as Syndication Agent, and other parties, incorporated by reference to Exhibit 10.1 of our Current Report on Form 8-K filed October 11, 2006), Amendment No. 1 thereto dated as of June 12, 2007, incorporated by reference to Exhibit 10.1 of our Current Report on Form 8-K filed June 15, 2007) and Amendment No. 2 thereto dated March 30, 2009, incorporated by reference to Exhibit 10.1 of our Current Report on Form 8-K filed March 31, 2009.
10.4	Guarantee and Security Agreement dated as of June 22, 2004 among Conseco, Inc., the Subsidiary Guarantors Party thereto and Bank of America, N.A., as Agent, incorporated by reference to Exhibit 10.4 of our Current Report on Form 8-K filed June 23, 2004.
10.5	Stock and Warrant Purchase Agreement dated as of October 13, 2009 by and between Conseco, Inc. and Paulson & Co. Inc., incorporated by reference to Exhibit 10.1 of our Current Report on filed October 13, 2009.
10.6*	Investor Rights Agreement dated as of November 13, 2009 between Conseco, Inc. and Paulson & Co. Inc. on behalf of the several investment funds and accounts managed by it.
10.7	Form of Warrant, incorporated by reference to Exhibit 10.3 of our Current Report on Form 8-K filed October 13, 2009.
10.8	Purchase Agreement, dated as of October 14, 2009, between Conseco, Inc. and Morgan Stanley & Co. Incorporated (incorporated by reference to Exhibit(b)(1) of our Schedule TO filed on October 15, 2009.
10.11	Letter of agreement dated as of August 3, 2007 between Conseco Services, LLC and John R. Kline, incorporated by reference to Exhibit 10.11 of our Quarterly Report on Form 10-Q for the quarter ended September 30, 2007.

Exhibit No.	Description
10.12	Amended and Restated Employment Agreement dated as of October 6, 2006 between 40|86 Advisors, Inc. and Eric R. Johnson, incorporated by reference to Exhibit 10.12 of our Current Report on Form 8-K filed October 12, 2006), as amended by Amendment dated as of October 14, 2008, incorporated by reference to Exhibit 10.12 of our Annual Report on Form 10-K for the year ended December 31, 2008.
10.13	Conseco, Inc. Amended and Restated Long-Term Incentive Plan, incorporated by reference to Annex B to our Proxy Statement filed on April 23, 2009.
10.14	Form of executive stock option agreement under Conseco, Inc. 2003 Amended and Restated Long-Term Incentive Plan, incorporated by reference to Exhibit 10.14 of our Annual Report on Form 10-K for the year ended December 31, 2005.
10.15	Form of executive restricted stock agreement under Conseco, Inc. 2003 Amended and Restated Long-Term Incentive Plan, incorporated by reference to Exhibit 10.15 of our Annual Report on Form 10-K for the year ended December 31, 2004.
10.16	Form of Indemnification Agreement among Conseco, Inc., CDOC, Inc., Conseco Services, LLC and each director of Conseco, Inc., incorporated by reference to Exhibit 10.20 of our Annual Report on Form 10-K for the year ended December 31, 2008.
10.18	Closing Agreement on Final Determination Covering Specific Matters, incorporated by reference to Exhibit 10.14 of our Current Report on Form 8-K filed September 14, 2004.
10.20	Conseco, Inc. Pay for Performance Incentive Plan, as amended, incorporated by reference to Exhibit 10.20 of our Annual Report on Form 10-K filed March 31, 2009.
10.21	Closing Agreement on Final Determination Covering Specific Matters, incorporated by reference to Exhibit 10.21 of our Current Report on Form 8-K filed August 1, 2006.
10.22	Form of performance unit award agreement under the Conseco, Inc. 2003 Amended and Restated Long-Term Incentive Plan, incorporated by reference to Exhibit 10.22 of our Quarterly Report on Form 10-Q for the quarter ended June 30, 2006.
10.23	Employment Agreement dated as of August 9, 2006 between Conseco, Inc. and C. James Prieur, incorporated by reference to Exhibit 10.23 of our Current Report on Form 8-K filed August 9, 2006.
10.24	Conseco Inc. Deferred Compensation Plan effective January 1, 2007, incorporated by reference to Exhibit 10.24 of our Quarterly Report on Form 10-Q for the quarter ended September 30, 2006, as amended by First Amendment of the Conseco Deferred Compensation Plan, effective January 1, 2007.
10.25	Amended and Restated Employment Agreement dated as of August 17, 2007 between Conseco Services, LLC and Susan L. Menzel, incorporated by reference to Exhibit 10.25 of our Quarterly Report on Form 10-Q for the quarter ended September 30, 2007.
10.26	Amended and Restated Employment Agreement dated as of February 27, 2008 between Conseco Services, LLC and Russell M. Bostick, incorporated by reference to Exhibit 10.26 of our Annual Report on Form 10-Q for the year ended December 31, 2007, as amended by Amendment dated as of April 16, 2009, incorporated by reference to Exhibit 10.26 of our Quarterly Report on Form 10-Q for the quarter ended June 30, 2009.
10.27	Employment Agreement dated as of September 8, 2005 between Conseco Services, LLC and Christopher J. Nickele, incorporated by reference to Exhibit 10.27 of our Quarterly Report on Form 10-Q for the quarter ended September 30, 2006.
10.28	Employment Agreement dated as of October 1, 2008 between Conseco Services, LLC and Scott R. Perry, incorporated by reference to Exhibit 10.28 of our Annual Report on Form 10-K for the year ended December 31, 2008.
10.31	Stipulation of Settlement — In Re Conseco Life Insurance Co. Cost of Insurance Litigation, Cause No. MDL 1610 (Central District, California), incorporated by reference to Exhibit 10.31 of our Annual Report on Form 10-K for the year ended December 31, 2006.

Exhibit No.	Description
10.32	Employment Agreement dated as of April 23, 2007 between Conseco, Inc. and Edward J. Bonach, incorporated by reference to Exhibit 10.32 of our Current Report on Form 8-K filed April 27, 2007.
10.33	Coinsurance and Administration Agreement between Conseco Insurance Company and Reassure American Life Insurance Company, incorporated by reference to Exhibit 10.34 of our Quarterly Report on Form 10-Q for the quarter ended June 30, 2007.
10.34	Employment Agreement dated as of May 27, 2008 between Conseco Services, LLC and Steven M. Stecher, incorporated by reference to Exhibit 10.36 of our Quarterly Report on Form 10-Q for the quarter ended June 30, 2008.
10.35	Form A Statement Regarding the Acquisition of Control of Conseco Senior Health Insurance Company, including the Transfer Agreement dated as of August 11, 2008 by and among the Corporation, CDOC, Inc. and Senior Health Care Transition Trust, incorporated by reference to Exhibit 10.37 of our Current Report on Form 8-K filed August 11, 2008.
10.36	Employment Agreement dated as of June 11, 2008 between Conseco Services, LLC and Matthew J. Zimpfer, incorporated by reference to Exhibit 10.38 of our Quarterly Report on Form 10-Q for the quarter ended June 30, 2008, as amended by Amendment dated as of May 29, 2009, incorporated by reference to Exhibit 10.38 of our Quarterly Report on Form 10-Q for the quarter ended June 30, 2009.
12.1	Computation of Ratio of Earnings to Fixed Charges and Preferred Dividends, incorporated by reference to Exhibit 12.1 of our Current Report on Form 8-K filed on October 13, 2009.
12.2*	Computation of Ratio of Earnings to Fixed Charges for the nine months ended September 30, 2009.
21.1	List of Subsidiaries, incorporated by reference to Exhibit 21 of our Annual Report on Form 10-K for the year ended December 31, 2008.
23.1**	Consent of Simpson Thacher & Bartlett LLP (included as part of its opinions filed as Exhibit 5.1 hereto).
23.2*	Consent of PricewaterhouseCoopers LLP.
24.1	Powers of Attorney (included in the signature pages hereto, and incorporated herein by reference)

* Filed herewith.

** To be filed by amendment.

Exhibit 10.6

INVESTOR RIGHTS AGREEMENT

THIS INVESTOR RIGHTS AGREEMENT (this “ Agreement ”) is entered into as of November 13, 2009, by and among Conseco, Inc., a Delaware corporation (the “ Company ”), and Paulson & Co. Inc., a Delaware corporation on behalf of the several investment funds and accounts managed by it (the “ Stockholder ”) and any other Investors agreeing in writing to be bound by the terms of this Agreement.

W I T N E S S E T H :

WHEREAS, pursuant to the Stock Purchase Agreement, dated as of October 13, 2009 (the “ Purchase Agreement ”), by and among the Company and the Stockholder, the Company issued to the Stockholder shares of Common Stock (as defined below) and Warrants (as defined below);

WHEREAS, as a result of and immediately following the consummation of the transactions contemplated by the Purchase Agreement, the Stockholder owns 16,400,000 Shares (as defined below) and Warrants (as defined below) to purchase 5,000,000 shares of Common Stock; and

WHEREAS, in connection with the consummation of the transactions contemplated by the Purchase Agreement, each of the Company and the Stockholder desire to enter into this Agreement to set forth certain rights and obligations of the Company and the Stockholder with respect to the ownership by the Stockholder of the Company’s securities and certain other matters, all in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.1 Certain Defined Terms . Capitalized terms used and not otherwise defined herein shall have the respective meanings ascribed to such terms in the Purchase

Agreement. For purposes of this Agreement, the following terms shall have the following meanings:

" 5% Shareholder " shall mean a Person or group of Persons that is a "5-percent shareholder" of the Company pursuant to Treasury Regulation § 1.382-2T(g).

" Additional Effective Date " shall have the meaning set forth in Sections 3.1(c) and 3.2(b).

" Additional Filing Date " shall have the meanings set forth in Sections 3.1(c) and 3.2(b).

" Adjusted Ownership " means, with respect to any Person a percentage determined by dividing (a) the sum of (i) the number of issued and outstanding Voting Securities of the Company owned by such person and (ii) the number of Voting Securities issuable upon the conversion or exercise of any Equity Securities of the Company owned by such person, by (b) the sum of (i) the number of issued and outstanding Voting Securities of the Company in the aggregate and (ii) the number of Voting Securities issuable upon the conversion or exercise of any Equity Securities of the Company owned by such person, then multiplying such quotient by 100%.

" Affiliate " means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, such specified Person, for so long as such Person remains so associated to the specified Person.

" Affiliated Assignee " shall have the meaning set forth in Section 8.9.

" Assignment Period " shall have the meaning set forth in Section 3.1(d).

" beneficial owner " or " beneficially own " has the meaning given such term in Rule 13d-3 under the Exchange Act and a Person's beneficial ownership of either Common Stock or other Voting Securities of the Company shall be calculated in accordance with the provisions of such Rule; *provided* , *however* , that for purposes of determining beneficial ownership, a Person shall be deemed to be the beneficial owner of any security which may be acquired by such Person whether within sixty (60) days or thereafter, upon the conversion, exchange or exercise of any options, rights or other securities.

" Black Out Period " shall have the meanings set forth in Sections 3.3(a)(i) and (ii).

" Business Day " means any day other than a day on which banks are required or authorized by law to be closed in the State of New York or the State of Indiana.

“ Capital Stock ” means, with respect to any Person at any time, any and all shares, interests, participations or other equivalents (however designated, whether voting or non-voting) of capital stock, partnership interests (whether general or limited) or equivalent ownership interests in or issued by such Person and, with respect to the Company, includes any and all shares of Common Stock, preferred stock and any other equity interests of the Company.

“ Claims ” shall have the meaning set forth in Section 4.4(a).

“ Closing ” has the meaning assigned to such term in the Purchase Agreement.

“ Closing Date ” has the meaning assigned to such term in the Purchase Agreement.

“ Common Stock ” means the common stock, par value $0.01 per share, of the Company and any securities issued in respect thereof, or in substitution therefor, in connection with any stock split, dividend, spin-off or combination, or any reclassification, recapitalization, merger, consolidation, exchange or other similar reorganization or business combination.

“ Company Affiliate ” refers to any Investor during and for the three months following such time such Investor (i) holds in excess of 10% of the Voting Securities of the Company or (ii) has a material relationship with any director of the Company.

“ Company Board ” means the Board of Directors of the Company.

“ Company Non-Affiliate ” means any Investor other than a Company Affiliate.

“ Company Offering ” means any public offering of securities of the Company, in whole or in part, by the Company (other than pursuant to Form S-8 or Form S-4).

“ Confidentiality Agreement ” means the Mutual Nondisclosure Agreement dated as of August 27, 2009, by and between the Stockholder and the Company.

“ control ” (including the terms “ controlled by ” and “ under common control with ”), with respect to the relationship between or among two or more Persons, means the possession, directly or indirectly, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee or executor, by contract or otherwise.

“ Covered Securities ” means Common Stock and any securities convertible into or exercisable or exchangeable for Common Stock, other than securities that are (A) Indebtedness issued in connection with the Company Refinancing (as such terms are defined in the Purchase Agreement), (B) the Warrants, (C) issued by the Company pursuant to any employment contract, employee or benefit plan, stock purchase plan, stock ownership plan, stock option or equity compensation plan or other similar plan where stock is being issued or offered to a trust, other entity to or for the benefit of any employees, potential employees, consultants, officers or director of the Company, (D) issued by the Company in connection with a business combination or other merger, acquisition or disposition transaction, (E) issued with reference to the common stock of a Subsidiary (i.e., a carve-out transaction), (F) issued as a dividend or in connection with a dividend investment or stockholder purchase plan or (G) issued in exchange for, or upon exercise or conversion of, (i) currently outstanding securities or (ii) securities issued hereafter that are securities described in clauses (A) through (F) above.

