

MARRONE BIO INNOVATIONS INC
Form 10-K/A
April 24, 2017
Table of Contents

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

FORM 10-K/A
Amendment No. 1

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2016

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission File Number: 001-36030

Marrone Bio Innovations, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

20-5137161
(I.R.S. Employer
Identification No.)

1540 Drew Avenue, Davis, California 95618
(Address of principal executive offices and zip code)

(530) 750-2800

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Class	Exchange on which registered
Common Stock, \$0.00001 par value	Nasdaq Capital Market
Securities registered pursuant to Section 12(g) of the Act: None	

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 or Regulation S-K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company.

Large accelerated filer

Accelerated filer

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

Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes No

As of June 30, 2016, the last day of the registrant's most recently completed second quarter, the aggregate market value of the registrant's voting and non-voting common stock held by non-affiliates was \$15,449,219 based upon the closing price of the common stock as reported on the Nasdaq Global Market. This calculation excludes the shares of common stock held by each officer, director and holder of 5% or more of the outstanding common stock as of June 30, 2016. This calculation does not reflect a determination that such persons are affiliates for any other purposes.

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

Class	Shares Outstanding at April 14, 2017
Common Stock, \$0.00001 par value	24,779,448

DOCUMENTS INCORPORATED BY REFERENCE

None.

Table of Contents

EXPLANATORY NOTE

This Amendment No. 1 on Form 10-K/A (this Amendment) amends Marrone Bio Innovations, Inc.'s Annual Report on Form 10-K for the year ended December 31, 2016, originally filed with the Securities and Exchange Commission, or SEC, on April 3, 2017 (the Original Filing). This Amendment amends and restates in its entirety Items 10, 11, 12, 13 and 14 of Part III to include the information previously omitted from the Original Filing in reliance on General Instruction G to Form 10-K. In addition, this Amendment amends Item 15 of Part IV of the Original Filing to include new certifications by our principal executive officer and principal financial officer under Section 302 of the Sarbanes-Oxley Act of 2002 as required by Rule 12b-15 under the Securities Exchange Act of 1934, as amended (the Exchange Act).

Except as expressly set forth herein, this Amendment does not reflect events occurring after the date of the Original Filing or modify or update any of the other disclosures contained therein in any way other than as required to reflect the amendments discussed above. Accordingly, this Amendment should be read in conjunction with the Original Filing and our other filings with the SEC subsequent to the Original Filing.

Table of Contents

TABLE OF CONTENTS

	Page
EXPLANATORY NOTE	
PART III.	
Item 10. <u>Directors, Executive Officers and Corporate Governance</u>	1
Item 11. <u>Executive Compensation</u>	7
Item 12. <u>Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters</u>	19
Item 13. <u>Certain Relationships and Related Transactions, and Director Independence</u>	23
Item 14. <u>Principal Accounting Fees and Services</u>	25
PART IV.	
Item 15. <u>Exhibits, Financial Statement Schedules</u>	26
Item 16. <u>Form 10-K Summary</u>	26
<u>SIGNATURES</u>	27

Table of Contents**PART III****ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE****Directors and Executive Officers**

The following table sets forth certain information about our executive officers, directors and key employees as of April 14, 2017:

NAME	AGE	POSITION
Board of Directors:		
Pamela G. Marrone, Ph.D.	60	President, Chief Executive Officer and Director
Michael H. Benoff ^{(1) (2)}	63	Director
George H. Kerckhove ⁽²⁾	79	Director
Kathleen A. Merrigan, Ph.D. ⁽³⁾	57	Director
Timothy Fogarty ^{(1) (2)}	56	Chair of the Board
Richard Rominger ^{(1) (3)}	89	Director
Zachary S. Wochok, Ph.D. ^{(1) (3)}	74	Director
Other Executive Officers:		
James B. Boyd	64	Senior Vice President, Chief Financial Officer and Assistant Secretary
Linda V. Moore	70	Senior Vice President, General Counsel, Secretary and Chief Compliance Officer
Brian R. Ahrens	45	Vice President of Sales
Keith J. Pitts	53	Vice President of Regulatory and Government Affairs
Amit Vasavada, Ph.D.	62	Vice President of Research and Development
Tim Johnson, Ph.D.	60	Vice President of Field Development and Technical Services

(1) Member of the Compensation Committee.

(2) Member of the Audit Committee.

(3) Member of the Nominating and Corporate Governance Committee.

Board of Directors

Pamela G. Marrone, Ph.D. is our founder and has served as our Chief Executive Officer and has been a member of our board of directors since our inception in 2006 and as our President during that period except from January 2015 through August 2015. Prior to founding the Company, in 1995 Dr. Marrone founded AgraQuest, Inc. (acquired by Bayer), where she served as chief executive officer until May 2004 and as president or chairman from such time until March 2006, and where she led teams that discovered and commercialized several bio-based pest management products. She served as founding president and business unit head for Entotech, Inc., a biopesticide subsidiary of Denmark-based Novo Nordisk A/S (acquired by Abbott Laboratories), from 1990 to 1995, and held various positions at the Monsanto Company from 1983 until 1990, where she led the Insect Biology Group, which was involved in pioneering projects in transgenic crops, natural products and microbial pesticides. Dr. Marrone is an author of over a dozen invited publications, is in demand as a speaker and has served on the boards and advisory councils of numerous professional and academic organizations. In 2016, Dr. Marrone was elected to the Cornell University Board of Trustees. In 2013, Dr. Marrone was named the Sacramento region's Executive of the Year by the Sacramento Business

Journal and Cleantech Innovator of the Year by the Sacramento Area Regional Technology Alliance and Best Manager with Strategic Vision by Agrow in 2014. Dr. Marrone earned a B.S. in Entomology from Cornell University and a Ph.D. in Entomology from North Carolina State University. We believe Dr. Marrone's qualifications to sit on our board of directors include the fact that, as our founder, Dr. Marrone is uniquely familiar with the business, structure, culture and history of our company and that she also brings to the board of directors considerable expertise based on her management and technical and commercialization experience in the biopesticide industry.

Table of Contents

Michael H. Benoff joined our board of directors in January of 2016. Since September 2008, Mr. Benoff has served as a consultant for a variety of companies, advising on debt acquisition and structure, providing guidance on corporate governance and strategy, organizational structure and asset growth plans, managing capital raising and acquisition activities and preparing business models for his clients. From May 1987 to February 1999, Mr. Benoff served in a variety of roles at The Money Store Inc., including executive vice president and chief financial officer, during which time the company was acquired by First Union National Bank, with Mr. Benoff playing an instrumental role in the transaction. Since 2009, Mr. Benoff has served on the board of and as audit and finance committee chairman of Sacramento Tree Foundation. Mr. Benoff served on the board of OIS Corporation from June 2004 to August 2007, during which time he served on the board's audit committee. Mr. Benoff received a B.A. in Politics from Princeton University. We believe Mr. Benoff's qualifications to sit on our board of directors include his extensive experience as an executive and consultant in finance, operations, corporate governance and public and private debt and equity markets.

George H. Kerckhove has served on our board of directors since July 2014. He has served on the board of directors for Gundersen Medical Foundation since 2010 and previously served on the board of directors for Merix Corporation, where he chaired the audit committee, Wellspring International, American Standard Companies and the Mississippi Valley Conservancy Land Trust. He worked with the American Standard Companies from 1988 through 2000, where he served as VP and chief financial officer, executive VP and global sector manager of various countries and president and general manager of the European Division. Prior to that, he served in a variety of positions from 1962 through 1987 with The Trane Company, from product manager in several product departments, VP and general manager, Process Equipment Division, and executive VP and general manager of both the US and International Commercial Equipment Divisions. Mr. Kerckhove received Bachelor of Science degrees in Agricultural Engineering and Mechanical Engineering, a Master of Science Degree in Mechanical Engineering, and an MBA, all from the University of Wisconsin in Madison. We believe Mr. Kerckhove's qualifications to sit on our board include his education in agricultural engineering and his extensive experience in finance, accounting and management in global publically-traded companies.

Kathleen A. Merrigan, Ph.D. joined our board of directors in March of 2016. Dr. Merrigan has served as the executive director of sustainability at The George Washington University since 2014, where she leads the GW Sustainability Collaborative and GW Food Institute and serves as a professor of public policy. She has also been actively involved with the Food and Agriculture Organization of the United Nations since 1998, serving in various roles including delegation head, chairman and lecturer. From 2013 to 2014, Dr. Merrigan worked as an independent consultant advising clients on strategic business planning. From 2009 to 2013, Dr. Merrigan served as deputy secretary and chief operating officer of the United States Department of Agriculture. Dr. Merrigan is currently a board member of FoodCorps and Stone Barns Center for Food and Agriculture. She was named as one of Time Magazine's 100 Most Influential People in the World in 2010. Dr. Merrigan received a Ph.D. in Public Policy and Environmental Planning from Massachusetts Institute of Technology, an M.A. in Public Affairs from the University of Texas at Austin and a B.A. from Williams College. We believe Dr. Merrigan's qualifications to sit on our board include her extensive experience in and knowledge of agriculture and food systems as well as the perspective gained in the leadership roles she has in the agriculture and sustainability space.

Timothy Fogarty has served on our board of directors since 2010 and was appointed the Chair of our board in 2015. As the chief financial officer and a partner of The Contrarian Group, Inc., a private equity fund affiliated with CGI Opportunity Fund II, L.P., which is a 5% stockholder, where he has worked since May 2006, Mr. Fogarty previously served on the boards of TeachTown, Amanzi and Bellwether Marine Acquisition Corporation. From December 2003 to March 2006, Mr. Fogarty worked for Cypress Reinsurance, a startup Bermuda reinsurer, as president and chief operating officer. Mr. Fogarty is a Certified Public Accountant in good standing in California and earned a B.S. in Accounting from California State Polytechnic University, Pomona. We believe Mr. Fogarty's qualifications to sit on

our board of directors include his extensive experience in investment management and accounting and his perspective gained as a board member of various early-stage companies.

Table of Contents

Richard Rominger has served on our board of directors since our inception in 2006 and was the Chair of our board from 2008 to 2013. Mr. Rominger is a fourth generation Yolo County, California farmer and is active in farm organizations and cooperatives. Mr. Rominger served as Director (Secretary) of the California Department of Food and Agriculture from 1977 to 1982 and was the Deputy Secretary at the U. S. Department of Agriculture in Washington, DC from 1993 to 2001. As the Department's chief operating officer, he was responsible for over 100,000 employees and a budget of approximately \$100 billion. Mr. Rominger has served as a production agriculture advisor at University of California, Davis, University of California, Riverside, California State University, Fresno and California Polytechnic State University, San Luis Obispo and has served on the advisory committee of the Agricultural Sustainability Institute at University of California, Davis and as a special advisor to the Chancellor at University of California, Davis. He is a member of the University of California President's Advisory Commission on Agriculture and Natural Resources and the California Roundtable on Agriculture and the Environment and serves on the board of directors of Oryzatech, Inc., a plant based building material company. Mr. Rominger earned a B.S. in Plant Science from University of California, Davis and graduated summa cum laude. We believe Mr. Rominger's qualifications to sit on our board of directors include his years of government experience and his perspective gained as a leader in keeping American agriculture healthy and sustainable.

Zachary S. Wochok, Ph.D. has served on our board since May 2016. He served as president and founder of The Wochok Group, LLC, a management consulting firm, from October 2011 to March 2017. For over 25 years, Dr. Wochok has held executive positions in the agribusiness, biotechnology and food industries, including service as chairman of PGP International, Inc., a food ingredients company, from April 2011 to October 2011 and as its chief executive officer from February 1996 to March 2011, as the chairman and chief executive officer of NURTURE, Inc., as president and chief operating officer of Calgene, Inc., which was then publicly traded, and as the chief executive officer of Plant Genetics, Inc., during which time the company completed an initial public offering and later merged with Calgene, Inc., creating the largest plant biotechnology company in the United States. Dr. Wochok has served as a director and President of Grazix Animal Health, Inc. from July 2015 to March 2017, on the board of Nucelis, Inc., a specialty chemical manufacturer, from March 2012 to December 2014, an advisor to the board of directors of Cibus Global, Ltd. since January 2015 and on the Scientific Advisory Board of AgTech Accelerator since May 2016. He has also served as business development manager in the new ventures department at Monsanto and a lead scientist for Weyerhaeuser Company. Dr. Wochok began his career as a professor of biology at the University of Alabama, following an NIH funded post-doctoral position at Yale University. Dr. Wochok received a B.S. in Biology from LaSalle University, an M.S. in Biology from Villanova University and a Ph.D. in Cell Biology and Plant Physiology from the University of Connecticut. We believe Dr. Wochok's qualifications to sit on our board include his education in biology and plant physiology and extensive experience serving public and private companies in the agriculture and biotechnology industries as an advisor, senior executive or director.

Executive Officers

James B. Boyd was appointed as Chief Financial Officer effective February 2014, Assistant Secretary effective March 2014 and Senior Vice President effective December 2015. Mr. Boyd previously served as chief financial officer of Quantenna Communications and Link-A-Media Devices, both venture capital backed companies, from 2012 to 2013 and from 2010 to 2012, respectively. From 2007 to 2010, he served as chief financial officer and senior vice president of Silicon Storage Technology and from 2000 to 2007, Mr. Boyd served as chief financial officer and senior vice president of ESS Technology, both Nasdaq listed companies. Mr. Boyd earned a B.A. and an M.B.A. in Finance from the University of Wisconsin and a J.D. from Golden Gate University School of Law.

Linda V. Moore was appointed as General Counsel, Secretary and Chief Compliance Officer effective March 2014 and Senior Vice President effective December 2015. Ms. Moore co-founded The Moore Group, where she served as principal from 2005 to 2007, during which time she also served as chief operating officer and general counsel of

Mobius Photonics, and 2009 to 2014. From 2007 to 2009, Ms. Moore served as executive vice president, general counsel, chief compliance officer and secretary of Merix Corporation. Ms. Moore has served

Table of Contents

as an Executive Mentor to Astia (formerly Women's Technology Cluster) and as a member of the Advisory Board for Remedy Interactive and Opportunity Works. She has also taught at the University of Detroit Mercy and Santa Clara University as an adjunct professor. Ms. Moore earned a J.D. at Michigan State University School of Law.

Brian Ahrens was appointed as Vice President of Sales in October 2014. Previously, from 2005 to 2014 Mr. Ahrens served in various positions, including strategic business leader and innovation leader, at ADAMA (previously MANA), a crop protection solutions company. From 2003 to 2005, he served in various positions, including global strategic marketing manager, at BASF, a leading chemical producer. Mr. Ahrens earned a B.A. in Agriculture Business from Iowa State University.

Keith J. Pitts was appointed as Vice President of Regulatory and Government Affairs in July 2008. Previously, from January 2001 to June 2007, Mr. Pitts served as Director of Public Policy at the Pew Initiative on Food and Biotechnology, a non-partisan research and policy organization based in Washington, D.C. From 1986 to 2001, Mr. Pitts worked in senior legislative, administrative, regulatory and public policy roles in both the U.S. Department of Agriculture and the House Committee on Agriculture. Mr. Pitts earned a B.A. in Chemistry from the University of North Carolina.

Amit Vasavada, Ph.D. was appointed as Vice President of Research and Development in March 2014. From 2009 to 2014, Dr. Vasavada served as a program manager at General Atomics. Since 2006, Dr. Vasavada has served on the scientific advisory board of Vaxiion Therapeutics and from 2008 to 2014 served as scientific advisor to NewCos, an applied microbiology and algae-based technology development company. Dr. Vasavada earned a B.S. in microbiology from Gujarat University, an M.S. in microbiology from University of Louisiana and a Ph.D. in applied microbiology from University of California, Davis.

Tim Johnson, Ph.D. was appointed as Vice President of Field Development and Technical Services in August 2015. Dr. Johnson previously served as our Global Product Development Director, Product Development Manager and Eastern U.S. Product Development Manager from June 2011 to August 2015, May 2009 to June 2011 and November 2009 to May 2009, respectively. From June 2002 to November 2008, Dr. Johnson served as manager of commercial development for Plato Industries, Ltd. Dr. Johnson earned a B.S. in Entomology and Pest Management from Iowa State University, an M.S. in Entomology from Iowa State University and a Ph.D. in Entomology from Purdue University.

Board of Directors

Our board of directors currently consists of seven members.

In accordance with our amended and restated certificate of incorporation and amended and restated bylaws, our board of directors has been divided into three classes with staggered three-year terms. At each annual general meeting of stockholders, the successors to directors whose terms then expire will be elected to serve from the time of election and qualification until the third annual meeting following election. Our current directors have been divided among the three classes as follows:

The Class I directors are Pamela G. Marrone, Ph.D., Michael H. Benoff and Kathleen A. Merrigan, Ph.D., and their terms will expire at the annual general meeting of stockholders to be held in 2017;

The Class II directors are Timothy Fogarty and Richard Rominger, and their terms will expire at the annual general meeting of stockholders to be held in 2018; and

The Class III directors are Zachary S. Wochok, Ph.D. and George H. Kerckhove, and their terms will expire at the annual general meeting of stockholders to be held in 2019.

The board currently separates the role of Chairman and Chief Executive Officer, with Dr. Marrone serving as Chief Executive Officer and Mr. Fogarty serving as Chairman. The board believes that separating these two roles

Table of Contents

promotes balance between the board's independent authority to oversee our business and the Chief Executive Officer and our management team, which manages the business on a day-to-day basis. The current separation of the Chairman and Chief Executive Officer roles allows the Chief Executive Officer to focus her time and energies on operating and managing the Company and leverages the experience and perspectives of the Chairman.

We believe the board maintains effective independent oversight through a number of governance practices, including our strong committee system, open and direct communication with management, input on meeting agendas, and regular executive sessions.

In addition, the board has established the following procedures for selecting the presiding director during the executive sessions of the board. The presiding director will be (i) the Chairman of the board or (ii) another director appointed by the independent directors. In fiscal year 2016, Mr. Fogarty presided at each of the executive sessions of our board.

Director Independence

The rules of The Nasdaq Stock Market LLC (Nasdaq) generally require that a majority of the members of a listed company's board of directors be independent. In addition, the listing rules generally require that, subject to specified exceptions, each member of a listed company's audit, compensation, and governance committees be independent. Audit committee members must also satisfy the independence criteria set forth in Rule 10A-3 under the Exchange Act and compensation committee members must also satisfy the independence criteria set forth in Rule 10C-1 under the Exchange Act. In order to be considered independent for purposes of Rule 10A-3 and Rule 10C-1, a committee member may not, other than in his or her capacity as a member of the board of directors or any board committee: accept, directly or indirectly, any consulting, advisory, or other compensatory fee from the listed company or any of its subsidiaries; or be an affiliated person of the listed company or any of its subsidiaries.

Our board of directors has undertaken a review of its composition, the composition of its committees and the independence of each director and considered whether any director has a material relationship with us that could compromise his or her ability to exercise independent judgment in carrying out his or her responsibilities. Our board of directors has also reviewed whether the directors that comprise our audit committee and compensation committee satisfy the independence standards for those committees established by the applicable SEC rules and Nasdaq rules. In making this determination, our board of directors has considered the relationships that each of these non-employee directors has with our company and all other facts and circumstances our board of directors deem relevant in determining their independence, including the beneficial ownership of our capital stock held by each non-employee director and, in the case of Mr. Fogarty, his employment with The Contrarian Group, Inc., a private equity fund affiliated with CGI Opportunity Fund II, L.P., which is a 5% stockholder. Based on this determination, the board of directors determined that each of its non-employee members is independent.

Audit Committee

Our audit committee members are Mr. Kerckhove, Mr. Fogarty and Mr. Benoff, each of whom is a non-employee member of our board of directors. Mr. Kerckhove is our audit committee chair and is our audit committee financial expert, as defined under the applicable SEC rules. Our board of directors has determined that each of Mr. Kerckhove, Mr. Fogarty and Mr. Benoff is independent within the meaning of the applicable SEC rules and the listing standards of Nasdaq.