" Demand Limitation " shall have the meaning set forth in Section 3.2.

" Demand Notice " shall have the meaning set forth in Section 3.2.

" Designated Securities " shall have the meaning set forth in Section 5.2.

" Effective Date " shall have the meaning set forth in Section 3.1(c).

" Equity Securities " means with respect to the Company, any and all shares of Capital Stock of the Company or securities of the Company, options or other rights convertible into, or exchangeable or exercisable for, such shares.

" Excess Shares " shall have the meaning set forth in Section 7.1(c).

" Exchange Act " means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

" Filing Date " shall have the meaning set forth in Section 3.1(c).

" Holdback Period " shall have the meaning set forth in Section 4.6.

" incur " or " incurrence " means to incur, create, assume, guarantee or otherwise become directly or indirectly liable with respect to.

" Indemnified Parties " shall have the meaning set forth in Section 4.4(a).

" Initial Effective Date " shall have the meaning set forth in Section 3.1(a)(ii).

" Initial Filing Date " shall have the meaning set forth in Section 3.1(a)(i).

" Investor " means any of the Stockholder Parties and the Unaffiliated Assignees.

" Investor Representative " means the Stockholder or its Affiliated designee, or, on or after such date as the Stockholder Parties hold less than 50% of the Registrable Securities outstanding (determined based on the Registrable Securities Purchase Price of the Registrable Securities then held by the Stockholder Parties as a percentage of the aggregate Registrable Securities Purchase Price applicable to all Registrable Securities then outstanding) for a 90 consecutive day period, the Investor or group of Affiliated Investors who hold the largest single block of Registrable Securities.

" Liquidated Damages " shall have the meaning set forth in Section 3.3(d)(i).

" Lock-Up Period " means the period commencing on the Closing Date and ending on the date that is the earlier of (a) 90 days after the closing of the Public Offering (as defined in the Purchase Agreement) and (b) six months after the Closing Date.

" NYSE" means The New York Stock Exchange, Inc.

" Percentage Interest " means, as of any date, the percentage equal to (i) the aggregate number of Shares beneficially owned or otherwise held by the Stockholder Parties as of such date, divided by (ii) the total number of outstanding shares of Company Common Stock as of such date.

" Person " means any individual, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivisions thereof or any Group (as such term is defined in Section 13(d)(3) of the Exchange Act) comprised of two or more of the foregoing.

" Permitted Assignee " shall have the meaning set forth in Section 8.9.

" Plan of Distribution " shall have the meaning set forth in Section 3.1(a)(i).

" Private Placement " shall have the meaning set forth in Section 5.3(b).

" Public Offering " has the meaning attributed thereto in the Purchase Agreement.

" Purchase Agreement " shall have the meaning set forth in the Recitals.

" Qualified Offering " shall have the meaning set forth in Section 5.1.

" Registrable Securities " means any Shares and Warrants issued to the Stockholder pursuant to the Purchase Agreement or subsequently issued with respect thereto (including, without limitation, upon exercise of the Warrants), any convertible Indebtedness issued in connection with the Company Refinancing and any other shares of Common Stock now owned or hereafter acquired by the Stockholder (including shares issued upon conversion, exercise, or otherwise in respect of any Equity Securities), other than (i) shares of Common Stock subject to registration or registration rights pursuant to any past, present or future obligation of the Company under any other Agreement (other than shares of Common Stock issued upon conversion of convertible Indebtedness acquired by Stockholder in the Company Refinancing), and (ii) in the case of any Permitted Assignee hereunder, shares of Common Stock acquired by such Permitted Assignee that were not (or, if issuable upon conversion or exercise of any Equity Securities of the Company, would not have been if so converted by the prior holder) Registrable Securities immediately prior to the acquisition of such shares of Common Stock or Equity Securities convertible thereinto. As to any particular Registrable Securities, once issued, such Registrable Securities shall cease to be Registrable Securities when (i) a registration statement with respect to the sale by the Investor of such securities shall have become effective under the Securities Act and such securities shall have been disposed of in accordance with such registration statement, (ii) such securities shall have been distributed to the public pursuant to Rule 144 (or any successor provision), (iii) such securities are eligible to be a sold by the holder thereof pursuant to Rule 144 without restriction or limitation thereunder on volume or manner of sale (other than restrictions imposed hereunder) in the reasonable opinion of counsel to the Company; (iv) such securities are sold in a private transaction in which the transferor's rights under this Agreement are not assigned to the transferee of the securities; or (v) such securities shall have ceased to be outstanding. For purposes of this Agreement, any required calculation of the amount of, or percentage of, Registrable Securities shall be based on the number of Shares or other shares of Common Stock which are Registrable Securities.

" Registrable Securities Purchase Price " means, with respect to any Registrable Security, the purchase price actually paid by the Investor holding such Registrable Security (or, if such Registrable Security was acquired upon exercise or conversion of other Equity Securities, the exercise price or conversion price thereof), in all cases subject to adjustment for any stock split, dividend, spin-off or combination, or any reclassification, recapitalization, merger, consolidation, exchange or other similar reorganization or business combination. Notwithstanding the foregoing, the Registrable Securities Purchase Price for (i) the Shares shall be $4.29 per Share and (ii) the Warrants shall be $1.50 per share of common stock issuable upon exercise of the Warrants, in all cases subject to adjustment for any stock split, dividend, spin-off or combination, or any reclassification, recapitalization, merger, consolidation, exchange or other similar reorganization or business combination.

" Registration Default " shall have the meaning set forth in Section 3.1(d).

“ Registration Expenses ” means any and all expenses incident to performance of or compliance with Articles III, IV and V of this Agreement, including (i) all SEC and NYSE or other securities exchange registration and filing fees, (ii) all fees and expenses of complying with securities or blue sky laws (including the reasonable fees and disbursements of counsel for the underwriters in connection with blue sky qualifications of the Registrable Securities), (iii) all printing, messenger and delivery expenses, (iv) all fees and expenses incurred in connection with the listing of the Registrable Securities on the NYSE or any other securities exchange pursuant to this Agreement and all rating agency fees, (v) the fees and disbursements of counsel for the Company and of the Company’s independent public accountants, including the expenses of any special audits and/or “cold comfort” letters required by or incident to such performance and compliance, (vi) the reasonable fees and disbursements of counsel, (vii) any reasonable fees and disbursements of underwriters and their counsel customarily paid by the issuers or sellers of securities (including, without limitation, fees and expenses related to filings with the Financial Industry Regulatory Authority, Inc.), and the reasonable fees and expenses of special experts retained in connection with the requested registration, but excluding underwriting discounts and commissions and transfer taxes, if any, and (viii) all expenses incurred in connection with any road shows (including the reasonable out-of-pocket expenses of the holder of the applicable Registrable Securities).

“ Registration Statement ” means any registration statement of the Company under the Securities Act which covers any of the Registrable Securities pursuant to the provisions of this Agreement, including the prospectus, amendments and supplements to such registration statement, including post-effective amendments, all exhibits and all material incorporated by reference or deemed to be incorporated by reference in such registration statement. For the avoidance of doubt, the definition of “Registration Statement” includes any Shelf Registration.

“ Response Period ” shall have the meaning set forth in Section 3.2.

“ Rule 144 ” means Rule 144 (or any successor provision) under the Securities Act.

“ Scheduled Earnings Blackouts ” shall have the meaning set forth in Section 3.3(a)(ii).

“ SEC ” means the U.S. Securities and Exchange Commission or any other federal agency then administering the Securities Act or the Exchange Act and other federal securities laws.

“ Securities Act ” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“ Sell-Down ” shall have the meaning set forth in Section 5.5.

“ Shares ” shall mean (a) the Shares acquired by the Stockholder pursuant to the Purchase Agreement, (b) any Common Stock issued to any Investor in connection with the exercise of the Warrants, and any securities issued in respect of (a) or (b), or in substitution therefor, in connection with any stock split, dividend, spin-off or combination, or any reclassification, recapitalization, merger, consolidation, exchange or other similar reorganization or business combination.

“ Shelf Registration ” shall have the meaning set forth in Section 3.1(a)(i).

“ Stockholder Party ” means any of the Stockholder and the Affiliated Assignees.

“ Subsidiary ” means (i) any corporation of which a majority of the securities entitled to vote generally in the election of directors thereof, at the time as of which any determination is being made, are owned by another entity, either directly or indirectly, and (ii) any joint venture, general or limited partnership, limited liability company or other legal entity in which an entity is the record or beneficial owner, directly or indirectly, of a majority of the voting interests or the general partner and, with respect to the Company.

“ Suspension Notice ” shall have the meaning set forth in Section 3.3(a).

“ Transaction Agreements ” shall mean the Confidentiality Agreement and the Purchase Agreement.

“ Transfer ” shall mean, with respect to any security or instrument, any voluntary or involuntary attempt to, directly or indirectly, offer, sell, assign, transfer, grant a participation in, pledge, hypothecate or otherwise encumber or dispose of, including, without limitation, by way of entry into any swap or other agreement or transaction that hedges or transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of such security or instrument, or the consummation of any such transactions.

“ Unaffiliated Assignee ” shall have the meaning set forth in Section 8.9.

“ Underwriter Cutback ” shall have the meaning set forth in Section 3.2.

“ Underwritten Offering ” shall have the meaning set forth in Section 3.2.

“ Voting Securities ” means, at any time, shares of any class of Equity Securities which are then entitled to vote generally in the election of Directors.

“ Voting Threshold ” means, at any time and with respect to any matter upon which holders of any class or series of Capital Stock of the Company are then entitled to vote or consent, 19.9% of the aggregate voting power of all Capital Stock so entitled. If approval of such matter requires the separate vote or consent of any class(es) or series of Capital Stock of the Company, the “Voting Threshold” will be determined in respect of, and by reference to, the aggregate voting power of all class(es) or series of Capital Stock entitled to vote in each such vote or consent.

“ Warrants ” shall mean the warrants to acquire an aggregate 5,000,000 shares of Common Stock purchased by the Stockholder pursuant to the Purchase Agreement.

“ Withheld Shares ” shall have the meaning set forth in Section 7.1(b).

SECTION 1.2 Other Definitional Provisions . (a) The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Article and Section references are to this Agreement unless otherwise specified.

(b) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

ARTICLE II

RESTRICTIONS ON TRANSFER

SECTION 2.1 Transfer of the Shares . No Investor shall Transfer any Shares or Warrants without the Company’s written consent except (i) any Transfer by a Stockholder Party to any Affiliate of the Stockholder who agrees to be bound by all of the provisions of this Agreement as a Stockholder Party (subject to Section 8.9), which Affiliate of the Stockholder will then be a Stockholder Party entitled to further transfer as a Stockholder Party hereunder to Affiliates of the Stockholder in accordance with the terms hereof, or (ii) (x) upon the expiration of the Lock-Up Period, (y) pursuant to a Transfer described in Section 2.3(b) or (z) in the event of a Sell-Down and, in the case of clauses (x), (y) and (z):

(a) pursuant to an effective registration statement under the Securities Act;

(b) pursuant to Rule 144; or

(c) upon receipt by the Company of an opinion of counsel reasonably satisfactory to the Company that such Transfer is exempt from registration under the Securities Act and applicable state laws.

SECTION 2.2 Restrictive Legends . Each of the Investors hereby acknowledges and agrees that, during the term of this Agreement, each of the certificates or book-entry confirmations representing Shares or Warrants shall be subject to stop transfer instructions and shall include the applicable portion(s) of the legends set forth below:

> "THE SECURITIES REPRESENTED BY THIS CERTIFICATE OR CONFIRMATION HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), AND MAY NOT BE TRANSFERRED, SOLD, ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF ("TRANSFERRED") EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR AN EXEMPTION FROM REGISTRATION THEREUNDER."

In the event that any Shares, Warrants or Common Stock issuable upon exercise of the Warrants or upon conversion of convertible Indebtedness acquired by Stockholder in the Company Refinancing (i) are no longer subject to the transfer restrictions set forth in this Agreement, (ii) are Transferred in a transaction registered under the Act, (iii) are Transferred in a transaction exempt from the registration requirements of the Act, and upon delivery to the Company of such documents as it may reasonably request with respect to such exemption, (iv) upon an Investor's request and receipt by the Company and its transfer agent of an opinion of Investor's counsel reasonably satisfactory to the Company and its transfer agent to the effect that a "private placement" legend is no longer required under the Act and applicable state laws or (v) upon an Investor's request and receipt by the Company and its transfer agent of the certificate attached hereto as Exhibit A certifying that such shares of Common Stock are eligible for resale without limitation under Rule 144 (other than Company information requirements of Rule 144(c)), the Company shall promptly issue new certificates or book-entry confirmations representing such Shares or Warrants, at the expense of the Company. The Company shall cause its counsel to issue a legal opinion, if required (or requested by the Company's transfer agent), to effect the removal of such legend or notation, as applicable, in accordance with this Section 2.2.

SECTION 2.3 Restriction on Certain Transactions (a). From and after the date hereof, each Investor hereby covenants and agrees that it shall not, without the prior written consent of the Company, Transfer any of the Shares to any person if such Transfer, taken together with any other Transfers of shares of Common Stock by the Investor to the same person or any of its Affiliates at any time, would, to the knowledge of the Investor, cause such Person and its Affiliates to become a 5% Shareholder. Notwithstanding this Section 2.3, nothing shall prevent any Stockholder Party from making a Transfer in violation of Section 2.3 under the following circumstances:

(b) Transfers with the consent of the Company Board (such consent not to be withheld unless the Company Board determines in good faith that such Transfer will jeopardize or endanger the availability to the Company of its net operating loss carryforwards to be used to offset its taxable income in such year or future years and the basis for such determination is provided in writing to the applicable Stockholder Party) to any Stockholder Party if the transferee agrees in writing for the benefit of the Company (with a copy thereof to be furnished to the Company) to be bound by the terms of this Agreement and *provided* that, in conjunction therewith, the transferee makes to the Company, at and as of the date of such transfer, each of the representations and warranties contained in Sections 4.1, 4.2 and 4.7 of the Purchase Agreement as if such assignee were "Purchaser" therein;

(c) Transfers pursuant to a merger, tender offer or exchange offer or other business combination, acquisition of assets or similar transaction or change of control involving the Company or any Subsidiary of the Company so long as (i) such transaction has been approved by the Company Board or (ii) none of the Stockholder Parties (x) is a member of the group (as such term is defined in Section 13(d)(3) of the Exchange Act) conducting such transaction or (y) has taken any actions otherwise prohibited pursuant to Section 6.2 hereunder in connection with such transaction; and

(d) Transfers in connection with the sale of shares in a widely-distributed Underwritten Offering.

SECTION 2.4 Transfers Not In Compliance . A purported or attempted Transfer of Shares or Warrants by an Investor, and any purported assignment of Investor's rights and obligations hereunder, that does not comply with Section 2.1, Section 2.2, Section 2.3 and Section 8.9 shall be void *ab initio* and the purported transferee or successor by operation of law shall not be deemed to be a stockholder or warrantholder of the Company for any purpose and shall not be entitled to any of the rights of (i) in the case of a Transfer of Shares, a stockholder, including, without limitation, the right to vote any Shares entitled to vote or to receive a certificate or certificates for the Shares or any dividends or other distributions on or with respect to the Shares or (ii) in the case of a Transfer of Warrants, a warrantholder, including, without limitation, the right to exercise such Warrants or to receive shares of Common Stock in respect thereof.

ARTICLE III

REGISTRATION RIGHTS WITH RESPECT TO THE REGISTRABLE SECURITIES

SECTION 3.1 Shelf Registration Statement Matters .

(a) Shelf Registration Statement . Subject to Section 3.3, the Company shall:

(i) on or prior to the 60 th day after the Closing (the " Initial Filing Date "), prepare and file with the SEC a "shelf" Registration Statement covering the resale of 100% of the Registrable Securities (a " Shelf Registration ") on such Initial Filing Date for an offering to be made on a continuous basis pursuant to Rule 415 under the Securities Act (or any successor provisions), which Shelf Registration shall be on Form S-3 (except if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, in which case such registration shall be on Form S-1 or another reasonably appropriate form) and shall contain substantially the " Plan of Distribution " attached hereto as Annex A;

(ii) use reasonable best efforts to cause the Shelf Registration to become effective as soon as practicable after such filing, but in no event later than the 120 th day after the Closing (the " Initial Effective Date "); *provided* , *however* , that in the event the Company is notified by the SEC that the Shelf Registration will not be reviewed or is no longer subject to further review and comments, the Initial Effective Date shall be the fifth Business Day following the date on which the Company is so notified if such date precedes the date otherwise required above;

(iii) use reasonable best efforts to maintain continuously in effect, supplement and amend, if necessary, the Shelf Registration, as required by the instructions applicable to such registration form or by the Securities Act, until there are no remaining Registrable Securities;

(iv) furnish, upon request, to the holders of the Registrable Securities to which the Shelf Registration relates copies of any supplement or amendment to such Shelf Registration prior to such supplement or amendment being used and/or filed with the SEC; and

(v) pay all Registration Expenses in connection with the Shelf Registration, whether or not it becomes effective, and whether all, some or none of the Registrable Securities to which it relates are sold pursuant to it.

(b) Effective Shelf Registration Statement . (i) If at any time, the Shelf Registration ceases to be effective, the Company shall, subject to Section 3.3, file, not later than 30 days after such prior Shelf Registration ceased to be Effective (a " New Filing Date "), and use its reasonable best efforts to cause to become effective a new Shelf Registration as soon as practicable, but not later than the 90 th day after such New Filing Date (a " New Effective Date "); *provided* , *however* , that in the event the Company is notified by the SEC that the Shelf Registration will not be reviewed or is no longer subject to further review or comments, the New Effective Date shall be the fifth Business Day following the date on which the Company is so notified if such date precedes the date otherwise required above.

(ii) If, after any Shelf Registration has become effective, it is interfered with by any stop order, injunction or other order or requirement of the

SEC or other governmental agency or authority, the Company shall use its reasonable best efforts to prevent the issuance of any stop order suspending the effectiveness of the Shelf Registration or of any order preventing or suspending the use of any prospectus and, if any such order is issued, to obtain the withdrawal of any such order at the earliest possible moment, but not later than the 90 th day after such order is issued (a " Withdrawal Date ").

(c) Additional Registrable Securities . At any time that the Company knows that the number of Registrable Securities at such time exceeds 115% of the number of shares of Common Stock then registered on all Registration Statements applicable to the Registrable Securities, the Company shall, subject to Section 3.3, use its reasonable best efforts to amend any existing Registration Statement, or to file an additional Registration Statement, to register for resale by the Holders of not less than 100% of the Registrable Securities as soon as reasonably practicable, but not later than the 30 th day after the Company first knows of such circumstance (an " Additional Filing Date " and together with the Initial Filing Date, the New Filing Date, a " Filing Date "), and shall use its reasonable best efforts to cause such amendment or additional Registration Statement to be declared effective, as soon as practicable, but not later than the 60 th day after the Additional Filing Date (an " Additional Effective Date " and together with the Initial Effective Date and the New Effective Date and the Withdrawal Date, an " Effective Date "); *provided* , *however* that in the event the Company is notified by the SEC that such additional Registration Statement will not be reviewed or is no longer subject to further review and comments, such Additional Effective Date as to such Registration Statement shall be the fifth Business Day following the date on which the Company is so notified if such date precedes the date otherwise required above.

(d) Delay Payments . (i) The Company and each Investor each agree that the Investor will suffer damages, and it would not be feasible to ascertain the extent of such damages with precision, if the Company fails to fulfill its obligations under Article III hereof. Subject in all cases to Section 3.3 (including any applicable Blackout Period imposed in accordance therewith) and Section 4.6 (including any Holdback Period imposed in accordance therewith, whether such period is pursuant to the agreement set forth in Section 4.6 or a separate agreement with the underwriters of any Company Offering or Underwritten Offering), if (A) a Registration Statement is not filed on or prior to any Filing Date applicable thereto, (B) a Registration Statement is not declared effective by the SEC or any order of a governmental authority preventing or suspending the use of any prospectus is not lifted prior to any Effective Date applicable thereto, (C) the Company fails to file with the SEC a request for acceleration of effectiveness in accordance with Rule 461 promulgated under the Securities Act, within five Business Days after the date that the Company is notified in writing by the SEC that a Registration Statement will not be "reviewed," or is not subject to further review, (D) after the Effective Date, the Shares are not listed on the NYSE, (E) after the Effective Date, a Registration Statement required to be effective hereunder ceases for any reason to remain effective (without being succeeded immediately by a replacement Registration Statement filed and declared effective) or usable (excluding during the Lock-Up Period, and excluding as a result of a post-effective amendment thereto that is required by applicable law in order to cause a Permitted Assignee hereunder to be named as a selling securityholder therein, provided that such post-effective amendment is filed by the Company within 10 Business Days after the Company receiving notice from any Investor that such post-effective amendment is required (any such 10 Business Day period, an " Assignment Period ") for the resale of Registrable Securities, or the Investors are otherwise unable to effect the resale of any Registrable Securities hereunder as a result of a breach by the Company of its obligations hereunder, in each case for such period of time (excluding the duration of any Black Out Period applicable to such Registrable Securities, any Holdback Period, any Assignment Period or the Lock-up Period) as to any Registrable Securities for which any Registration Statement is then required to be effective hereunder (each of the events referred to in clauses (A) through (E), a " Registration Default ") the Company shall pay to any Investor holding any Registrable Securities not eligible for resale as a result of such Registration Default, for the duration of such Registration Default as it applies to such Registrable Securities held by such Investor:

(1) if such Investor is a Company Affiliate, an amount (the " Affiliate Liquidated Damages ") equal to (i) one-half of one percent (0.5%) per year of the Registrable Securities Purchase Price applicable to such Registrable Securities for the period up to and including the 70 th day in any 360 consecutive-day period during which a Registration Default has occurred and is continuing, payable in cash on each January 1 and July 1 and calculated on the basis of a 360 calendar-day year consisting of twelve 30 calendar-day months, and (ii) one percent (1.0%) per 30 days of the Registrable Securities Purchase Price applicable to such Registrable Securities for the period exceeding the 70 th day in any 360 consecutive-day period during which a Registration Default has occurred and is continuing, payable in cash on the second business day of each calendar month in respect of payments accruing through the last day of the preceding calendar month, with late payments accruing interest at a rate of 18% per annum (or such lesser maximum amount that is permitted to be paid by applicable law), compounding on each payment date; or

(2) If such Investor is a Company Non-Affiliate, an amount equal to one percent (1.0%) per 30 days of the Registrable Securities Purchase Price applicable to such Registrable Securities, payable in cash on the second business day of each calendar month in respect of payments accruing through the last day of the preceding calendar month, with late payments accruing interest at a rate of 18% per annum (or such lesser maximum amount that is permitted to be paid by applicable law), compounding on each payment date (the payments described in clauses (1) and (2) of this Section 3.3(d)(i), the " Liquidated Damages ")

(ii) Notwithstanding anything to the contrary herein, in no event shall the Company be liable for Liquidated Damages in excess of $8,000,000 in any calendar year, pro-rated for the remaining portion of the calendar year in which this Agreement is entered into. Each of the Company and each Investor agree that the Liquidated Damages provided for in this Section

3.1(d) constitute a reasonable estimate of the damages that may be incurred by the Investor by reason of a Registration Default and that such Liquidated Damages are the only monetary damages available to the Stockholder in the event of a Registration Default. Notwithstanding anything to the contrary set forth in this Section 3.1, no event shall be considered a Registration Default hereunder if such event or the primary cause thereof (i) was consented to in writing by the Stockholder or Investors holding in excess of 50% of the then-outstanding Registrable Securities (determined based on the Registrable Securities Purchase Price applicable to the then-outstanding Registrable Securities), or (ii) results (and shall not be considered a Registration Default for as long as it continues to result) primarily from (x) any breach or delay in performance by any Investor of any of its obligations set forth in this Agreement, (y) an Investor's objection pursuant to Section 4.1(c) or (z) any delay caused or requested by any underwriter or underwriters in connection with an Underwritten Offering, including as a result of any holdback period contemplated by Section 4.6 hereof.

SECTION 3.2 Underwritten Offerings; Demand Registration . Subject to Section 3.3 (including any Blackout Period imposed in accordance therewith) and 4.6 (including any Holdback Period imposed in accordance therewith, whether such period is pursuant to the agreement set forth in Section 4.6 or a separate agreement with the underwriters of any Company Offering or Underwritten Offering), the Stockholder or, if the Stockholder has assigned its rights under this Section 3.2 in accordance with the terms of this Agreement, Investors holding more than 50% of the Registrable Securities at such time (determined based on the Registrable Securities Purchase Price applicable to the then-outstanding Registrable Securities)) may deliver a notice to the Company stating that it wishes to effect an underwritten offering of all or part of its Registrable Securities (an " Underwritten Offering ") and stating the number of the Registrable Securities to be included in the Underwritten Offering (a " Demand Notice "). The Company shall, promptly after its receipt of a Demand Notice, give all other Investors written notice of such request. Each such Investor may, by delivery of written notice to the Company within twenty (20) days after the Company's delivery of notice to such Investor (the " Response Period "), request that all or any portion of such Investor's Registrable Securities be included in such Underwritten Offering. Notwithstanding the foregoing, the Stockholder and the other Investors, collectively, shall be entitled to deliver to the Company no more than three (3) Demand Notices in the aggregate (the " Demand Limitation "); *provided* that no Demand Notice shall be counted against the Demand Limitation unless and until the Registration Statement filed pursuant to such Demand Notice is declared effective and the Registrable Securities registered thereunder have been sold (other than any such Registrable Securities excluded from such Underwritten Offering as a result of a determination by the underwriter that marketing factors required a limitation on the number of shares to be underwritten in such offering (an " Underwriter Cutback "), except in the event that (i) the Stockholder or Investors holding of more than 50% of the Registrable Securities requested to be registered in such Underwritten Offering (determined based on the Registrable Securities Purchase Price applicable to such Registrable Securities) elect to abandon such offering or (ii) the Underwritten Offering is not consummated primarily as a result of the action, or failure to act, of one or more Investors holding Registrable Securities requested to be included therein. Notwithstanding the foregoing, if, in connection with an Underwritten Offering requested pursuant to the final Demand Notice permitted under the Demand Limitation set forth above, (i) the Stockholder Parties request that all of their remaining Registrable Securities be included in such Underwritten Offering, and (ii) solely as a result of an Underwriter Cutback, the Stockholder Parties are required to sell less than 75% of such Registrable Securities requested to be distributed in such Underwritten Offering, then the Stockholder Parties will be entitled, collectively, to request one additional Underwritten Offering with respect to all of their remaining Registrable Securities, in which all Investors will be entitled to participate as if in connection with, and pursuant to the procedures applicable to, the delivery of a Demand Notice; *provided* that, in connection with such additional Underwritten Offering, any Underwriter Cutbacks shall be applied first, pro rata, with respect to the Registrable Securities of Unaffiliated Assignees requested to be included therein, and thereafter, pro rata, with respect to the Registrable Securities of the Stockholder Parties requested to be included therein.