Our audit committee oversees our corporate accounting and financial reporting process. Among other matters, the audit committee evaluates the independent registered public accounting firm's qualifications, independence and

performance; determines the engagement of the independent registered public accounting firm; reviews and approves the scope of the annual audit and the audit fee; discusses with management and the independent

Table of Contents

registered public accounting firm the results of the annual audit and the review of our quarterly consolidated financial statements; approves the retention of the independent registered public accounting firm to perform any proposed permissible non-audit services; monitors the rotation of partners of the independent registered public accounting firm on our engagement team as required by law; reviews our critical accounting policies and estimates; and annually reviews the audit committee charter and the committee's performance. The audit committee operates under a written charter adopted by the board that satisfies the applicable standards of Nasdaq.

Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the Exchange Act requires our directors and executive officers, and persons who own more than ten percent of a registered class of our equity securities, to file with the SEC initial reports of ownership and reports of changes in ownership of common stock and other equity securities of the Company. Officers, directors and greater than ten percent stockholders are required by SEC regulation to furnish us with copies of all Section 16(a) forms they file.

To our knowledge, based solely on a review of the copies of such reports furnished to us and written representations that no other reports were required, during the fiscal year ended December 31, 2016 all Section 16(a) filing requirements applicable to our officers, directors and greater than ten percent beneficial owners were filed in a timely manner.

Code of Business Conduct and Ethics

We have adopted the Marrone Bio Innovations Code of Business Conduct and Ethics that applies to all officers, directors and employees. Our Code of Business Conduct and Ethics is available on the investor relations section of our website (at investors.marronebio.com) under the heading *Corporate Governance*. If we make any substantive amendments to our Code of Business Conduct and Ethics or grant any waiver from a provision of the Code of Business Conduct and Ethics to any executive officer or director, we will promptly disclose the nature of the amendment or waiver on the investor relations section of our website at investors.marronebio.com under the heading *Corporate Governance*. We intend to satisfy the disclosure requirement under Item 5.05 of Form 8-K regarding amendment to, or waiver from, a provision of our Code of Business Conduct and Ethics by posting such information on our website at the address and location specified above.

Changes in Governance and Nominating Committee Procedures

There have been no material changes to the procedures by which stockholders may recommend individuals for consideration by the Nominating and Corporate Governance Committee as potential nominees for director since such procedures were last described in our annual proxy statement, filed with the SEC on April 25, 2016.

Table of Contents**ITEM 11. EXECUTIVE COMPENSATION**

We refer to our chief executive officer and our two other most highly compensated executive officers discussed below as our named executive officers. Our named executive officers for fiscal year 2016 were as follows:

Pamela G. Marrone, Ph.D., President and Chief Executive Officer

James B. Boyd, Senior Vice President and Chief Financial Officer

Linda V. Moore, Senior Vice President, General Counsel, Secretary and Chief Compliance Officer

Summary Compensation Table

The following table presents information regarding compensation earned by or awards to our named executive officers during fiscal years 2016, 2015 and 2014.

NAME AND PRINCIPAL POSITION	YEAR	SALARY (\$)	BONUS (\$)	NON-EQUITY			TOTAL (\$)
				OPTION & INCENTIVE AWARDS (\$) ⁽¹⁾	RSU PLAN COMPENSATION (\$) ⁽²⁾	ALL OTHER COMPENSATION (\$) ⁽³⁾	
Pamela G. Marrone, Ph.D. <i>President and Chief Executive Officer</i>	2016	300,000		88,825 ⁽⁴⁾		10,989	399,814
	2015	300,000			24,754 ⁽⁵⁾	12,306	337,060
	2014	300,000				11,973	311,973
James B. Boyd <i>Senior Vice President and Chief Financial Officer</i>	2016	250,000		319,350 ⁽⁴⁾		10,972	580,322
	2015	248,958			20,542	10,033	279,533
	2014	202,769	10,000 ⁽⁷⁾	1,704,699 ⁽⁶⁾		1,855	1,919,323
Linda V. Moore <i>Senior Vice President, General Counsel, Secretary and Chief Compliance Officer</i>	2016	240,000		54,460 ⁽⁴⁾		10,679	305,139
	2015	237,500			19,674	10,587	267,761
	2014	178,125		935,460 ⁽⁶⁾	19,372	15,781 ⁽⁸⁾	1,148,738

(1) This column reflects the aggregate grant date fair value of option awards granted to our named executive officers estimated pursuant to FASB ASC 718, Compensation Share based compensation (ASC 718). Valuation assumptions are described in Note 10 of the Notes to Consolidated Financial Statements included in Part II-Item 8- Financial Statements and Supplementary Data in our Annual Report on Form 10-K for the fiscal year ended December 31, 2016.

- (2) This column includes amounts paid under our non-equity incentive award program. Non-equity incentive awards for 2016 have not yet been determined.
- (3) This column includes our 401(k) retirement savings plan matching, payment of life insurance premiums, long-term disability and other insurance-related reimbursements unless separately noted.
- (4) The amount for Ms. Marrone represents separate option awards of 166,687 shares and 83,313 shares, each with an exercise price of \$0.80, none of which have been exercised. The amount for Mr. Boyd represents separate option awards of 137,463 shares and 12,537 shares, each with an exercise price of \$1.23, and 121,114 shares and 78,886 shares, each with an exercise price of \$2.34, none of which have been exercised. In addition, Mr. Boyd received 31,250 restricted stock units that were fully vested. These RSUs were immediately converted into common stock. The price of closing price of the Company's common stock on the date of conversion was \$0.80. The amount for Ms. Moore represents two separate option awards of 84,319 shares and 15,681 shares, each with an exercise price of \$1.23, none of which have been exercised.

Table of Contents

- (5) Dr. Marrone voluntarily elected to defer payment of her non-equity incentive award for 2015, which has not yet been paid.
- (6) The amount for Mr. Boyd represents two separate option awards of 161,492 shares and 28,508 shares, each with an exercise price of \$14.03, none of which have been exercised. The amount for Ms. Moore represents two separate option awards of 73,240 shares and 26,760 shares, each with an exercise price of \$14.61, none of which have been exercised.
- (7) Represents a signing bonus.
- (8) In addition, to the items included in note 3, Ms. Moore's other compensation for 2014 includes certain reimbursements for relocation expenses.

Outstanding Equity Awards at the End of Fiscal Year 2016

The following table provides information regarding unexercised stock options held by each of the named executive officers as of the end of fiscal year 2016.

NAME	GRANT DATE	SECURITIES UNDERLYING UNEXERCISED OPTIONS EXERCISABLE (#) ⁽¹⁾	SECURITIES UNDERLYING UNEXERCISED OPTIONS UNEXERCISABLE (#)	OPTION EXERCISE PRICE (\$)	OPTION EXPIRATION DATE
Pamela G. Marrone, Ph.D.	10/22/2008	47,794 ⁽²⁾		1.19	10/22/2018
	1/28/2009	9,559 ⁽³⁾		1.19	1/28/2019
	1/11/2010	4,779 ⁽⁴⁾		1.19	1/11/2020
	1/24/2011	19,092 ⁽⁵⁾		1.19	1/24/2021
	1/24/2011	31,863 ⁽⁶⁾		1.19	1/24/2021
	12/15/2011	13,807 ⁽⁷⁾		1.41	12/15/2021
	2/20/2012	13,390 ⁽⁸⁾		3.11	2/20/2022
	10/29/2012	63,725 ⁽⁹⁾		12.08	10/29/2022
	8/1/2013	1,529 ⁽¹⁰⁾	319	12.00	8/1/2023
	9/27/2013	68,265 ⁽¹¹⁾	15,735	18.01	9/27/2023
11/6/2013	381 ⁽¹²⁾	101	16.77	11/6/2023	
8/11/2016	⁽¹⁵⁾	250,000	0.80	8/11/2026	
James B. Boyd	2/26/2014	134,611 ⁽¹³⁾	55,389	14.03	2/26/2024
	3/1/2016	⁽¹⁶⁾	150,000	1.23	3/1/2026
	11/16/2016	⁽¹⁷⁾	200,000	2.34	11/16/2026
Linda V. Moore	3/17/2014	68,764 ⁽¹⁴⁾	31,236	14.61	3/17/2024
	3/1/2016	⁽¹⁶⁾	100,000	1.23	3/1/2026

- (1) Options granted under the Marrone Bio Innovations, Inc. Stock Option Plan, which we refer to as the 2006 Plan, are immediately exercisable in full, regardless of vesting. Any unvested shares issued upon the exercise of these options are subject to a right of repurchase.
- (2) The option vested with respect to one-quarter of the total shares subject to the option on the first anniversary of the vesting commencement date of November 1, 2008, and with respect to 1/48th of the total shares subject to the option monthly thereafter for 36 months, such that all the shares were fully vested upon the fourth anniversary of

- the option's vesting commencement date.
- (3) The option vested with respect to one-quarter of the total shares subject to the option on the first anniversary of the vesting commencement date of January 1, 2009, and with respect to 1/48th of the total shares subject to the option monthly thereafter for 36 months, such that all the shares were fully vested upon the fourth anniversary of the option's vesting commencement date.
 - (4) The option vested with respect to 100% of the total shares subject to the option on the vesting commencement date of January 1, 2010.
 - (5) The options vested with respect to 100% of the total shares subject to the option on the vesting commencement date of January 1, 2011.