Upon expiration of such Response Period (or, if the Lock-Up Period has not then expired, upon expiration of the Lock-Up Period), and subject to Section 3.3 hereof, as soon as reasonably practicable and subject to such Underwriter Cutbacks as may be requested by the managing underwriter(s) of such Underwritten Offering:

(a) if there is, at such time, an effective Shelf Registration in respect of the Registrable Securities, the Company shall promptly amend or supplement the Shelf Registration if and as may be necessary in order to enable such Registrable Securities to be distributed pursuant to an Underwritten Offering, but in any event no later than 30 days after the expiration of the Response Period, and shall use its reasonable best efforts to cause such amendment to become effective as soon as practicable after such filing, but in any event no later than 90 days after the expiration of the Response Period; or

(b) if there is, at such time, no effective Shelf Registration in effect in respect of the Registrable Securities, the Company shall:

(i) cause to be prepared and to file a Registration Statement as promptly as reasonably practicable after expiration of the Response Period, but in any event no later than 30 days thereafter;

(ii) use reasonable best efforts to cause such Registration Statement to become effective as soon as practicable after filing, but in any event no later than 90 days after expiration of the Response Period;

(iii) use reasonable best efforts to maintain in effect, supplement and amend, if necessary, the Registration Statement, as required by the instructions applicable to such registration form or by the Securities Act for the period required to consummate the Underwritten Offering;

(iv) furnish, upon request, to the holders of the Registrable Securities to which the Registration Statement relates copies of any supplement or amendment to such Registration Statement prior to such supplement or amendment being used and/or filed with the SEC; and

(v) pay all Registration Expenses in connection with the Registration Statement, whether or not it becomes effective, and whether all, some or none of the Registrable Securities to which it relates are sold pursuant to it.

The date that is thirty (30) days after the expiration of the Response Period shall be an “Additional Filing Date” for purposes of Section 3.1(d) hereunder, and the date that is ninety (90) days after the expiration of the Response Period shall be an “Additional Effective Date” for purposes of Section 3.1(d) hereunder.

SECTION 3.3 Suspension of Registration Rights . (a) Notwithstanding anything to the contrary herein, if the Company shall at any time furnish to the Stockholder a certificate signed by any of its authorized officers (a “ Suspension Notice ”) stating that:

(i) the Company has pending or in process a material transaction, the disclosure of which would, in the good faith judgment of the Company Board, after consultation with its outside counsel, materially and adversely affect the Company; or

(ii) the Company Board has made the good faith determination (after consultation with counsel and including, without limitation, recurring earnings blackout periods established by the Company Board or a designated committee thereof (“ Scheduled Earnings Blackouts ”)) (i) that use or continued use of any proposed or effective Registration Statement for purposes of effecting offers or sales of Registrable Securities pursuant thereto would require, under the Securities Act, premature disclosure in such Registration Statement (or the prospectus relating thereto) of material, non-public information (without disclosing the specific material, non-public information, unless the Stockholder specifically requests in writing to receive such material, non-public information), (ii) that such premature disclosure would not be in the best interest of the Company and (iii) that it is therefore essential to defer the filing or to suspend the use of such Registration Statement (and the prospectus relating thereto) for purposes of effecting offers or sales of Registrable Securities pursuant thereto,

then the right of the Investors to require the Company to file any Registration Statement or, after the filing thereof, use any Registration Statement (and the prospectus relating thereto) for purposes of effecting offers or sales of Registrable Securities pursuant thereto shall be suspended for a period (a " Black Out Period ") of not more than (i) with respect to any Company Affiliate, 180 days in any 360 consecutive-day period (and no more than 45 consecutive days in any 360 consecutive day period except, in the case of a Suspension Notice delivered, or a Scheduled Earnings Blackout designated, in respect of the Company's year-end earnings reports, no more than 65 consecutive days after delivery of such Suspension Notice or start of such Scheduled Earnings Black Out), (ii) with respect to any Company Non-Affiliate, 90 days in any 360 consecutive-day period (and no more than 45 consecutive days in any 360 consecutive day period except, in the case of a Suspension Notice delivered, or Scheduled Earnings Blackout designated, in respect of the Company's year-end earnings reports, no more than 65 consecutive days after delivery of such Suspension Notice or start of such Scheduled Earnings Black Out). For avoidance of doubt, with respect to any Registrable Security, no Registration Default shall be applicable to such Registrable Security during any Black Out Period permitted to be imposed on the holder of such Registrable Security pursuant to this Section 3.3. Notwithstanding anything to the contrary in this Section 3.3(a), the Company shall not impose any Black Out Period, including any Scheduled Earnings Black Out, in a manner that is more restrictive (including, without limitation, as to duration) than the comparable restrictions the Company may impose on Transfers of the Company's Equity Securities by its directors and senior executive officers.

(b) During any Black Out Period, no Investor shall offer or sell any Registrable Securities pursuant to or in reliance upon any Registration Statement (or the prospectus relating thereto) filed by the Company. Notwithstanding the foregoing, if the public announcement of such material, nonpublic information is made during a Black Out Period, then the Black Out Period shall terminate without any further action of the parties and the Company shall immediately notify the Investors of such termination. Except in connection with any notice required to be provided hereunder or in connection with any reasonable response to unsolicited written or oral requests from a Stockholder Party or its representatives and affiliates for information, the Company shall use its reasonable best efforts to refrain from providing any Stockholder Party with any material, non-public information without such Stockholder Party's prior written consent.

SECTION 3.4 Incidental Registration Rights . If the Company at any time proposes to offer Covered Securities in a registered Company Offering for its own account, each such time it will promptly give written notice to the Investors of its intention so to do. Upon the written request of any Investor, received by the Company within thirty (30) days after delivery of any such notice by the Company, requesting to register any or all of its Registrable Securities, the Company will use its reasonable best efforts to cause such Registrable Securities to be included in the securities to be covered by the Registration Statement proposed to be filed in connection with the registered Company Offering to the extent required to permit the sale or other disposition by such Investor of such Registrable Securities. If such registered Company Offering involves an underwriting, the Company shall so advise the Investors as a part of the written notice given pursuant to this Section 3.4. In such event, the right of any Investor to registration pursuant to this Section 3.4 shall be conditioned upon such Investor's participation in such underwriting to the extent provided herein. If any Investor proposes to distribute any or all of its Registrable Securities through such underwritten Company Offering, it shall (together with the Company and any other Investors so participating) enter into an underwriting agreement in customary form with the underwriter or underwriters selected for underwriting by the Company. Notwithstanding any other provision of this Section 3.4, if there is an Underwriter Cutback, such limitation will be imposed first pro rata with respect to all securities whose holders have a contractual, incidental right to include such securities in the Registration Statement (including, without limitation, any Investors) and as to which inclusion has been requested pursuant to such right. The Company shall be obligated to include in such Registration Statement only such limited portion of Registrable Securities with respect to which any Investor has requested inclusion hereunder. Notwithstanding the foregoing provisions, the Company may withdraw any Registration Statement referred to in this Section 3.4 without thereby incurring any liability to any Investor. If any Investor disapproves of the terms of any such underwriting, it may elect to withdraw therefrom by written notice to the Company and the underwriter or in such other manner as may be required by any underwriting agreement to which the Investor becomes a party in connection with such underwriting. Any Registrable Securities or other securities excluded or withdrawn from such underwriting shall be withdrawn from such registration and the Company Offering, and the Registration Statement applicable to such registration shall not be available for use by such Investor in respect of such withdrawn Registrable Securities.

ARTICLE IV

REGISTRATION PROCEDURES

SECTION 4.1 Registration Procedures (a). If and whenever the Company is required to effect or cause the registration of any Registrable Securities under the Securities Act under this Agreement:

(b) The Company will use its reasonable best efforts to cause the Registration Statement applicable to such Registrable Securities to become effective and, subject to Section 3.3 hereof, the Company will prepare and file with the SEC such amendments and supplements to the Registration Statement and the prospectus or prospectus supplement used in connection therewith as may be necessary (i) in the case of a Shelf Registration, to keep such Shelf Registration continuously effective and usable for resale of the Registrable Securities for a period from the date of its initial effectiveness until such time as there are no such Registrable Securities remaining (including by refiling the Shelf Registration (or a new Shelf Registration) if the initial Shelf Registration expires, (ii) in the case of any other Registration Statement, to keep such Registration Statement effective and usable for resale of all of the Registrable Securities intended to be sold pursuant thereto and (iii) to comply with the provisions of the Securities Act with respect to the disposition of the Registrable Securities covered by such Registration Statement. The Company shall use its reasonable best efforts to cause any amendment to any Registration Statement to be declared effective by the SEC as soon as practicable following the filing thereof with the SEC. In the event that the Company is a well-known seasoned issuer (as defined under Rule 405 of the Act) at the time of the filing of the Shelf Registration with the

SEC, such Shelf Registration shall be designated by the Company as an automatic Shelf Registration.

(c) Not less than five (5) Business Days prior to the filing of each Registration Statement and not less than one (1) Business Day prior to the filing of any related prospectus or any amendment or supplement thereto (including any document that would be incorporated or deemed to be incorporated therein by reference), the Company shall, upon request of any Investor (but not if such Investor does not so request) (i) furnish to such Investor drafts of all such documents proposed to be filed, which documents (other than those incorporated or deemed to be incorporated by reference) will be subject to the review of such Investor, and (ii) cause its officers and directors, counsel and independent certified public accountants to respond, during normal business hours and upon reasonable notice, to such inquiries as shall be necessary, in the reasonable opinion of counsel to such Investor, to conduct a reasonable investigation within the meaning of the Securities Act. If such Investor reasonably and in good faith objects in writing and with specificity to any proposed disclosure in a draft Registration Statement or prospectus (no later than three (3) Business Days after the Stockholder has been furnished copies thereof) or any amendments or supplements thereto (no later than one (1) Business Day after the Stockholder has been furnished copies thereof) (i) regarding such Investor or (ii) on the basis that the disclosure, as proposed, contains one or more untrue statements of a material fact or omissions to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they are made, not misleading, in each case whether such disclosure is contained in the "selling stockholder" section thereof or otherwise, the Company shall not file such Registration Statement or such prospectus or amendments or supplements thereto until it has taken such steps as it deems reasonably appropriate to address the Investor's concerns.

(d) The Company will furnish to each Investor such number of copies of the applicable Registration Statement and each such amendment and supplement thereto (including in each case all exhibits) and of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as such Investor may reasonably request in order to facilitate the disposition of Registrable Securities owned or to be distributed by such Investor.

(e) The Company shall use its reasonable best efforts to register and qualify the Registrable Securities under such other securities or "blue sky" laws of such jurisdictions within the United States as shall be reasonably requested by the Investors, to keep such registration or qualification in effect for so long as such Registrable Securities remain outstanding, and to take any other action which may be reasonably necessary to enable the Investors to consummate the disposition in such jurisdictions within the United States of the Registrable Securities; *provided* that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions.

(f) After the filing of any Registration Statement, the Company will promptly notify the Investors of any stop order issued or threatened by the SEC and shall use its reasonable best efforts to prevent the entry of such stop order or to remove it if entered.

(g) The Company shall use its reasonable best efforts to cause the Shares and the Common Stock issued upon exercise of the Warrants to be listed on the NYSE or such other securities exchange on which the Common Stock is then listed. The Company will comply in all material respects with the Company's reporting, filing and other obligations under the NYSE Listed Company Manual or bylaws or other rules of the NYSE or comparable regulations of such other securities exchanges on which the Common Stock is then listed. The Company will not take any action which would be reasonably expected to result in the delisting or suspension of trading of the Common Stock, including the Shares and the Common Stock issued upon exercise of the Warrants, on the NYSE or a comparable national securities exchange.

(h) The Company shall promptly notify the Investors:

(i) of the existence of any fact of which the Company is aware or the occurrence of an event or the passage of time that makes the financial statements included in a Registration Statement ineligible for inclusion therein or any statement made in a Registration Statement or related prospectus untrue in any material respect or that otherwise requires the preparation of a supplement or amendment thereto so that, as thereafter amended or supplemented, such Registration Statement or related prospectus will not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statement therein, in light of the circumstances under which they are made, not misleading and promptly make available to the Investors a reasonable number of copies of any such supplement or amendment; *provided* that any Suspension Notice (including, with respect to Scheduled Earnings Blackouts, any such Suspension Notice describing the Company's Scheduled Earnings Blackout policy) shall satisfy the notice requirements hereunder;

(ii) when any Registration Statement filed pursuant to this Agreement or any amendment thereto (other than through the incorporation by reference therein of any report, statement or other document required to be filed pursuant to the Exchange Act and the rules and regulations thereunder) has been filed with the SEC and when such Registration Statement or any post-effective amendment thereto has become effective;

(iii) of any request by the SEC for amendments or supplements to any Registration Statement or the prospectus included therein; and

(iv) of the receipt by the Company or its legal counsel of any notification with respect to the suspension of the qualification of the Common Stock for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose or the issuance of any stop order suspending the effectiveness of any registration statement.