Table of Contents

- (6) The options vested with respect to one-quarter of the total shares subject to the option on the first anniversary of the vesting commencement date of January 1, 2011, and with respect to 1/48th of the total shares subject to the options monthly thereafter for 36 months, such that all the shares were fully vested upon the fourth anniversary of the options vesting commencement date.
- (7) The options vest with respect to 1/60th of the total shares subject to the options one month after the vesting commencement date of November 1, 2011, and with respect to 1/60th of the total shares subject to the options monthly thereafter for 59 months, such that all the shares will be fully vested upon the fifth anniversary of the options vesting commencement date.
- (8) The options vested with respect to 100% of the total shares subject to the options on the vesting commencement date of February 20, 2012.
- (9) The options vest with respect to one-quarter of the total shares subject to the options on October 18, 2013, and with respect to 1/48th of the total shares subject to the options monthly thereafter for 36 months, such that all the shares will be fully vested upon the fourth anniversary of the options vesting commencement date.
- (10) The options vest with respect to one-quarter of the total shares subject to the options on August 1, 2014, and with respect to 1/48th of the total shares subject to the options monthly thereafter for 36 months, such that all the shares will be fully vested upon the fourth anniversary of the options vesting commencement date.
- (11) The options vest with respect to one-quarter of the total shares subject to the options on September 27, 2014, and with respect to 1/48th of the total shares subject to the options monthly thereafter for 36 months, such that all the shares will be fully vested upon the fourth anniversary of the options vesting commencement date.
- (12) The option vests with respect to one-quarter of the total shares subject to the option on November 6, 2014, and with respect to 1/48th of the total shares subject to the option monthly thereafter for 36 months, such that all the shares will be fully vested upon the fourth anniversary of the option s vesting commencement date.
- (13) The option vests with respect to one-quarter of the total shares subject to the option on February 26, 2015, and with respect to 1/48th of the total shares subject to the option monthly thereafter for 36 months, such that all the shares will be fully vested upon the fourth anniversary of the option s vesting commencement date.
- (14) The option vests with respect to one-quarter of the total shares subject to the option on March 17, 2015, and with respect to 1/48th of the total shares subject to the option monthly thereafter for 36 months, such that all the shares will be fully vested upon the fourth anniversary of the option s vesting commencement date.
- (15) The option vests with respect to one-quarter of the total shares subject to the option on August 11, 2017, and with respect to 1/48th of the total shares subject to the option monthly thereafter for 36 months, such that all the shares will be fully vested upon the fourth anniversary of the option s vesting commencement date.
- (16) The option vests with respect to one-third of the total shares subject to the option on March 1, 2017, and with respect to 1/36th of the total shares subject to the option monthly thereafter for 24 months, such that all the shares will be fully vested upon the third anniversary of the option s vesting commencement date.
- (17) The option vests with respect to one-quarter of the total shares subject to the option on November 16, 2017, and with respect to 1/48th of the total shares subject to the option monthly thereafter for 36 months, such that all the shares will be fully vested upon the fourth anniversary of the option s vesting commencement date.

Compensation Committee Interlocks and Insider Participation

None of our executive officers currently serve, or in the past year have served, as a member of the board of directors or compensation committee of any other entity that has one or more executive officers serving on our board of directors.

Employment Agreements

We have entered into an employment offer letter with each of Dr. Marrone, Mr. Boyd and Ms. Moore, as described below. We have also entered into employee proprietary information and inventions assignment

Table of Contents

agreements with each of our named executive officers, under which each of them has agreed not to disclose our confidential information or induce us to use proprietary information or trade secrets of others at any time.

Pamela G. Marrone, Ph.D.

Effective as of June 29, 2006, we entered into an offer letter with Pamela G. Marrone, Ph.D., our President and Chief Executive Officer. Under the offer letter, Dr. Marrone is entitled to an annual base salary, which was \$250,000 for 2013, and was increased to \$300,000 commencing in 2014 in connection with our initial public offering. Dr. Marrone is eligible for our benefit programs on the same terms as our other executives. In addition, in accordance with the terms of the offer letter, our board of directors granted Dr. Marrone a restricted stock award of 97,424 shares, which completely vested on June 29, 2010, and an option to purchase 53,378 shares of our common stock on May 1, 2007, which completely vested on May 1, 2011.

The letter agreement provides that either party may terminate the employment arrangement for any reason or no reason, but four weeks' notice is requested if the agreement is terminated by Dr. Marrone. In addition, the agreement provides that if we actively or constructively terminate Dr. Marrone's employment without cause (whether or not in connection with a change of control), Dr. Marrone will be eligible to receive:

an amount equal to twelve months of her then-current annual base salary payable in the form of salary continuation; and

medical and dental coverage, plus disability and life insurance premiums, for a period of twelve months following her termination.

James B. Boyd

Effective as of February 26, 2014, we entered into an offer letter with James B. Boyd, our Vice President and Chief Financial Officer. Under the offer letter, Mr. Boyd is entitled to an annual base salary of \$240,000, and is eligible for our benefit programs, vacation benefits, medical benefits and 401(k) plan participation. In addition, in satisfaction of obligations to Mr. Boyd in the offer letter with respect to option awards, our board of directors granted Mr. Boyd an option to purchase 190,000 shares of our common stock on February 13, 2014, which vests, subject to continued employment on each vesting date, with respect to one-quarter of the total shares subject to the option on the first anniversary of the option's vesting commencement date of February 26, 2014 and with respect to 1/48th of the total shares subject to the option monthly thereafter for 36 months, such that all shares subject to the option will be fully vested on the fourth anniversary of such option's vesting commencement date.

The offer letter also provided for a \$10,000 signing bonus upon Mr. Boyd's acceptance, relocation expenses of \$20,000 and three months temporary housing. The letter agreement provides that either party may terminate the employment arrangement for any reason or no reason, but four weeks' notice is requested if Mr. Boyd terminates his employment. In addition, the agreement provides that if we actively or constructively terminate Mr. Boyd's employment without cause (whether or not in connection with a change of control), Mr. Boyd will be eligible to receive:

an amount equal to six months of his then-current annual base salary payable in the form of salary continuation; and

medical and dental coverage, plus disability and life insurance premiums, for a period of six months following his termination.

Effective March 3, 2015, Mr. Boyd's terms of employment were revised pursuant to a letter agreement to increase his base salary to \$250,000 and to provide for certain payments in the event of a termination in connection with a change in control. Such change in control provisions were superseded by the change in control agreement discussed below.

Table of Contents

Linda V. Moore

Effective as of March 17, 2014, we entered into an offer letter with Linda V. Moore, our General Counsel. Under the offer letter, Ms. Moore is entitled to an annual base salary of \$225,000, and is eligible for our benefit programs, vacation benefits, medical benefits and 401(k) plan participation. In addition, in satisfaction of obligations to Ms. Moore in the offer letter with respect to option awards, our board of directors granted Ms. Moore an option to purchase 100,000 shares of our common stock on March 17, 2014, which vests, subject to continued employment on each vesting date, with respect to one-quarter of the total shares subject to the option on the first anniversary of the option's vesting commencement date of March 17, 2014 and with respect to 1/48th of the total shares subject to the option monthly thereafter for 36 months, such that all shares subject to the option will be fully vested on the fourth anniversary of such option's vesting commencement date.

The offer letter also provided for relocation expenses of \$10,000 and one month temporary housing. The letter agreement provides that either party may terminate the employment arrangement for any reason or no reason, but four weeks' notice is requested if Ms. Moore terminates her employment. In addition, the agreement provides that if we actively or constructively terminate Ms. Moore's employment without cause (whether or not in connection with a change of control), Ms. Moore will be eligible to receive:

an amount equal to six months of his then-current annual base salary payable in the form of salary continuation; and

medical and dental coverage, plus disability and life insurance premiums, for a period of six months following his termination.

Effective February 9, 2015, Ms. Moore's terms of employment were revised pursuant to a letter agreement to increase her base salary to \$240,000 and to provide for certain payments in the event of a termination in connection with a change in control. Such change in control provisions were superseded by the change in control agreement discussed below.

Change in Control Agreements

Effective as of June 17, 2016, we entered into a change in control agreement with each of Dr. Marrone, Mr. Boyd and Mr. Moore (each an Agreement and together, the Agreements). The Agreements provide each of Dr. Marrone, Mr. Boyd and Ms. Moore, respectively, with the right to receive certain benefits if, in connection with a Change in Control (as defined in each Agreement), such executive terminates his or her employment with the Company for good reason or the Company terminates his or her employment without cause. Each Agreement provides that in such an event: (i) the executive will receive a single lump sum severance payment equal to twelve months of the executive's annual salary; (ii) all outstanding and unvested equity compensation awards held by the executive will vest; (iii) the executive will receive a lump sum bonus payment in an amount equal to 16.7% of the executive's then-current base salary, prorated based on the percentage of the current year completed prior to termination; and (iv) the Company will pay for health continuation coverage premiums for the executive and his or her family members for twelve months following the date of termination.

The benefits provided for in the Agreements as described above are subject to the executive's delivery of a release of claims reasonably acceptable to the Company. Under the Agreements, each executive is also subject to non-solicitation and non-disparagement obligations during employment with the Company and for one and two years,

respectively, following termination.

The Agreements supersede and replace the provisions of each executive's employment offer letter as to any matters expressly covered by the applicable Agreement, as well Mr. Boyd's and Ms. Moore's letter agreements effective March 3, 2015 and February 9, 2015, respectively, discussed above. However, each executive's employment offer letter shall continue to apply to any matters not expressly covered by the applicable Agreement.

Table of Contents

Compensation Risk Management

We have considered the risks associated with our compensation policies and practices for all employees, and we believe we have designed our compensation policies and practices in a manner that does not create incentives that could lead to excessive risk taking that would have a material adverse effect on our Company.

Employee Benefit and Stock Plans

Marrone Bio Innovations, Inc. Stock Option Plan

We established the Marrone Bio Innovations, Inc. Stock Option Plan, which we refer to as the 2006 Plan, effective as of July 26, 2006. We ceased granting options under our 2006 Plan after, and the 2006 Plan terminated upon, the adoption of our 2011 Plan on July 19, 2011. Our 2006 Plan provided for the grant of incentive stock options, within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended (the Code), to our employees and any parent and subsidiary corporations' employees, and for the grant of non-qualified stock options to our employees, outside directors and consultants and our parent and subsidiary corporations' employees and consultants.

Administration: Our board of directors administered our 2006 Plan. The administrator's powers include the power to: determine the fair market value of our common stock; select the individuals to whom options may be granted; determine the number of shares of stock covered by each option; approve forms of award agreement; determine the terms and conditions of options granted to employees and consultants (e.g., the exercise price, the times when options may be exercised (which may be based on performance criteria), any vesting acceleration or waiver of forfeiture restrictions, and any restriction or limitation regarding any option or the underlying shares of stock); reduce the exercise price of any option granted to employees and consultants to the then current fair market value of our common stock if such fair market value has declined since the date of grant; prescribe, amend and rescind rules and regulations relating to our 2006 Plan; modify or amend each option; institute an option exchange program; and make all other determinations deemed necessary or advisable for administering our 2006 Plan.

Transferability of Options: Our 2006 Plan allows for the transfer of options only (i) by will; and (ii) by the laws of descent and distribution. Only the recipient of an option may exercise such option during his or her lifetime.

Certain Adjustments: In the event of certain changes in our capitalization our board of directors will make adjustments to one or more of (i) the number of shares that are covered by outstanding options; (ii) the exercise price of outstanding options, and (iii) the numerical share limits contained in our 2006 Plan. In the event of our complete liquidation or dissolution, recipients must be notified at least ten (10) days prior to the proposed transaction and may exercise all vested and unvested options until ten (10) days prior to such transaction; all outstanding options will terminate immediately prior to the consummation of such transaction.

Corporate Transactions: Our 2006 Plan provides that in the event of a corporate transaction, as defined in our 2006 Plan, each outstanding option will become immediately vested. In the event of a corporate transaction involving a merger or sale of assets, options will be exercisable for a period of fifteen (15) days from the date that notice of the transaction is provided; the option will then terminate upon the expiration of that period.

2011 Stock Plan

We established our 2011 Stock Plan, which we refer to as the 2011 Plan, effective as of July 19, 2011. Our 2011 Plan provided for the grant of incentive stock options, within the meaning of Section 422 of the Code, to our employees and any parent and subsidiary corporations' employees, and for the grant of non-qualified stock options and stock

purchase rights to our employees, directors and consultants and any parent and subsidiary corporations employees, directors and consultants. We ceased granting options under our 2011 Plan after, and the 2011 Plan terminated upon, the adoption of our 2013 Plan on August 1, 2013.

Table of Contents

Administration: Our board of directors administered our 2011 Plan. The administrator's powers include the power to: determine the persons to whom, and the times at which, awards shall be granted and the number of shares of our common stock subject to each award; determine the fair market value of our common stock; determine the terms, conditions and restrictions applicable to each award (e.g. the exercise price, the method of payment, the method for satisfaction of any tax withholding obligation, the timing, terms and conditions of the exercisability and vesting of the award, the time of the expiration of the award, and the effect of the recipient's termination of service); approve forms of award agreement; amend, modify, extend, cancel or renew any award or waive any restrictions or conditions applicable to any award; accelerate, continue, extend or defer the exercisability of any award; prescribe, amend or rescind rules guidelines and policies relating to the 2011 Plan; and make all other determinations and take such other actions with respect to the 2011 Plan or any award as it deems advisable and that is consistent with applicable law, regulations and rules.

Stock Options: Our 2011 Plan allowed for the grant of incentive stock options that qualify under Section 422 of the Code only to our employees and employees of any parent or subsidiary of ours. Non-qualified stock options could be granted to our employees, directors, and consultants and those of any parent or subsidiary of ours. The exercise price of all options granted under our 2011 Plan was required to be at least equal to the fair market value of our common stock on the date of grant. The term of an option may not exceed ten (10) years, except that with respect to any employee who owns more than ten percent (10%) of the voting power of all classes of our outstanding stock or the outstanding stock of any parent or subsidiary corporation as of the grant date (i) the term of an incentive stock option must not exceed five (5) years; and (ii) the exercise price of an incentive stock option must equal at least one hundred ten percent (110%) of the fair market value of our common stock on the grant date.

After the continuous service of an employee, director or consultant terminates, he or she may exercise his or her option, to the extent vested, for the period of time specified in the award agreement. If his or her continuous service terminates for cause, however, the option shall immediately terminate. An option may not be exercised later than the expiration of its term.

Stock Purchase Rights: Our 2011 Plan allowed for the grant of stock purchase rights. Stock purchase rights are rights to purchase our common stock for at least one hundred percent (100%) of the fair market value of our common stock and which are exercisable for thirty (30) days from the date of grant. The purchase price of a stock purchase right may be paid in cash or in the form of services rendered. The board of directors may subject a stock purchase right to vesting conditions.

Transferability of Awards: Our 2011 Plan allowed for the transfer of awards only (i) by will; (ii) by the laws of descent and distribution and (iii) for non-qualified stock options, to the extent authorized by the board of directors. Only the recipient of an award may exercise such award during his or her lifetime except that non-qualified stock options may be transferred to certain trusts and certain family members.

Certain Adjustments: In the event of certain changes in our capitalization, to prevent diminution or enlargement of the benefits or potential benefits available under the 2011 Plan, the board of directors will make adjustments to one or more of (i) the number and class of shares subject to the 2011 Plan and that are covered by outstanding awards; (ii) the exercise price of outstanding awards and (iii) the incentive stock option share limit contained in the 2011 Plan.

Changes in Control: Our 2011 Plan provides that in the event of a change in control, as defined in the 2011 Plan, the board of directors, in its discretion may provide that (i) the vesting and exercisability of any outstanding awards shall accelerate; or (ii) that each outstanding award (including, at the board of directors' discretion, unvested awards) shall be cashed out; payment due with respect to unvested awards would then be payable in accordance with the existing vesting schedule. Further, the successor corporation may assume or substitute an equivalent award for each

outstanding award; if the successor corporation does not do so, awards held by recipients who have not terminated employment with us will vest in full as of the change in control.

Table of Contents

2013 Stock Incentive Plan

In August 2013, our board of directors adopted the 2013 Stock Incentive Plan (which we refer to as our 2013 Plan). The 2013 Plan serves as the successor to our 2011 Plan. Our 2013 Plan provides for the grant of incentive stock options, within the meaning of Section 422 of the Code, to our employees and any parent and subsidiary corporations employees, and for the grant of non-qualified stock options, stock appreciation rights, restricted stock, restricted stock units and dividend equivalent rights to our employees, directors and consultants and our parent and subsidiary corporations employees, directors and consultants.

Shares: We initially authorized a total of 1,600,000 shares of our common stock for issuance pursuant to the 2013 Plan, plus the number of shares of common stock reserved for issuance pursuant to future grants under the 2011 Plan upon the adoption of the 2013 Plan. In addition, the number of shares authorized for issuance pursuant to the 2013 Plan will be increased by any additional shares that would otherwise return to the 2011 Plan after the date of adoption of the 2013 Plan as a result of the forfeiture, termination or expiration of awards previously granted under the 2011 Plan. Further, our 2013 Plan provides for annual increases in the number of shares available for issuance thereunder equal to the least of (i) 3.5% of the number of shares of the Company's common stock outstanding on the last day of the immediately preceding fiscal year or (ii) a lesser number of shares determined by the administrator. Based on and subject to the foregoing, as of January 1, 2017, including such annual increase, 863,150 shares of our common stock, plus any additional shares which are subject to options granted under our 2006 Plan or 2011 Plan but are forfeited or otherwise terminate or expire subsequent to January 1, 2017, were authorized for issuance pursuant to the 2013 Plan. In addition, as of January 1, 2017, under the 2013 Plan, 3,702,740 shares of common stock were issuable upon the exercise of outstanding options and settlement of RSUs granted and 2,583,668 additional shares of common stock were reserved for issuance pursuant to future grants.

Administration: Our board of directors or a committee of our board of directors administers our 2013 Plan. In the case of awards intended to qualify as performance based compensation within the meaning of Section 162(m) of the Code, the committee consists of two (2) or more outside directors within the meaning of Section 162(m) of the Code. The administrator has the power to determine and interpret the terms and conditions of the awards, including the employees, directors and consultants who will receive awards, the exercise price, the number of shares subject to each such award, the vesting schedule and exercisability of the awards, the restrictions on transferability of awards and the form of consideration payable upon exercise. The administrator also has the authority to institute an exchange program whereby the exercise prices of outstanding awards may be reduced or outstanding awards may be surrendered or cancelled in exchange for other awards of the same type (which may have higher or lower exercise prices) or awards of a different type.

Stock Options: Our 2013 Plan allows for the grant of incentive stock options that qualify under Section 422 of the Code only to our employees and employees of any parent or subsidiary of ours. Non-qualified stock options may be granted to our employees, directors and consultants and those of any parent or subsidiary of ours.

The exercise price of all options granted under our 2013 Plan must at least be equal to the fair market value of our common stock on the date of grant. The term of an incentive stock option may not exceed ten (10) years, except that with respect to any employee who owns more than ten percent (10%) of the voting power of all classes of our outstanding stock or any parent or subsidiary corporation as of the grant date, the term must not exceed five (5) years and the exercise price must equal at least one hundred ten percent (110%) of the fair market value on the grant date.

After the continuous service of an employee, director or consultant terminates, he or she may exercise his or her option, to the extent vested, for the period of time specified in the option agreement. However, an option may not be exercised later than the expiration of its term.

Stock Appreciation Rights: Our 2013 Plan allows for the grant of stock appreciation rights. Stock appreciation rights allow the recipient to receive the appreciation in the fair market value of our common stock between the

Table of Contents

date of grant and the exercise date. The administrator will determine the terms of stock appreciation rights, including when such rights become exercisable and whether to pay the increased appreciation in cash or with shares of our common stock, or a combination thereof, except that the base appreciation amount for the cash or shares to be issued pursuant to the exercise of a stock appreciation right will be no less than one hundred percent (100%) of the fair market value per share on the date of grant. After the continuous service of an employee, director or consultant terminates, he or she may exercise his or her stock appreciation right, to the extent vested, only to the extent provided in the stock appreciation right agreement.

Restricted Stock Awards: Our 2013 Plan allows for the grant of restricted stock. Restricted stock awards are shares of our common stock that vest in accordance with terms and conditions established by the administrator. The administrator will determine the number of shares of restricted stock granted to any employee, director or consultant. The administrator may impose whatever conditions on vesting it determines to be appropriate. For example, the administrator may set restrictions based on the achievement of specific performance goals. Shares of restricted stock that do not vest are subject to our right of repurchase or forfeiture.

Restricted Stock Units: Our 2013 Plan allows for the grant of restricted stock units. Restricted stock units are awards that will result in payment to a recipient at the end of a specified period only if the vesting criteria established by the administrator are achieved or the award otherwise vests. The administrator may impose whatever conditions to vesting, restrictions and conditions to payment it determines to be appropriate. The administrator may set restrictions based on the achievement of specific performance goals or on the continuation of service or employment. Payments of earned restricted stock units may be made, in the administrator's discretion, in cash, with shares of our common stock or other securities, or a combination thereof.

Dividend Equivalent Rights: Our 2013 Plan allows for the grant of dividend equivalent rights. Dividend equivalent rights are awards that entitle the recipients to compensation measured by the dividends we pay with respect to our common stock.