(i) The Company shall use reasonable best efforts to procure the cooperation of the Company's transfer agent in settling any offering or sale of Registrable Securities, including with respect to the transfer of physical stock certificates into book-entry form in accordance with any procedures reasonably requested by any Investor.

(j) In connection with an Underwritten Offering, the Company shall:

(i) enter into such customary agreements, including a customary underwriting agreement, in each case in form and substance reasonably satisfactory to the Company, which may include indemnification provisions in favor of underwriters and other Persons in addition to, or in substitution for the provisions of Section 4.4 hereof, and take such other actions as the Stockholder Parties, the Investor Representative or the underwriters may reasonably request in order to expedite or facilitate the disposition of such Registrable Securities;

(ii) obtain one or more comfort letters, dated such date or dates as are customary for the Company in the context of an underwritten Company Offering, addressed to any underwriters of the Underwritten Offering, signed by the Company's independent public accountants, in form and covering such matters of the type customarily covered by comfort letters delivered by the Company in connection with underwritten Company Offerings as the lead underwriters may reasonably request;

(iii) make available for inspection by the Stockholder, by the Investor Representative, by any underwriter participating in any disposition to be effected pursuant to an Underwritten Offering and by any attorney, accountant or other agent retained by the Stockholder, the Investor Representative or any such underwriter, all pertinent financial and other records, pertinent corporate documents and properties of the Company, and cause all of the Company's officers, directors and employees to supply all information reasonably requested by the Stockholder, the Investor Representative or any such underwriter, attorney, accountant or agent in connection with such Underwritten Offering;

(iv) if requested by the managing underwriter or agent or the Stockholder or the Investor Representative, promptly incorporate in a prospectus supplement or post-effective amendment such information as the managing underwriter or agent or Investor Representative or the Stockholder reasonably requests to be included therein, including, with respect to the number of Registrable Securities being sold by the Investors to such underwriter or agent, the purchase price being paid therefor by such underwriter or agent and with respect to any other terms of the underwritten offering and make all required filings of such prospectus supplement or post-effective amendment as soon as reasonably practicable after being notified of the matters incorporated in such prospectus supplement or post-effective amendment;

(v) use its reasonable best efforts to obtain for delivery to the underwriter or agent an opinion or opinions from counsel for the Company in customary form and in form, substance and scope reasonably satisfactory to such underwriters or agents and their counsel;

(vi) use its commercially reasonable efforts (taking into account the interests of the Company) to make available the executive officers of the Company to participate with the Stockholder, the Investor Representative and any underwriters in any customary “road shows” or other selling efforts that may be reasonably requested by the Stockholder and the Investor Representative, on the one hand, or managing underwriters, on the other hand, in connection with an Underwritten Offering.

SECTION 4.2 Information Supplied . The Company may require any Investor to furnish the Company with, and such Investor shall promptly furnish, such information regarding the Investor and pertinent to the disclosure requirements reasonably relating to the registration and the distribution of the Registrable Securities as the Company may from time to time reasonably request in writing.

SECTION 4.3 Restrictions on Disposition . Each Investor agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 4.1(h), such Investor will forthwith discontinue disposition of Registrable Securities pursuant to the registration statement covering such Registrable Securities until such Investor’s receipt of the copies of the supplemented or amended prospectus contemplated by Section 4.1(h), and, if so directed by the Company, such Investor will deliver to the Company all copies, other than permanent file copies then in such Investor’s possession, of the prospectus covering such Registrable Securities current at the time of receipt of such notice; *provided* that, for the duration of any such suspension of the use of the Registration Statement that is not included as a Black Out Period, Liquidated Damages shall accrue and be payable pursuant to Section 3.1(d) hereof.

SECTION 4.4 Indemnification . (a) In the event of any registration of any Registrable Securities under the Securities Act pursuant to Articles III or IV of this Agreement, the Company shall, and it hereby does, indemnify and hold harmless, to the extent permitted by law, the seller of any Registrable Securities covered by such registration statement, each Affiliate of such seller and their respective directors, officers, employees and stockholders or members or general and limited partners (and any director, officer, Affiliate, employee, stockholder and controlling Person of any of the foregoing), each Person who participates as an underwriter in the offering or sale of such securities and each other Person, if any, who controls such seller or any such underwriter within the meaning of the Securities Act (collectively, the " Indemnified Parties "), against any and all losses, claims, damages or liabilities, joint or several, actions or proceedings (whether commenced or threatened) in respect thereof (" Claims ") and expenses (including reasonable attorney's fees and reasonable expenses of investigation) to which such Indemnified Party may become subject under the Securities Act, common law or otherwise, insofar as such Claims or expenses arise out of, relate to or are based upon (i) any untrue statement or alleged untrue statement of any material fact contained in any registration statement under which such securities were registered under the Securities Act, any preliminary, final or summary prospectus contained therein, or any amendment or supplement thereto, or (ii) any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of a prospectus, in light of the circumstances under which they were made) not misleading; *provided* , that the Company shall not be liable to any Indemnified Party in any such case to the extent that any such Claim or expense arises out of, relates to or is based upon any untrue statement or alleged untrue statement or omission or alleged omission made in such registration statement or amendment or supplement thereto or in any such preliminary, final or summary prospectus in reliance upon and in conformity with written information furnished to the Company by or on behalf of such seller specifically for use in the preparation thereof; and, *provided* , *further* , that the Company will not be liable in any such case to the extent, but only to the extent, that the foregoing indemnity with respect to any untrue statement contained in or omitted from a registration statement or the prospectus shall not inure to the benefit of any party (or any person controlling such party) who is obligated to deliver a prospectus in transactions in a security as to which a registration statement has been filed pursuant to the Securities Act and from whom the person asserting any such Damages purchased any of the Registrable Securities to the extent that it is finally judicially determined that such Damages resulted solely from the fact that such party sold Registrable Securities to a person to whom there was not sent or given, at or prior to the written confirmation of such sale, a copy of the registration statement or the prospectus, as amended or supplemented, and (x) the Company shall have previously and timely furnished sufficient copies of the registration statement or prospectus, as so amended or supplemented, to such party in accordance with this Agreement and (y) the registration statement or prospectus, as so amended or supplemented, would have corrected such untrue statement or omission of a material fact. The Company's obligation to indemnify for Claims and expenses hereunder is irrespective of whether the Indemnified Party has itself paid such Claims or expenses.

(b) As a condition to including any Registrable Securities in any registration statement filed in accordance with Sections 3.2 or 3.4 herein, the Company shall have received a customary agreement from the prospective seller of such Registrable Securities or any underwriter to indemnify and hold harmless (in the same manner and to the same extent as set forth in Section 4.4(a)) the Company and all other prospective sellers or any underwriter, as the case may be, with respect to any untrue statement or alleged untrue statement in or omission or alleged omission from such registration statement, any preliminary, final or summary prospectus contained therein, or any amendment or supplement thereto, if such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Company by or on behalf of such seller or underwriter specifically for use in the preparation of such registration statement, preliminary, final or summary prospectus or amendment or supplement, or a document incorporated by reference into any of the foregoing. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Company or any of the prospective sellers, or any of their respective Affiliates, directors, officers or controlling Persons and shall survive the transfer of securities by any seller. In no event shall the liability of any selling holder of Registrable Securities hereunder be greater in amount than the dollar amount of the proceeds received by such holder upon the sale of the Registrable Securities giving rise to such indemnification obligation.

(c) Each indemnified party hereunder shall give prompt written notice to the indemnifying party of any Claim commenced against it in respect of which indemnity may be sought hereunder, but failure to so notify the indemnifying party shall not relieve such indemnifying party from any liability which it may have under the indemnity provided in this Section 4.4, unless and to the extent the indemnifying party shall have been actually and materially prejudiced by the failure of such indemnified party to so notify the indemnifying party. Such notice shall describe in reasonable detail such Claim. In case any Claim is brought against an indemnified party, the indemnified party shall be entitled to hire, at its own expense, separate counsel and participate in the defense thereof. If the indemnifying party so elects within a reasonable time after receipt of notice, the indemnifying party may assume the defense of the Claim at the indemnifying party's own expense with counsel chosen by the indemnifying party and approved by the indemnified party, which approval shall not be unreasonably withheld, and the indemnified party may participate in such defense at its own expense; *provided* , *however* , that the indemnifying party will not settle or compromise any Claim, or consent to the entry of any judgment with respect to any such pending or threatened Claim, without the written consent of the indemnified party unless such settlement, compromise or consent secures the unconditional release of the indemnified party from all liabilities arising out of such Claim; *provided* , *further* , that if the defendants in any such Claim include both the indemnified party and the indemnifying party and the indemnified party reasonably determines, based upon advice of legal counsel, that such Claim involves a conflict of interest (other than one of a monetary nature) that would reasonably be expected to make it inappropriate for the same counsel to represent both the indemnifying party and the indemnified party, then the indemnifying party shall not be entitled to assume the defense of the indemnified party and the indemnified party shall be entitled to separate counsel at the indemnifying party's expense, which counsel shall be chosen by the indemnified party and approved by the indemnifying party, which approval shall not be unreasonably withheld; and *provided* , *further* , that it is understood that the indemnifying party shall not be liable for the fees, charges and disbursements of more than one separate firm for the indemnified parties. If the indemnifying party assumes the defense of any Claim, all indemnified parties shall thereafter deliver to the indemnifying party copies of all notices and documents (including court papers) received by such indemnified parties relating to the Claim, and each indemnified party shall cooperate in the defense or prosecution of such Claim. Such cooperation shall include the retention and (upon the indemnifying party's request) the provision to the indemnifying party of records and information that are reasonably available to the Indemnified Party and that are reasonably relevant to such Claim and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. If the indemnifying party is not entitled to assume the defense of such Claim as a result of the second proviso to the fourth sentence of this Section 4.4(c), the indemnifying party's counsel shall be entitled to conduct the indemnifying party's defense and counsel for the indemnified party shall be entitled to conduct the defense of the indemnified party, it being understood that both such counsel will cooperate with each other, to the extent feasible in light of the conflict of interest or different available legal defenses, to conduct the defense of such action or proceeding as efficiently as possible. If the indemnifying party is not so entitled to assume the defense of such action or does not assume the defense, after having received the notice referred to in the first sentence of this Section 4.4(c), the indemnifying party will pay the reasonable fees and expenses of counsel for the indemnified party; in that event, however, the indemnifying party will not be liable for any settlement of any Claim effected without the written consent of the indemnifying party, which may not be unreasonably withheld, delayed or conditioned. If the indemnifying party is entitled to assume, and assumes, the defense of an action or proceeding in accordance with this Section 4.4(c), the indemnifying party shall not be liable for any fees and expenses of counsel for the indemnified party incurred thereafter in connection with that action or proceeding except as set forth in the proviso in the fourth sentence of this Section 4.4(c). Unless and until a final judgment is rendered that an indemnified party is not entitled to the costs of defense under the provisions of this Section 4.4(c), the indemnifying party shall reimburse, promptly as they are incurred, the indemnified party's costs of defense. The indemnifying party's obligation to indemnify the indemnified parties for Claims hereunder is irrespective of whether the indemnified party has itself made payments in respect of such Claims.

(d) (i) If the indemnification provided for in this Section 4.4 from the indemnifying party is unavailable to an indemnified party hereunder in respect of any Claim or expenses referred to herein, then the indemnifying party, in lieu of indemnifying such indemnified party, shall contribute to the amount paid or payable by such indemnified party as a result of such Claim or expenses in such proportion as is appropriate to reflect the relative fault of the indemnifying party and indemnified party in connection with the actions which resulted in such Claim or expenses, as well as any other relevant equitable considerations. The relative fault of such indemnifying party and indemnified party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact, has been made by, or relates to information supplied by, such indemnifying party or indemnified party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action. The amount paid or payable by a party under this Section 4.4(d) as a result of the Claim and expenses referred to above shall be deemed to include any legal or other fees or expenses reasonably incurred by such party in connection with any action or proceeding.

(ii) The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 4.4(d) were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in Section 4.4(d)(i). No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

(e) Indemnification similar to that specified in this Section 4.4 (with appropriate modifications) shall be given by the Company and each seller of Registrable Securities with respect to any required registration or other qualification of securities under any law or with any governmental authority other than as required by the Securities Act.

(f) The obligations of the parties under this Section 4.4 shall be in addition to any liability which any party may otherwise have to any other party.

SECTION 4.5 Required Reports . So long as there are Registrable Securities, the Company shall not terminate its status as an issuer required to file reports under the Exchange Act (even if the Exchange Act or the rules and regulations thereunder would permit such termination) and the Company agrees that it will use reasonable best efforts to timely file the reports required to be filed by it under the Securities Act and the Exchange Act and it will take such further action as any Investor may reasonably request, all to the extent required from time to time to enable such Investor to sell shares of Registrable Securities pursuant to this Agreement, including without registration under the Securities Act within the limitation of the exemptions provided by (i) Rule 144 under the Securities Act, as such Rule may be amended from time to time, or (ii) any similar rule or regulation hereafter adopted by the SEC. Upon the request of any Investor, the Company will deliver to such Investor a written statement as to whether it has complied with such requirements.