Transferability of Awards: Our 2013 Plan allows for the transfer of awards under the 2013 Plan only (i) by will; (ii) by the laws of descent and distribution and (iii) for awards other than incentive stock options, to the extent authorized by the administrator. Only the recipient of an incentive stock option may exercise such award during his or her lifetime.

Certain Adjustments: In the event of certain changes in our capitalization, to prevent diminution or enlargement of the benefits or potential benefits available under the 2013 Plan, the administrator will make adjustments to one or more of the number or class of shares that are covered by outstanding awards, the exercise or purchase price of outstanding awards, the numerical share limits contained in the 2013 Plan and any other terms that the administrator determines require adjustment. In the event of our complete liquidation or dissolution, all outstanding awards will terminate immediately upon the consummation of such transaction.

Corporate Transactions and Changes in Control: Our 2013 Plan provides that in the event of a corporate transaction, as defined in the 2013 Plan, each outstanding award will terminate upon the consummation of the corporate transaction to the extent that such awards are not assumed by the acquiring or succeeding corporation. Prior to or upon the consummation of a corporate transaction or a change in control, as defined in the 2013 Plan, an outstanding award may vest, in whole or in part, to the extent provided in the award agreement or as determined by the administrator in its discretion. The administrator may condition the vesting of an award upon the subsequent termination of the recipient's service or employment within a specified period of time following the consummation of a corporate transaction or change in control. The administrator will not be required to treat all awards similarly in the event of a corporate transaction or change in control.

Plan Amendments and Termination: Our 2013 Plan will automatically terminate ten (10) years following the date it becomes effective, unless we terminate it sooner. In addition, our board of directors has the authority to amend, suspend or terminate the 2013 Plan provided such action does not impair the rights under any outstanding award unless mutually agreed to in writing by the recipient and us.

Table of Contents**401(k) Plan**

We maintain a 401(k) retirement savings plan. Each participant who is a U.S. employee may contribute to the 401(k) plan, through payroll deductions, up to a statutorily prescribed annual limit imposed by the Internal Revenue Service (which limit was \$18,000 in 2016). All amounts contributed by employee participants and earnings on these contributions are fully vested at all times and are not taxable to participants until withdrawn. Employee participants may elect to invest their contributions in various established funds. We may make contributions to the accounts of plan participants.

Director Compensation

Directors who are employees of ours do not receive any compensation for their service on our board of directors. Our board of directors has adopted the following compensation policy that is applicable to all of our non-employee directors since our 2015 annual meeting of stockholders.

Initial Equity Grants. Each non-employee director who joins the board will receive restricted stock units valued at \$40,000, with one-third of the restricted stock units vesting on the first anniversary of the director's service and the remainder vesting monthly thereafter.

Annual Retainers. Each non-employee director will receive an annual retainer for service on the board valued at \$50,000, consisting of \$25,000 in cash and the remainder in restricted stock units, in addition to annual cash retainers for service as chair of our board of directors, or as a member or chair of committees of our board of directors, as set forth in the table below. Cash retainers will be paid on a quarterly basis, with restricted stock units awarded at our annual stockholders meeting and vesting after one year.

Additional annual retainer fees for service as a Chair of the Board		\$ 20,000
Additional annual retainer fees for service as a member or chair of (with chair fees inclusive of fees for service as a member):	Member	Chair
Audit Committee	\$ 7,500	\$ 15,000
Compensation Committee	\$ 5,000	\$ 10,000
Nominating and Corporate Governance Committee	\$ 3,750	\$ 7,500

Our director compensation policy was adopted by our board of directors in consideration of a number of factors, including its assessment of the previous compensation policy and a director compensation report from Pearl Meyer & Partners, LLC (Pearl Meyer), which our board of directors engaged to prepare a competitive assessment of non-employee director compensation. In August 2015, Pearl Meyer delivered a report to the board of directors regarding market practices, recommending changes, based on our financial and size metrics, that would bring our director compensation more comparable to the 25th percentile of peers in our industry.

In addition to the above policy, our board of directors from time to time may consider additional payments to our directors in respect of extraordinary service by such director. For example, in 2015, our board of directors approved a payment of \$25,000 to Mr. Kerckhove who provided, on behalf of the board of directors, input and guidance to our leadership team and executive officers regarding business operations.

Table of Contents**Director Compensation Table**

Our non-employee directors who served during the fiscal year ended December 31, 2016 received the following compensation for their service on our board of directors:

NAME	FEEES EARNED OR PAID IN CASH	RESTRICTED STOCK UNITS	TOTAL (\$)
	(\$)	(\$) ⁽¹⁾ (2) (3) (6)	
Pamela Contag, Ph.D. ⁽⁴⁾	15,543		15,543
Timothy Fogarty	52,500	24,690	77,190
Michael Benoff ⁽⁵⁾	38,516	70,219	108,735
George Kerckhove	40,000	24,690	64,690
Kathleen A. Merrigan, Ph.D. ⁽⁷⁾	21,486	65,525	87,011
Elin Miller ⁽⁴⁾	15,041		15,041
Richard Rominger	36,006	24,690	60,696
Zachary S. Wochok, Ph.D. ⁽⁸⁾	20,306	64,193	84,499

- (1) The fair value of restricted stock units (RSUs) granted to our directors on May 25, 2016 was determined based on the closing bid price of the Company s common stock on the date of grant, \$0.67. See Note 10 of the Notes to Consolidated Financial Statements included in Part II-Item 8- Financial Statements and Supplementary Data in our Annual Report on Form 10-K for the fiscal year ended December 31, 2016.
- (2) On May 25, 2016, we granted each non-employee board member 36,850 RSUs, each unit representing a contingent right to receive one share of our common stock. The RSUs will vest with respect to 100% of the total shares subject to the grant on the date of the 2017 annual stockholder meeting. Vested RSUs are settled in common stock of the Company upon the director s separation from service for the Company. Additionally, in the event of a corporate transaction or change in control as defined in the award agreement, 100% of the RSUs vest immediately prior to the event.
- (3) The following table sets forth the aggregate number of option awards and RSUs held by each non-employee director as of December 31, 2016:

NAME	AGGREGATE NUMBER OF OPTION AWARDS	AGGREGATE NUMBER OF RESTRICTED STOCK UNITS
Pamela Contag, Ph.D. ^(a)	24,124	
Timothy Fogarty	17,335	54,745
Michael Benoff		78,620
George Kerckhove	20,866	54,745
Kathleen A. Merrigan, Ph.D.		76,496
Elin Miller ^(a)	32,071	

Richard Rominger	29,521	54,745
Zachary S. Wochok, Ph.D.		95,810

- (a) All RSUs held by each of Dr. Contag and Ms. Miller were vested and settled upon completion of her service as a director on May 25, 2016.
- (4) Dr. Contag and Ms. Miller did not stand for re-election at our May 25, 2016 annual meeting.
- (5) On January 4, 2016, we granted Mr. Benoff 41,770 RSUs, each unit representing a contingent right to receive one share of our common stock, in connection with his appointment to the board. Of the 41,770 RSUs granted, 8,630 vested on May 25, 2016, the date of the 2016 annual stockholder meeting. Of the remaining 33,140 RSUs, 1/3 vested on January 4, 2017, the first anniversary of the vesting commencement date and the remaining 2/3 vest equally over 24 months on the monthly anniversary of the vesting commencement date. The fair value of the RSUs granted to our directors on January 4, 2016 was determined based on the closing bid price of the Company's common stock on the date of grant, \$1.09.

Table of Contents

- (6) In addition, in the event of a corporate transaction or change in control as defined in the award agreement, 100% of the RSUs vest immediately prior to the event.
- (7) On March 22, 2016, we granted Dr. Merrigan 39,646 RSUs, each unit representing a contingent right to receive one share of our common stock, in connection with her appointment to the board. Of the 39,646 RSUs granted, 3,740 vested on May 25, 2016, the date of the 2016 annual stockholder meeting. Of the remaining 35,906 RSUs, 1/3 vested on March 22, 2017, the first anniversary of the vesting commencement date and the remaining 2/3 vest equally over 24 months on the monthly anniversary of the vesting commencement date. The fair value of the RSUs granted to our directors on March 22, 2016 was determined based on the closing bid price of the Company's common stock on the date of grant, \$1.03.
- (8) On May 25, 2016, we granted Mr. Wochok 95,810 RSUs, of which 36,850 are described in footnote 2 above and of which 58,960 were granted in connection with his appointment to the board. Of the remaining 58,960 RSUs granted, 1/3 vested on May 25, 2017, the first anniversary of the vesting commencement date and the remaining 2/3 vest equally over 24 months on the monthly anniversary of the vesting commencement date. The fair value of the RSUs granted to our directors on May 25, 2016 was determined based on the closing bid price of the Company's common stock on the date of grant, \$0.67.

Table of Contents

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The following table sets forth certain information with respect to the beneficial ownership of our common stock as of April 14, 2017, for:

each person or group of affiliated persons known by us to be the beneficial owner of more than 5% of our common stock;

each of our named executive officers;

each of our directors; and

all current executive officers and directors as a group.

We have determined beneficial ownership in accordance with SEC rules. The information does not necessarily indicate beneficial ownership for any other purpose. Under these rules, the number of shares of common stock deemed outstanding includes shares issuable upon exercise of options held by the respective person or group that may be exercised within 60 days after April 14, 2017. For purposes of calculating each person's or group's percentage ownership, stock options and warrants exercisable within 60 days after April 14, 2017 are included for that person or group but not the stock options of any other person or group.

Applicable percentage ownership is based on 24,779,448 shares of common stock outstanding at April 14, 2017. In computing the number of shares of common stock beneficially owned by a person and the percentage ownership of that person, we deemed to be outstanding all shares of common stock subject to options and warrants exercisable within 60 days of April 14, 2017. We did not deem these shares outstanding, however, for the purpose of computing the percentage ownership of any other person.

Table of Contents

Unless otherwise indicated and subject to applicable community property laws, to our knowledge, each stockholder named in the following table possesses sole voting and investment power over the shares listed. Unless otherwise noted below, the address of each person listed in the table is c/o Marrone Bio Innovations, Inc., 1540 Drew Avenue, Davis, CA 95618.

NAME AND ADDRESS OF BENEFICIAL OWNER	SHARES BENEFICIALLY OWNED	
	SHARES (#)	SHARES (%)
5% Stockholders:		
Entities affiliated with Waddell & Reed Financial, Inc. ⁽¹⁾ 6300 Lamar Avenue Overland Park, KS 66202	5,010,179	19.99
PRIMECAP Management Company ⁽²⁾ 225 South Lake Avenue #400 Pasadena, CA 91101	2,843,200	11.47
Entities affiliated with Stuart Mill Venture Partners, L.P. ⁽³⁾ 252 North Washington Street Falls Church, VA 22046	1,347,317	5.44
Entities affiliated with Saffron Hill Ventures ⁽⁴⁾ 130 Wood Street London EC2V 6DL United Kingdom	1,287,983	5.20
Entities affiliated with CGI Opportunity Fund II, L.P. ⁽⁵⁾	1,272,465	5.14
Directors and Named Executive Officers:		
Pamela G. Marrone, Ph.D. ⁽⁶⁾	1,138,183	4.54
Timothy Fogarty ⁽⁷⁾	73,270	*
Michael Benoff ⁽⁸⁾	69,125	*
George Kerckhove ⁽⁹⁾	78,611	*
Kathleen A. Merrigan, Ph.D. ⁽¹⁰⁾	54,551	*
Richard Rominger ⁽¹¹⁾	193,655	*
Zachary S. Wochok, Ph.D. ⁽¹²⁾	60,303	*
James B. Boyd ⁽¹³⁾	258,155	1.03
Linda V. Moore ⁽¹⁴⁾	120,848	*
All current directors and executive officers as a group (13 persons)⁽¹⁵⁾	2,467,892	9.41

* Represents beneficial ownership of less than 1% of our outstanding common stock.

(1) As reported in the Schedule 13G filed February 14, 2017, the securities reported on herein are beneficially owned by one or more open-end investment companies or other managed accounts which are advised or sub-advised by Ivy Investment Management Company (IICO), the direct holder of 2,898,692 shares and an investment advisory subsidiary of Waddell & Reed Financial, Inc. (WDR) or Waddell & Reed Investment Management Company (WRIMCO), the direct holder of 1,827,500 shares and an investment advisory subsidiary of WDR. The investment advisory contracts grant IICO and WRIMCO all investment and/or voting power over securities owned by such advisory clients. The investment sub-advisory contracts grant IICO and WRIMCO investment

power over securities owned by such sub-advisory clients and, in most cases, voting power. Any investment restriction of a sub-advisory contract does not restrict investment discretion or power in a material manner. Therefore, IICO and/or WRIMCO may be deemed the beneficial owner of the securities covered by this statement under Rule 13d-3 of the Securities Exchange Act of 1934. Also includes warrants to purchase in the aggregate 182,337 shares of common stock held by Ivy Science & Technology Fund, Waddell & Reed Advisors Science & Technology Fund and Ivy Funds VIP Science & Technology, each an open-end fund of a series trust managed by either IICO or WRIMCO, which are exercisable within 60 days.

(2) PRIMECAP Management Company is an independent investment management company.

Table of Contents

- (3) As reported on Schedule 13G filed February 16, 2016, the securities reported on herein are beneficially owned by both Stuart Mill Partners, LLC and Stuart Mill Venture Partners, L.P. This includes warrants to purchase 8,929 shares of common stock held by Stuart Mill Venture Partners, L.P. Walter Lubsen Jr., Jeffrey Salinger and Jana Hernandez are the Managing Partners and Lawrence Hough is the Managing Director of Stuart Mill Partners, LLC, the general partner of Stuart Mill Venture Partners, L.P., and therefore may be deemed to share voting control and investment power over the securities held by Stuart Mill Venture Partners, L.P.
- (4) As reported on Schedule 13G filed January 16, 2014, the securities reported on herein are beneficially owned by Saffron Hill Ventures 2 Limited Partnership, Saffron Hill MGP2 Limited and Saffron Hill Ventures Limited which hold 1,287,983 shares of common stock. Shawn Luetchens and Ranjeet Bhatia are Directors of Saffron Hill MGP Ltd and Saffron Hill MGP2 Ltd, the General Partners of Saffron Hill Ventures L.P. and Saffron Hill Ventures 2, L.P., respectively, and therefore may be deemed to share voting control and investment power over the securities held by Saffron Hill Ventures L.P. and Saffron Hill Ventures 2, L.P.
- (5) As reported in the Schedule 13G filed February 16, 2016, the securities reported on herein are beneficially owned by CGI Opportunity Fund II, L.P. which holds 1,270,085 shares and Ueberroth Family Trust dated June 27, 1986 which holds 2,380 shares. Peter V. Ueberroth and Joseph Ueberroth are Partners of CGI Opportunity Gen Par II, LLC, the sole General Partner of CGI Opportunity Fund II, L.P. and therefore may be deemed to share voting control and investment power over the securities held by CGI Opportunity Fund II, L.P., and Peter V. Ueberroth is the trustee of, and holds voting control and investment power over the securities held by, Ueberroth Family Trust dated June 27, 1986.
- (6) Includes 283,298 shares of common stock issuable to Dr. Marrone upon the exercise of options exercisable within 60 days, 6,442 shares of common stock held by Florence H. Marrone TOD Pamela G. Marrone and 53,134 shares of common stock held by Dr. Marrone and Michael Rogers. Does not include 257,104 shares of common stock issuable to Dr. Marrone upon the exercise of options not exercisable within 60 days.
- (7) Includes 1,190 shares of common stock held by Timothy and Patricia Fogarty 2011 Trust, Dated August 1, 2011, 54,745 shares of common stock subject to restricted stock units and 17,335 shares of common stock subject to options settleable or exercisable within 60 days. Timothy Fogarty is a Partner of the Contrarian Group, an affiliate of CGI Opportunity Fund II, L.P. but does not hold voting control or investment power over the securities held by CGI Opportunity Fund II, L.P. See also Note 5 to this section.
- (8) Includes 61,125 shares of common stock subject to restricted stock units settleable within 60 days. Does not include 17,495 shares of common stock issuable to Mr. Benoff upon the settlement of restricted stock units not settleable within 60 days.
- (9) Includes 54,745 shares of common stock subject restricted stock units and 20,866 shares of common stock subject to options settleable or exercisable within 60 days.
- (10) Includes 54,551 shares of common stock subject to restricted stock units settleable within 60 days. Does not include 21,945 shares of common stock issuable to upon the settlement of restricted stock units not settleable within 60 days.
- (11) Includes 109,522 shares of common stock held by The Richard and Mary Rominger Community Trust, 54,745 shares of common stock subject to restricted stock units and 29,388 shares of common stock subject to options settleable or exercisable within 60 days. Does not include 133 shares of common stock issuable to Mr. Rominger upon the exercise of options not exercisable within 60 days.
- (12) Includes 3,000 shares of common stock held by The Zachary S Wochok & Barbara N Wochok Trust and 56,503 shares of common stock subject restricted stock units within 60 days. Does not include 39,307 shares of common stock issuable to Dr. Wochok upon the settlement of restricted stock units not settleable within 60 days.
- (13) Includes 216,905 shares of common stock subject to options exercisable within 60 days. Does not include 323,095 shares of common stock issuable upon the exercise of options not exercisable within 60 days.
- (14) Includes 120,848 shares of common stock subject to options exercisable within 60 days. Does not include 79,152 shares of common stock issuable upon the exercise of options not exercisable within 60 days.
- (15)

Includes 336,414 shares of common stock subject to restricted stock units and 1,098,046 shares of common stock subject to options held by current directors and executive officers settleable or exercisable within 60

Table of Contents

days of common stock. Does not include 78,747 shares of common stock issuable upon the settlement of restricted stock units or 854,226 shares of common stock issuable upon the exercise of options held by current directors and executive officers not settleable or exercisable within 60 days. See also Note 5 to this section.

Equity Compensation Plan Information

As of April 14, 2017, the maximum aggregate number of shares available for future grants under all the Company-administered equity compensation plans was 2,583,668 shares. In addition, at that time, the aggregate number of shares subject to unvested outstanding restricted stock units was 324,254 shares, the aggregate number of shares subject to vested but unsettled outstanding restricted stock units was 90,907 shares and the aggregate number of shares subject to outstanding options was 3,287,579 shares. The weighted-average exercise price of these options was \$5.58 and the weighted-average remaining term was 7.6 years. On April 17, 2017, the closing sales price of the common stock as reported on Nasdaq was \$1.80 per share.

Information, as of December 31, 2016, regarding equity compensation plans approved and not approved by stockholders is summarized in the following table:

PLAN CATEGORY	NUMBER OF SECURITIES TO BE ISSUED UPON EXERCISE OF OUTSTANDING OPTIONS, WARRANTS AND RIGHTS (a)	WEIGHTED- AVERAGE EXERCISE PRICE OF OUTSTANDING OPTIONS, WARRANTS AND RIGHTS⁽¹⁾ (b)	NUMBER OF SECURITIES REMAINING AVAILABLE FOR FUTURE ISSUANCE UNDER EQUITY COMPENSATION PLANS (EXCLUDING SECURITIES REFLECTED IN COLUMN (a))⁽²⁾
Equity compensation plans approved by security holders	3,812,652	\$ 5.62	1,622,705
Equity compensation plans not approved by security holders			
Total	3,812,652	\$ 5.62	1,622,705

(1) Represents weighted average exercise price of outstanding options.

(2) Consists of shares available for issuance under our 2013 Stock Incentive Plan.

Table of Contents

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

We describe below the transactions and series of similar transactions, since December 31, 2015, to which we were a participant or will be a participant, in which:

transactions in which the amount involved exceeds the lesser of \$120,000 or one percent of the average of the smaller reporting company's total assets at year-end for the last two completed fiscal years; and

any of our directors, executive officers, holders of more than 5% of our capital stock (which we refer to as 5% stockholders) or any member of their immediate family had or will have a direct or indirect material interest, other than compensation arrangements with directors and executive officers.

Executive Compensation and Employment Arrangements

Please see Item 11- Executive Compensation for information on compensation arrangements with our executive officers and agreements with, and offer letters to, our executive officers containing compensation and termination provisions, among others.