SECTION 4.6 Holdback Agreement . If any Company Offering or any sale of securities in connection with a registration under Article III hereof shall be in connection with an underwritten public offering, each of the Company and each Investor agree and, if so requested by any underwriter in connection with such offering or sale, shall enter into a customary agreement with such underwriter agreeing, not to effect any sale or distribution, including, in the case of Investors, any sale pursuant to Rule 144 under the Securities Act, of any such securities of the Company, or options or other rights convertible into, or exchangeable or exercisable for, such securities (other than as part of such underwritten public offering), within seven (7) days before, or ninety (90) days (or such lesser period as the managing underwriters may permit) after, the effective date of any such Company Offering or registration pursuant to Article III or the closing of any sale of securities in connection with a registration under Section 3.2 (except as part of any such registration or sale) (such period, a " Holdback Period "); *provided* , that, notwithstanding the foregoing, with respect to any Company Offering, the Investors shall have no obligation under this Section 4.6, and shall not be required to enter into any agreement with an underwriter pursuant to this Section 4.6, in each case that is more restrictive than the obligations imposed on and agreements required to be entered into by the directors and senior executive officers of the Company in connection with such Company Offering and/or in each case that would restrict or prohibit a Sell-Down.

SECTION 4.7 No Inconsistent Agreement . The Company represents and warrants that it will not enter into, or cause or permit any of its Subsidiaries to enter into, any agreement which conflicts with or limits or prohibits the exercise of the rights granted to the holders of Registrable Securities in this Agreement.

ARTICLE V

PREEMPTIVE RIGHTS; SHARE REPURCHASES

SECTION 5.1 Company Sale of Covered Securities . If the Company offers to sell Covered Securities in a public or private offering of Covered Securities solely for cash (a " Qualified Offering "), the Stockholder Parties shall be afforded the opportunity to acquire from the Company, for the same price and on the same terms as such Covered Securities are offered, in the aggregate up to the amount of Covered Securities required to enable it to maintain its then-current Percentage Interest, but solely to the extent that (i) any such issuance of shares of Covered Securities would not result in the issuance of Covered Securities that would require a vote of the stockholders of the Company pursuant to the rules of the NYSE and (ii) the Company Board determines in its good faith discretion that the acquisition of such Covered Shares by the Stockholder will not jeopardize or endanger the availability to the Company of its net operating loss carryforwards to be used to offset its taxable income in such year or future years, and the basis for such determination shall be provided to the Stockholder in writing; *provided* , *however* , that this Section 5.1 shall not apply to any Qualified Offering the gross proceeds of which, together with the aggregate gross proceeds of any other Qualified Offering of Covered Securities after the date hereof, do not exceed $1,000,000. For the avoidance of doubt, to the extent that the Stockholder Parties' acquisition of Covered Securities required to enable the Stockholder Parties to maintain their then-current Percentage Interest would result in an event described in clause (i) or (ii) of the preceding sentence, the Stockholder Parties may nonetheless acquire up to the maximum amount that would not result in the occurrence of such event. In addition prior to the date of this Agreement, the Company and the Company Board will have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti takeover provision under the Company's certificate of incorporation (or similar charter documents) or other agreements or the laws of its state of incorporation (including, without limitation, Section 203 of the Delaware General Corporation Law) that is or could become applicable to Stockholder as a result of the Stockholder exercising its rights under this Section 5.1 to acquire Covered Securities as set forth herein; *provided* that the Company and the Company Board shall not be required to take any such action in respect of the Company's Section 382 Rights Agreement, dated as of January 20, 2009, between the Company and American Stock Transfer & Trust Company, LLC (the " 382 Rights Agreement ") (which will not be applicable to the extent clause (ii) above does not apply).

SECTION 5.2 Notice . Prior to making any Qualified Offering of Covered Securities, the Company shall give the Stockholder written notice of its intention (including, in the case of a registered public offering and to the extent possible, a copy of the prospectus included in the registration statement filed in respect of such), describing, to the extent then known, the anticipated amount of securities, price (or, in the case of a registered public offering, an estimated range of prices) and other material terms upon which the Company proposes to offer the same. The Stockholder shall have ten (10) days from the provision of such notice to notify the Company in writing that it intends to exercise such preemptive purchase rights and as to the amount of Covered Securities the Stockholder desires to purchase, up to the maximum amount calculated pursuant to Section 5.1 (the " Designated Securities "). Such notice shall constitute a non-binding indication of interest of the Stockholder to purchase the amount of Designated Securities so specified (or a proportionately lesser amount if the amount of Covered Securities to be offered in such Qualified Offering is subsequently reduced) at the price (or range of prices) and other terms set forth in the Company's notice to it. The failure to respond during such ten (10) day period shall constitute a waiver of preemptive rights in respect of such offering. Any notice provided by the Company pursuant to this Section 5.2, and any information provided to the Stockholder otherwise in connection with such Qualified Offering, shall be subject to the terms of the Confidentiality Agreement applicable to "Evaluation Material" thereunder until the 90 th day following the consummation of any such Qualified Offering of Covered Securities, regardless of any termination thereof. If the sale of Covered Securities contemplated by the Qualified Offering described in such notice delivered to the Stockholder (i) is not subject to a binding agreement between the Company and the purchasers of such Covered Securities, (ii) is not otherwise consummated within thirty (30) days of delivery of such notice to the Stockholder, or (iii) if the terms of such binding agreement in respect of the Qualified Offering are materially amended, or if the terms relating to price are amended whatsoever, then such Qualified Offering shall again be subject to the requirements of this Article V.

SECTION 5.3 Purchase Mechanism . (a) If the Stockholder exercises its preemptive purchase rights provided in this Article V with respect to a Qualified Offering that is an underwritten public offering or a private offering made to qualified institutional buyers (as such term is defined in Rule 144A under the Act) for resale pursuant to Rule 144A under the Act, the Company shall offer the Stockholder, if such underwritten public offering or Rule l44A offering is consummated, the Designated Securities (as adjusted downward or, at the Stockholder's option, upward to reflect the actual size of such offering when priced) at the same price and on the same terms as the Covered Securities are offered to the initial purchasers in such offering and shall provide written notice of such price to the Stockholder as soon as practicable prior to such consummation.

(b) If the Stockholder exercises its preemptive rights provided in this Article V with respect to a Qualified Offering that is not an underwritten public offering or Rule 144A offering (a " Private Placement "), the closing of the purchase of the Covered Securities with respect to which such right has been exercised shall be conditioned on the consummation of the Private Placement giving rise to such preemptive purchase rights and shall take place simultaneously with the closing of the Private Placement or on such other date as the Company and the Stockholder shall agree in writing; *provided* that the actual amount of Covered Securities to be sold to the Stockholder pursuant to its exercise of preemptive rights hereunder shall be reduced if the aggregate amount of Covered Securities sold in the Private Placement is reduced and, at the option of the Stockholder (to be exercised by delivery of written notice to the Company within five (5) Business Days of receipt of notice of such increase), shall be increased if such aggregate amount of Covered Securities sold in the Private Placement is increased. In connection with its purchase of Designated Securities, the Stockholder shall, if it continues to wish to exercise its preemptive rights with respect to such offering, execute an agreement containing representations, warranties and agreements of the Stockholder that are substantially similar in all material respects to the agreements executed by other purchasers in such Private Placement.

(c) If, prior to consummation of Qualified Offering, the terms of the proposed issuance change with the result that the price is less than the minimum price or more than the maximum price set forth in the notice contemplated by Section 5.2 or the other principal terms are more favorable in any material respect to the prospective purchaser than those set forth in such notice, it shall be necessary for a separate notice to be furnished, and the terms and provisions of this Article V separately complied with.

SECTION 5.4 Termination of Preemptive Rights . Anything to the contrary in this Article V notwithstanding, the preemptive right to purchase Covered Securities granted by this Article V shall terminate as of and not be available for any offering that commences at any time after the date on which the Stockholder Transfers any Shares, other than Transfers (i) to Affiliates of the Stockholder or (ii) pursuant to a Sell-Down.

SECTION 5.5 Notice of Share Repurchase, Redemption . Unless otherwise instructed in writing by the Stockholder, following the date hereof and until the earlier of (i) the fifth anniversary of the date hereof, (ii) such time as the Stockholder Parties' Adjusted Ownership no longer exceeds 10% and (iii) such time as the Stockholder Parties no longer hold any indebtedness of the Company, the Company will not, directly or indirectly, redeem, purchase or otherwise acquire, any of its Voting Securities without providing the Stockholder at least 90 days prior written notice, which notice shall not be delivered prior to the date of public announcement of such proposed redemption or repurchase. Beginning on the date of delivery of such notice until the first to occur of (i) the date such share repurchase, redemption or acquisition is commenced or (ii) the date such Stockholder receives notice from the Company that it has abandoned the repurchase, redemption or acquisition disclosed in such notice, the Stockholder Parties shall be permitted to Transfer Equity Securities of the Company without regard to the Lock-Up Period and shall have no obligation pursuant to Section 4.6 hereof, in each case to the extent reasonably required to ensure that no Stockholder Party, or a direct or indirect owner of such Stockholder Party (that is a non-U.S. person) is deemed to be a 10% or more owner of the Company for purposes of the portfolio interest exemption from withholding as set forth in Sections 871 and 881 of the Internal Revenue Code of 1986, as amended (a " Sell-Down "). Notwithstanding the foregoing, the Company shall not, directly or indirectly, redeem, purchase or otherwise acquire any of its Voting Securities prior to the date which is 90 days following the closing of the Public Offering.

ARTICLE VI

STANDSTILL

SECTION 6.1 No Acquisition . Prior to the first anniversary of the date of this Agreement, each of the Investors shall not, and shall cause each of their respective controlled

Affiliates not to, directly or indirectly, acquire, or agree to acquire, by purchase or otherwise, beneficial ownership of any Capital Stock of the Company (except pursuant to the Purchase Agreement, the provisions of Article V of this Agreement, the exchange of rights issued pursuant to the 382 Rights Agreement, the exercise of the Warrants, or the conversion of any convertible indebtedness acquired in connection with the Company Refinancing or by way of any stock split, dividend, spin-off, combination, reclassification or recapitalization of the Company and its Common Stock) to the extent such acquisition would result in such Investor and its controlled Affiliates beneficially owning in excess of 19.9% of the Voting Securities of the Company; *provided* that, for purposes of this Section 6.1, "beneficial ownership" shall have the meaning given to such term in Rule 13d-3 of the Exchange Act without regard to the proviso included in the definition of "beneficial ownership" set forth in Section 1.1 hereof. For the avoidance of doubt, this prohibition shall not apply to acquisitions of (i) the Company's convertible Indebtedness (or the conversion of such convertible Indebtedness into Capital Stock of the Company) issued in connection with the Company Refinancing, (ii) the Warrants (or the receipt of the Common Stock of the Company upon exercise of the Warrants), (iii) in connection with any exchange of rights under the 382 Rights Agreement; (iv) purchases of Covered Securities in a Qualified Offering pursuant to and subject to the limitations set forth in Article V hereof and (v) purchases of Common Stock on the market if, and to the extent, required to maintain such Investor's Ownership Percentage after giving effect to any preemptive rights available to such Investor pursuant to Article V. Notwithstanding anything to the contrary herein, nothing in this Agreement shall be construed as an exemption of any Investor from the provisions of the 382 Rights Agreement, or a waiver of the applicability thereof, absent (and solely to the extent of) an express determination of exemption or inapplicability by the Company Board in accordance with the terms of the 382 Rights Agreement.

SECTION 6.2 Other Restrictions . Each of the Investors shall not, and will cause its controlled Affiliates not to, directly or indirectly, alone or in concert with others, unless specifically requested in writing by the Chief Executive Officer of the Company or by a resolution of the Company Board, take any of the actions set forth below (or take any action that would require the Company to make an announcement regarding any of the following:

(a) effect, seek, offer, engage in, propose (whether publicly or otherwise) or cause or participate in, or assist any other Person to effect, seek, engage in, offer, cause, propose (whether publicly or otherwise) or participate in:

(i) any acquisition of beneficial ownership of Voting Securities of the Company which would result in a breach of Section 6.1 of this Agreement;

(ii) any tender or exchange offer, merger, consolidation, share exchange, business combination, recapitalization, restructuring, liquidation, dissolution or other extraordinary transaction involving the Company or any material portion of its business or any purchase of all or any substantial part of the assets of the Company or any material portion of its business; *provided* that, if such transaction is being conducted by a third-party unaffiliated with such Investor, the foregoing shall not prevent such Investor from tendering, exchanging, exercising voting rights in respect of, or otherwise exercising rights in respect of and opting to receive the benefit of such transactions in the same manner as offered to other holders of the Company's Common Stock not participating in the "group" (as such term is used in Section 13(d)(3) of the Exchange Act) conducting such transaction; or

(iii) any "solicitation" of "proxies" (as such terms are used in the proxy rules of the SEC, but without regard to the exclusion set forth in Section 14a-1(l)(2)(iv) from the definition of "solicitation") with respect to the Company or any of its Affiliates or any action resulting in the Stockholder, or any of its controlled Affiliates, or such other Person becoming a "participant" in any "election contest" (as such terms are used in the proxy rules of the SEC) with respect to the Company or any of its Subsidiaries.

(b) propose any matter for submission to a vote of stockholders of the Company or any of its Affiliates;

(c) seek election to, seek to place a representative on, or seek the removal of, any director of the Company or any of its Affiliates;

(d) except as contemplated by this Agreement and except for proxies granted to Affiliates of the Stockholder (and their respective employees, attorneys and agents (other than Persons who are attorneys and agents solely as a result of the granting of such proxy), grant any proxy with respect to any Capital Stock of the Company;

(e) form, join or participate in a "group" (as such term is used in Section 13(d)(3) of the Exchange Act) with respect to any Capital Stock of the Company, or deposit any Capital Stock of the Company in a voting trust or, except as contemplated by this Agreement, subject any Capital Stock of the Company to any arrangement or agreement with respect to the voting of such Capital Stock or other agreement having similar effect;

(f) take any other actions to seek to affect the control of the Company Board or the management of the Company or any of its Affiliates, including publicly suggesting or announcing its willingness to engage in or have another Person engage in a transaction that could reasonably be expected to result in a business combination or to increase the percentage of Capital Stock owned by the Investor; *provided* that from and after the first anniversary of this Agreement, each Investor and its Affiliates shall not be prohibited by this clause (g) from acquiring Capital Stock of the Company;

(g) enter into any discussions, negotiations, arrangements or understandings with any Persons with respect to any of the foregoing, or advise, assist, encourage or seek to persuade others to take any action with respect to any of the foregoing; or

(h) disclose to any Person (other than an Affiliate) or otherwise induce, encourage, discuss or facilitate, any intention, plan or arrangement inconsistent with the foregoing or with the restrictions on transfer set forth in Article II or form any such intention which would result in the Company or any of its Affiliates or any Investor or any of its Affiliates being required to make any such disclosure in any filing with a Governmental Authority or being required to make a public announcement with respect thereto;

provided , *however* , that notwithstanding the foregoing restrictions, each Investor shall be entitled to make any disclosure required by securities or similar disclosure laws, as advised in writing by outside counsel reasonably familiar with such matters; *provided* , *further* that the Stockholder shall not be prohibited from requesting that the Company Board consider nominating a designee of the Stockholder for election to the Company Board and, if so elected, from assisting such designee in the conduct of such designee’s office and the fulfillment of such designee’s fiduciary duties in such office. Subject to Section 7.1, nothing in this Agreement, including this Section 6.2, will prohibit, limit, condition or delay each Investor’s ability (i) to vote (including by proxy) or consent with respect to any matter properly brought before stockholders of the Company for a vote or consent, or (ii) to tender or exchange its shares); *provided* , *further* , that the Stockholder shall not be required to take any such action as a result of the request of the Company or a resolution of the Company Board, but, if so requested, prior to receipt of written notice from the Company to the contrary, the Stockholder may continue to take such actions that are reasonably related to the matters addressed in, reasonably in furtherance of, and not in conflict with, such request or resolution and, if available, the publicly stated position of the Company with respect to the matters addressed therein.

SECTION 6.3 Termination of Standstill . The provisions of this Article VI (except for the last sentence of Section 6.1 hereof) shall terminate in respect of any individual Investor in the event (i) the Company Board approves a tender offer for 50% or more of the outstanding Capital Stock of the Company (*provided* that if such offer is withdrawn or expires without being consummated, this Article VI shall be reinstated),(ii) it is publicly disclosed that Capital Stock representing 33-1/3% or more of the voting power of the Company’s stockholders have been acquired by any Person (including any group of Persons acting in concert) other than such Investor and its Affiliates, (iii) of (a) the filing by the Company of a voluntary petition in bankruptcy; (b) the entry of an order of relief in any bankruptcy or insolvency proceeding in respect of the Company or the entry of an order that the Company is a bankrupt or insolvent; or (c) any involuntary proceeding seeking liquidation, reorganization or other relief against the Company under any bankruptcy, insolvency or other similar law now or hereafter in effect that has not been dismissed 60 days after the commencement thereof, (iv) of the public announcement of any merger, consolidation, share exchange, business combination, recapitalization, restructuring, liquidation, dissolution or other extraordinary transaction, in each case involving a change of control of the Company or substantially all of its business or any purchase of all or substantially all of the assets of the Company or substantially all of its business, in each case conducted by any Person (including any group of Persons acting in concert) other than such Investor and its Affiliates, (v) solely with respect to the Stockholder Parties, the Stockholder Parties' aggregate Adjusted Ownership has not exceeded 9.9% for 120 consecutive days or (vi) of the first anniversary of the first date upon which the Warrants may be exercised in accordance with their terms.

ARTICLE VII

VOTING LIMITATION

SECTION 7.1 Limitation on Voting . At any meeting of the Company's stockholders, however called, including any adjournment or postponement thereof, or in connection with any written consent of the Company's stockholders, unless otherwise consented to by the Company Board:

(a) each Investor shall, and shall cause its controlled Affiliates to, appear at each such meeting or otherwise cause all Capital Stock of the Company beneficially owned or owned of record by such Investor or its controlled Affiliates entitled to vote on any matter at such meeting to be duly counted as present thereat for purposes of calculating a quorum (to the extent such shares of Capital Stock may be so counted);

(b) with respect to any proposals requiring approval by the affirmative vote of a percentage of the votes cast in respect of such proposal, in person or by proxy, at such meeting, each Investor shall, and shall cause its controlled Affiliates to, vote, or cause to be voted, collectively, that number of shares of its and their Capital Stock entitled to be voted in respect of such proposal representing no more than the Voting Threshold in respect of such proposal, and shall cause any remaining shares of its and their Capital Stock entitled to vote thereon to be properly withheld (but not cast as abstaining votes) from voting on such matter (such remaining shares, the " Withheld Shares ");

(c) with respect to any proposals at any such meeting requiring approval by the affirmative vote of a percentage of the outstanding shares of Capital Stock or of aggregate voting power entitled to vote in respect of such proposal, in person or by proxy, at such meeting, or in respect of any written consent of the Company's stockholders, or any proposal in respect of which the provisions of Section 7.1(b) cannot or do not apply, each Investor shall, and shall cause its controlled Affiliates to, vote, or cause to be voted, all shares of its and their Capital Stock entitled to be voted in respect of such proposal in excess of the Voting Threshold (such excess shares, the " Excess Shares ") in the same proportion as all other votes cast on such proposal (including any votes cast by such Investor and its controlled Affiliates other than Excess Shares).

SECTION 7.2 No Inconsistent Agreements . Each Investor hereby represents, warrants, covenants and agrees that, except for this Agreement, the neither such Investor nor any of its controlled Affiliates (a) have entered into, and none shall enter into at any time while this Agreement remains in effect, any voting agreement or voting trust with respect to such Investor's or its controlled Affiliates' Capital Stock of the Company and (b) have granted, and none shall grant at any time while this Agreement remains in effect, a proxy, consent or power of attorney with respect to such Investor's or its controlled Affiliates' Capital Stock of the Company that is inconsistent with this Agreement.

SECTION 7.3 Termination of Voting Rights . The provisions of this Article VII shall terminate in respect of any individual Investor in the event (i) the Company Board approves a tender offer for 50% or more of the outstanding Capital Stock of the Company (*provided* that if such offer is withdrawn or expires without being consummated, this Article VII shall be reinstated), (ii) it is publicly disclosed that Capital Stock representing 33-1/3% or more of the voting power of the Company's stockholders has been acquired by any Person (including any group of Persons acting in concert) other than such Investor and its Affiliates, (iii) of (a) the filing by the Company of a voluntary petition in bankruptcy; (b) the entry of an order of relief in any bankruptcy or insolvency proceeding in respect of the Company or the entry of an order that the Company is bankrupt or insolvent; or (c) any involuntary proceeding seeking liquidation, reorganization or other relief against the Company under any bankruptcy, insolvency or other similar law now or hereafter in effect that has not been dismissed 60 days after the commencement thereof, (iv) of the public announcement of any merger, consolidation, share exchange, business combination, recapitalization, restructuring, liquidation, dissolution or other extraordinary transaction, in each case involving a change of control of the Company or substantially all of its business or any purchase of all or substantially all of the assets of the Company or substantially all of its business, in each case conducted by any Person (including any group of Persons acting in concert) other than such Investor and its Affiliates, or (v) solely with respect to the Stockholder Parties, upon the date that the Stockholder Parties' aggregate Adjusted Ownership has not exceeded 9.9% for 120 consecutive days.

ARTICLE VIII

MISCELLANEOUS

SECTION 8.1 Governing Law; Venue . This Agreement shall be deemed to be made in and in all respects shall be interpreted, construed and governed by and in accordance with the laws of the State of New York (except to the extent that mandatory provisions of Delaware law are applicable). The parties hereby irrevocably submit to the jurisdiction of the courts of the State of New York and the federal courts of the United States of America located in the State of New York solely for the purposes of any suit, action or other proceeding between any of the parties hereto arising out of this Agreement or any transaction contemplated hereby, and hereby waive, and agree to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof, that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Agreement may not be enforced in or by such courts, and the parties hereto irrevocably agree that all claims with respect to such action or proceeding shall be heard and determined in such New York state or federal court. The parties hereby consent to and grant any such court jurisdiction over the person of such parties and over the subject matter of such dispute and agree that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 8.5 or in such other manner as may be permitted by law, shall be valid and sufficient service thereof. **EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

SECTION 8.2 Attorney's Fees . In the event of any action of any kind between the parties hereto with respect to this Agreement, the prevailing party shall be entitled to recover from the other party its reasonable attorney's fees and related costs, expenses and disbursements incurred in connection with such action.

SECTION 8.3 Termination . The provisions of Article III and Article IV of this Agreement shall terminate upon the earliest to occur of (a) the date when no Registrable Securities remain outstanding, (b) June 30, 2017 and (c), solely with respect to any individual Investor, when such Investor no longer holds any Registrable Securities or Warrants. The remaining provisions of this agreement shall terminate in accordance with their terms, or, if no such termination is provided for hereunder, shall survive until terminated by written agreement of each of the parties hereto. Nothing herein shall relieve any party from any liability for the breach of any provisions set forth in this Agreement.

SECTION 8.4 Entire Agreement; Amendments . This Agreement and the Transaction Agreements constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and thereof, and no party shall be liable or bound to any other party in any manner by any warranties, representations or covenants except as specifically set forth herein or therein. Except as expressly provided herein, neither this Agreement nor any term hereof may be amended, waived, discharged or terminated other than by a written instrument signed by the party against whom enforcement of any such amendment, waiver, discharge or termination is sought.

SECTION 8.5 Notices . Any notice, request, instruction or other document to be given hereunder by any party to the other will be in writing and will be deemed to have been duly given (a) on the date of delivery if delivered personally or by telecopy or facsimile, upon confirmation of receipt, (b) on the first Business Day following the date of dispatch if delivered by a recognized next-day courier service, or (c) on the third 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 as set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice.

If to the Stockholder to it at:

Paulson & Co. Inc.
1251 Avenue of the Americas, 50 th Floor
New York, New York 10020
Attn: Mr. Michael Waldorf
Telephone: (212) 956-2221
Fax: (212) 351-5886

with a copy to (which copy alone shall not constitute notice):

Kleinberg, Kaplan, Wolff & Cohen, P.C.
551 Fifth Avenue, 18 th Floor
New York, New York 10176
Attn: Stephen M. Schultz, Esq.
Telephone: (212) 986-6000
Fax: (212) 986-8866

If to the Company:

Conseco, Inc.
11825 North Pennsylvania Street
Carmel, Indiana 46032
Attn: General Counsel
Telephone: (317) 817-2889
Fax: (317) 817-2826

with a copy to (which copy alone shall not constitute notice):

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017
Attn: Gary I. Horowitz, Esq.
Telephone: (212) 455-2000
Fax: (212) 455-2502

SECTION 8.6 Specific Performance . The Company and the Stockholder acknowledge and agree that irreparable damage to the other party 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. It is accordingly agreed that each party shall be entitled to an injunction, injunctions or other equitable relief, without the necessity of posting a bond, to prevent or cure breaches of the provisions of this Agreement and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which the parties may be entitled by law or equity.

SECTION 8.7 Delays or Omissions . It is agreed that no delay or omission to exercise any right, power or remedy accruing to any party, upon any breach, default or noncompliance by another party under this Agreement, shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach, default or noncompliance, or any acquiescence therein, or of or in any similar breach, default or noncompliance thereafter occurring. It is further agreed that any waiver, permit, consent or approval of any kind or character on the part of any party hereto of any breach, default or noncompliance under this Agreement or any waiver on such party's part of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement, by law, or otherwise afforded to any party, shall be cumulative and not alternative.

SECTION 8.8 No Third Party Beneficiaries . Other than as set forth in Section 4.4, nothing in this Agreement, expressed or implied, is intended to confer upon any person, other than the parties hereto or their respective successors, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

SECTION 8.9 Successors, Assigns; Transferees . This Agreement shall bind and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns and transferees. Except as expressly provided herein, this Agreement may not be assigned by any party hereunder except by operation of law or with the prior written consent of the Company, in the case of any assignment by an Investor, or of the Stockholder, in the case of the Company, except that an Investor hereunder may assign the rights to cause the Company to register any Registrable Securities that such Investor Transfers to a transferee pursuant to and in accordance with this Agreement (but, for so long as such Investor holds Equity Securities of the Company, no such Transfer or assignment shall relieve such Investor of its obligations hereunder), if such transferee (a) (i) acquires at least 10% of the Registrable Securities (other than convertible Indebtedness issued in connection with the Company Refinancing) pursuant to such transfer and (ii) as a result of such acquisition, beneficially owns at least 10% of the Common Stock of the Company (excluding convertible Indebtedness issued in connection with the Company Refinancing) or (b) is an Affiliate of the Stockholder (a transferee described in clause (a), an " Unaffiliated Assignee ", a transferee described in clause (b), an " Affiliated Assignee ", and collectively, the " Permitted Assignees "), in each case subject to the succeeding sentence. Any purported Permitted Assignee shall agree to be bound by and subject to the obligations attributable to an Investor and of a holder of Registrable Securities found in Articles I, II, III, IV, VI, VII and VIII of this Agreement but excluding any rights and obligations attributable solely to the Stockholder or, in the case of an Unaffiliated Assignee, to an Affiliated Assignee) and, solely with respect to purported Permitted Assignees that are Affiliates of the Stockholder, Article V hereof, and as a condition to such transferee's receipt of such shares and such rights, such transferee, if not already bound in writing by such provisions hereof, shall execute an agreement in form and substance reasonably satisfactory to the Company, agreeing to be bound by such provisions hereof. For avoidance of doubt, however, no such transfer and assignment shall (i) act to duplicate any limited rights to which the Stockholder is otherwise entitled hereunder, including, without limitation, the right to deliver no more than three Demand Notices pursuant to Section 3.2 hereunder or (ii) act to assign or transfer any of the rights and obligations set forth in Article V hereof except in respect of a transfer and assignment to a Permitted Assignee who is also an Affiliate of the Stockholder.

SECTION 8.10 Expenses . Except as otherwise expressly provided herein, each of the Company and the Stockholder shall bear its own respective expenses incurred on its behalf with respect to this Agreement.

SECTION 8.11 Payment Obligations . Notwithstanding anything to the contrary herein, the Company will make any payment required to be made by it pursuant to the terms of this Agreement only to the extent not prohibited by any material agreement of the Company in effect on the date hereof, and any failure to make a payment otherwise so required hereunder shall not constitute a default or breach of the Company’s obligations hereunder to the extent so prohibited by any such material agreement.

SECTION 8.12 Counterparts . This Agreement may be executed in any number of counterparts, each of which shall be enforceable against the parties actually executing such counterparts, and all of which together shall constitute one instrument. This Agreement may be executed by facsimile signature(s).

SECTION 8.13 Severability . In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision; *provided* that no such severability shall be effective if it materially changes the economic benefit of this Agreement to any party..

SECTION 8.14 Titles and Subtitles . The titles and subtitles used in this Agreement are used for convenience only and are not considered in construing or interpreting this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed the INVESTOR RIGHTS AGREEMENT as of the date set forth in the first paragraph hereof.

CONSECO, INC.

By: /s/ Edward J. Bonach
Name: Edward J. Bonach
Title: Executive Vice President and Chief Financial Officer

PAULSON & CO. INC., on behalf of the several investment funds and accounts managed by it

By: /s/ Michael Waldorf
Name: Michael Waldorf
Title: Authorized Signatory

Annex A

Plan of Distribution

We are registering the shares offered by this prospectus on behalf of the selling stockholders named in this prospectus. The selling stockholders may, from time to time, sell, transfer or otherwise dispose of any or all of their shares of common stock or interests in shares of common stock on any stock exchange, market or trading facility on which the shares are traded or in private transactions directly or through one or more underwriters, broker-dealers or agents. If the shares of common stock are sold through underwriters or broker-dealers, the selling stockholders will be responsible for underwriting discounts or commissions or agent's commissions. These dispositions may be at fixed prices, at prevailing market prices at the time of sale, at prices related to the prevailing market price, at varying prices determined at the time of sale, or at negotiated prices.

The selling stockholders will act independently of us in making decisions as to the timing, manner and size of each sale. The selling stockholders may use any one or more of the following methods when disposing of shares or interests therein:

- in the over-the-counter market;
- on any national securities exchange or market, if any, on which our common stock may be listed at the time of sale;
- in transactions otherwise than on an exchange or in the over-the-counter market, or in a combination of any such transactions;
- through block trades in which the broker or dealer so engaged will attempt to sell the shares as agent, but may position and resell a portion of the block as principal to facilitate the transaction;
- through purchases by a broker or dealer as principal and resale by such broker or dealer for its account pursuant to this prospectus;
- in ordinary brokerage transactions and transactions in which the broker solicits purchasers;
- through writing of options, swaps, forwards, or derivatives;
- in privately negotiated transactions;
- in transactions to cover short sales;
- through transactions in which broker-dealers may agree with the selling stockholders to sell a specified number of such shares at

a stipulated price per share;

- through a combination of any such methods of sale.

The selling stockholders may, from time to time, pledge or grant a security interest in some or all of the shares of common stock owned by them and, if they default in the performance of their secured obligations, the pledgees or secured parties may offer and sell the shares of common stock, from time to time, under this prospectus, or under an amendment or supplement to this prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act of 1933, as amended amending the list of selling stockholders to include the pledgee, transferee or other successors in interest as selling stockholders under this prospectus.

The selling stockholders may sell their shares of our common stock directly to purchasers or may use brokers, dealers, underwriters or agents to sell such shares. In effecting sales, brokers and dealers engaged by the selling stockholders may arrange for other brokers or dealers to participate. Brokers or dealers may receive commissions, discounts or concessions from a selling stockholder or, if any such broker-dealer acts as agent for the purchaser of such shares, from a purchaser in amounts to be negotiated. Such compensation may, but is not expected to, exceed that which is customary for the types of transactions involved. Broker-dealers may agree with a selling stockholder to sell a specified number of such shares at a stipulated price per share, and, to the extent such broker-dealer is unable to do so acting as agent for a selling stockholder, to purchase as principal any unsold shares at the price required to fulfill the broker-dealer commitment to the selling stockholders. Broker-dealers who acquire shares as principal may thereafter resell such shares from time to time in transactions, which may involve block transactions and sales to and through other broker-dealers, including transactions of the nature described above, in the over-the-counter market or otherwise at prices and on terms then prevailing at the time of sale, at prices then related to the then-current market price or in negotiated transactions. In connection with such resales, broker-dealers may pay to, or receive from, the purchasers of such shares commissions as described above.

The selling stockholders and any broker-dealers or agents that participate with the selling stockholders in sales of their shares of our common stock may be deemed to be “underwriters” within the meaning of the Securities Act of 1933, as amended in connection with such sales. In such event, any commissions received by such broker-dealers or agents and any profit on the resale of such shares purchased by them may be deemed to be underwriting commissions or discounts under the Securities Act of 1933, as amended.

From time to time, the selling stockholders may engage in short sales, short sales against the box, puts and calls and other hedging transactions in our securities, and may sell and deliver their shares of our common stock in connection with such transactions or in settlement of securities loans. These transactions may be entered into with broker-dealers or other financial institutions. In addition, from time to time a selling stockholder may pledge our shares pursuant to the margin provisions of customer agreements with broker-dealers or other financial institutions. Upon delivery of such shares or a default by a selling stockholder, the broker-dealer or financial institution may offer and sell such pledged shares from time to time under this prospectus, or under an amendment or supplement to this prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act of 1933, as amended amending the list of selling stockholders to include the pledgee, transferee or other successors in interest as selling stockholders under this prospectus.

The selling stockholders also may resell all or a portion of the shares in open market transactions in reliance upon Rule 144 under the Securities Act of 1933, as amended provided that they meet the criteria and conform to the requirements of that rule.

We are required to pay all fees and expenses incident to the registration of the common stock. We have agreed to indemnify the selling stockholders against certain losses, claims, damages and liabilities under the Securities Act of 1933, as amended.

The selling stockholders are subject to applicable provisions of the Securities Exchange Act of 1934, as amended and the SEC's rules and regulations, including Regulation M, which provisions may limit the timing of purchases and sales of the shares by the selling stockholders.

In order to comply with certain states' securities laws, if applicable, the shares may be sold in those jurisdictions only through registered or licensed brokers or dealers. In certain states the shares may not be sold unless the shares have been registered or qualified for sale in such state, or unless an exemption from registration or qualification is available and is obtained.

We will file supplements to this prospectus as required by item 508 of Regulation S-K to the extent applicable.

The selling stockholders are not restricted as to the price or prices at which they may sell their common shares. Sales of such common shares may have an adverse effect on the market price of the securities, including the market price of the common shares. Moreover, the selling stockholders are not restricted as to the number of common shares that may be sold at any time, and it is possible that a significant number of common shares could be sold at the same time, which may have an adverse effect on the market price of the common shares.

We and the selling stockholders may agree to indemnify any underwriter, broker-dealer or agent that participates in transactions involving sales of the common shares against certain liabilities, including liabilities arising under the Securities Act.

EXHIBIT A

FORM OF REQUEST FOR REMOVAL OF RESTRICTIVE LEGEND IN CONNECTION WITH A TRANSFER PURSUANT TO RULE 144

To be delivered to:

Conseco, Inc.
11825 North Pennsylvania Street
Carmel, Indiana 46032
Attn: General Counsel

[Address of Transfer Agent]

Re: Shares, Warrants or Common Stock issuable upon exercise of the Warrants or upon conversion of convertible Indebtedness acquired by Stockholder in the Company Refinancing (collectively, the "Securities")

Reference is hereby made to the Investor Rights Agreement dated as of ______________, 20___ (the "Rights Agreement") by and among Conseco, Inc., a Delaware corporation (the "Company"), and Paulson & Co. Inc., a Delaware corporation, on behalf of the several investment funds and accounts managed by it, and any other Investors agreeing in writing to be bound by the terms of the Rights Agreement. Capitalized terms used by not defined herein will have the respective meanings ascribed to such terms in the Rights Agreement.

This letter relates to the following Securities held by the undersigned Investor (the "Subject Securities"):

☐ Warrants to acquire ____________shares of Common Stock represented by certificate number(s): ______________________________ ______________________________.

☐ ____________shares of Common Stock represented by certificate number(s): ____ ____________.

The undersigned Investor requests that the restrictive legend included on the face of the Subject Securities described above pursuant to Section 2.2 of the Rights Agreement (the "Restrictive Legend") be removed. In connection with such request, the undersigned Investor does hereby certify that neither the Restrictive Legend nor the restrictions on transfer set forth therein are required to ensure that transfers of the Subject Securities will not violate the registration requirements of the Securities Act for the reason checked below:

The Subject Securities are being Transferred in a transaction exempt from registration under the Securities Act pursuant to Rule 144. The Investor hereby certifies that the Subject Securities are eligible for resale without limitation under Rule 144 (other than company information requirements of paragraph (c) of Rule 144). In connection with this Transfer, the Investor hereby represents and warrants as follows:

1. The Investor is not, and has not been at any time during the three months preceding the date hereof, an affiliate (as defined under Rule 144) of the Company;

2. The Subject Securities were acquired from the Issuer or from an affiliate of the Issuer, and the full purchase price or other consideration was paid therefore, at least six months prior to the date hereof; and

3. The Investor is not aware of any material adverse information with regard to the Company which has not been publicly disclosed.

Notwithstanding anything to the contrary herein, and without otherwise limiting the Investor's remedies under the Rights Agreement, if the Company is not in compliance with the Company information requirements of paragraph (c) of Rule 144, the Investor hereby instructs the Company to disregard this request until such time as the Company is again in compliance with such requirements of paragraph (c) of Rule 144.

This certificate and the statements contained herein are made for the benefit of the Company and the Company's transfer agent on behalf of the undersigned Investor.

[NAME OF INVESTOR]

By: ______________________________
Name:
Title:

Dated: __________, ____

Exhibit 12.2

CONSECO, INC.
Computation of Ratio of Earnings to Fixed Charges
(Dollars in millions)

	Nine months ended September 30, 2009	Year ended December 31, 2008
Pretax income (loss) from operations:		
Net income (loss)	$ 67.5	$ (1,132.3)
Add income tax expense	88.4	413.3
Add discontinued operations	—	722.7
Pretax income	155.9	3.7
Add fixed charges:		
Interest expense on corporate debt	61.6	67.9
Interest expense on investment borrowings	26.2	38.6
Interest added to policyholder account balances	248.9	330.5
Portion of rental (a)	9.3	13.4
Fixed charges	346.0	450.4
Adjusted earnings	$ 501.9	$ 454.1
Ratio of earnings to fixed charges	1.45X	1.01X

(a) Interest portion of rental is estimated to be 33 percent.

Exhibit 23.2

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in this Registration Statement on Form S-1 of our reports dated March 31, 2009, except with respect to our opinion on the consolidated financial statements insofar as it relates to the effects of the change in accounting for convertible debt instruments discussed in Note 4, as to which the date is September 28, 2009, relating to the financial statements, the financial statement schedules and the effectiveness of internal control over financial reporting, which appear in Conseco, Inc.'s Current Report on Form 8-K dated October 13, 2009. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ PricewaterhouseCoopers LLP

Indianapolis, Indiana
November 17, 2009