Waddell & Reed

On May 31, 2016, we entered into an amendment to our senior secured promissory notes, dated August 20, 2015, in the aggregate principal amount of \$40 million (the Notes) issued and sold to Ivy Science & Technology Fund, Waddell & Reed Advisors Science & Technology Fund and Ivy Funds VIP Science & Technology (the Investors), each an affiliate of Waddell & Reed, which is a 5% stockholder. Pursuant to such amendment, the Investors agreed to delete from the Notes the provisions that had required the Company to maintain a \$15 million minimum cash balance.

Director and Officer Indemnification and Insurance

We have adopted provisions in our current certificate of incorporation that limit or eliminate the liability of our directors for monetary damages for breach of their fiduciary duties, except for liability that cannot be eliminated under the Delaware General Corporation Law. Accordingly, our directors will not be personally liable for monetary damages for breach of their fiduciary duties as directors, except with respect to of the following:

any breach of their duty of loyalty to us or our stockholders;

acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;

unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the Delaware General Corporation Law; or

any transaction from which the director derived an improper personal benefit.

This limitation of liability does not apply to liabilities arising under the federal securities laws and does not affect the availability of equitable remedies such as injunctive relief or rescission. If Delaware law is amended to authorize the further elimination or limiting of director liability, then the liability of our directors will be eliminated or limited to the fullest extent permitted by Delaware law as so amended.

Our certificate of incorporation and our bylaws also provide that we shall indemnify our directors and executive officers and shall indemnify our other officers and employees and other agents to the fullest extent permitted by law. We believe that indemnification under our bylaws covers at least negligence and gross negligence on the part of indemnified parties. Our bylaws, as currently in effect, also permit us to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in this capacity, regardless of whether our bylaws would permit indemnification.

Table of Contents

We have entered into and intend to continue to enter into separate indemnification agreements with certain of our directors and executive officers that are, in some cases, broader than the specific indemnification provisions provided by Delaware law and our charter documents, and may provide additional procedural protection. These agreements will require us, among other things, to:

indemnify officers and directors against certain liabilities that may arise because of their status as officers and directors;

advance expenses, as incurred, to officers and directors in connection with a legal proceeding subject to limited exceptions; and

cover officers and directors under any general or directors and officers liability insurance policy maintained by us.

We believe that these provisions and agreements are necessary to attract and retain qualified persons as directors and executive officers. Insofar as indemnification for liabilities arising under the Securities Act of 1933, as amended (the Securities Act), may be permitted to directors, officers or persons controlling our company pursuant to the foregoing provisions, the opinion of the SEC is that such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

In addition, we maintain standard policies of insurance under which coverage is provided to our directors and officers against loss arising from claims made by reason of breach of duty or other wrongful act, and to us with respect to payments which may be made by us to such directors and officers pursuant to the above indemnification provisions or otherwise as a matter of law. We also make available standard life insurance and accidental death and disability insurance policies to our employees.

Policies and Procedures Regarding Related Party Transactions

Our board of directors reviews related party transactions for potential conflict of interest issues. Our board of directors has adopted a written related person transaction policy to set forth the policies and procedures for the review and approval or ratification of related person transactions. This policy covers any transaction, arrangement or relationship, or any series of similar transactions, arrangements or relationships in which we were or are to be a participant, the amount involved exceeds \$120,000 or one percent of the average of our total assets at year-end for the last two completed fiscal years and a related person had or will have a direct or indirect material interest, including, without limitation, purchases of goods or services by or from the related person or entities in which the related person has a material interest, indebtedness, guarantees of indebtedness or employment by us or a related person.

Director Independence

For a discussion of the independence of our directors, please see Item 10- Directors, Executive Officers and Corporate Governance Director Independence above.

Table of Contents**ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES**

The following table summarizes the fees of Ernst & Young LLP, our independent registered public accounting firm, for each of the last two fiscal years.

FEE CATEGORY FISCAL 2016 FISCAL 2015

	FISCAL 2016		FISCAL 2015		FISCAL 2014		FISCAL 2013		FISCAL 2012	
Audit fees ⁽¹⁾	\$ 1,322,900	\$ 1,155,600								
Audit-related fees ⁽²⁾										
Tax fees ⁽³⁾										
	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
March 21, 2009	1,000.00	0.00	1,000.00	1,000.00	0.00	1,000.00	1,000.00	54.30	1,054.30	1,054.30
March 21, 2010	1,000.00	46.41	1,046.41	1,000.00	54.30	1,054.30	1,000.00	111.55	1,111.55	1,111.55
March 21, 2011	1,000.00	94.98	1,094.98	1,000.00	111.55	1,111.55	1,000.00	171.91	1,171.91	1,171.91
March 21, 2012	1,000.00	145.80	1,145.80	1,000.00	171.91	1,171.91	1,000.00	235.72	1,235.72	1,235.72
March 21, 2013*	1,000.00	199.12	1,199.12	1,000.00	235.72	1,235.72	1,000.00	302.82	1,302.82	1,302.82
March 21, 2014	1,000.00	254.78	1,254.78	1,000.00	302.82	1,302.82	1,000.00	373.57	1,373.57	1,373.57
March 21, 2015	1,000.00	313.01	1,313.01	1,000.00	373.57	1,373.57	1,000.00	448.16	1,448.16	1,448.16
March 21, 2016	1,000.00	373.95	1,373.95	1,000.00	448.16	1,448.16	1,000.00	527.01	1,527.01	1,527.01
March 21, 2017	1,000.00	437.90	1,437.90	1,000.00	527.01	1,527.01	1,000.00	609.93	1,609.93	1,609.93
March 21, 2018*	1,000.00	504.63	1,504.63	1,000.00	609.93	1,609.93	1,000.00	697.35	1,697.35	1,697.35
March 21, 2019	1,000.00	574.46	1,574.46	1,000.00	697.35	1,697.35	1,000.00	789.52	1,789.52	1,789.52
March 21, 2020	1,000.00	647.54	1,647.54	1,000.00	789.52	1,789.52	1,000.00	886.96	1,886.96	1,886.96
March 21, 2021	1,000.00	724.21	1,724.21	1,000.00	886.96	1,886.96	1,000.00	989.43	1,989.43	1,989.43

Table of Contents

Redemption Date	Assuming 2.00% LIBOR			Assuming 5.00% LIBOR			Assuming 8.00% LIBOR		
	(1) Note Issue Price	(2) Increase in Variable Principal Amount	(3) Redemption Price (1)+(2)	(1) Note Issue Price	(2) Increase in Variable Principal Amount	(3) Redemption Price (1)+(2)	(1) Note Issue Price	(2) Increase in Variable Principal Amount	(3) Redemption Price (1)+(2)
March 21, 2022	1,000.00	887.98	1,887.98	1,000.00	1,097.46	2,097.46	1,000.00	1,097.46	2,097.46
March 21, 2023	1,000.00	975.60	1,975.60	1,000.00	1,211.35	2,211.35	1,000.00	1,211.35	2,211.35

* Dates on which holders may require us to purchase outstanding notes at a price equal to the redemption price above.

If we convert the notes to quarterly coupon notes following the occurrence of a tax event, the notes will be redeemable at the restated principal amount plus accrued and unpaid interest from the date of the conversion through the redemption date. However, in no event may the notes be redeemed prior to March 21, 2006. For more information on this optional conversion, see Description of Notes Optional Conversion to Quarterly Coupon Notes upon Tax Event.

If less than all of the outstanding notes are to be redeemed, the trustee will select the notes to be redeemed in principal amounts at maturity of \$1,000 or integral multiples of \$1,000. In this case, the trustee may select the notes by lot, pro rata or by any other method the trustee considers fair and appropriate. If a portion of a holder's notes is selected for partial redemption and the holder converts a portion of the notes, the converted portion will be deemed to be the portion selected for redemption.

Purchase of Notes at the Option of the Holder

On the purchase dates of March 21, 2008, March 21, 2013 and March 21, 2018, we may, at the option of the holder, be required to purchase, at the purchase price set forth below, any outstanding note for which a written purchase notice has been properly delivered by the holder and not withdrawn, subject to certain additional conditions. Holders may submit their written purchase notice to the paying agent at any time from the opening of business on the date that is 20 business days prior to such purchase date until the close of business on the business day immediately preceding such purchase date.

The purchase price of a note will be equal to the variable principal amount and accrued and unpaid cash interest, if any, on such notes as of the applicable purchase date. Beginning March 21, 2008, the variable principal amount of a note will be equal to the original principal amount of \$1,000 increased daily by the variable yield. Because the purchase price of a note at any time after this date is dependent upon the variable principal amount of a note at that time, the purchase price cannot be determined at this time.

We may, at our option, elect to pay the purchase price in cash or shares of common stock, or any combination thereof, as further described below.

If, prior to a purchase date, the notes have been converted to quarterly coupon notes following the occurrence of a tax event, the purchase price will be equal to the restated principal amount plus accrued and unpaid cash interest from the date of the conversion to the purchase date.

We will be required to give notice on a date not less than 20 business days prior to each purchase date to all holders at their addresses shown in the register of the registrar, and to beneficial owners as required by applicable law, stating among other things:

the amount of the purchase price;

whether we will pay the purchase price of the notes in cash or common stock or any combination thereof, specifying the percentages of each;

if we elect to pay in common stock, the calculation of the market price of the common stock; and

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

Table of Contents

The purchase notice given by each holder electing to require us to purchase notes shall state:

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

the portion of the original principal amount of notes to be purchased, which must be \$1,000 or an integral multiple of \$1,000;

that the notes are to be purchased by us pursuant to the applicable provisions of the notes; and

in the event we elect, pursuant to the notice that we are required to give, to pay the purchase price in common stock, in whole or in part, but the purchase price is ultimately to be paid to the holder entirely in cash because any of the conditions to payment of the purchase price or portion of the purchase price in common stock is not satisfied prior to the close of business on the purchase date, as described below, whether the holder elects:

(1) to withdraw the purchase notice as to some or all of the notes to which it relates; or

(2) to receive cash in respect of the entire purchase price for all notes or portions of notes to which such purchase notice relates.

If the purchase price for the notes subject to the purchase notice is ultimately to be paid to a holder entirely in cash because we have not satisfied one or more of the conditions to payment of the purchase price in common stock prior to the close of business on the purchase date, a holder shall be deemed to have elected to receive cash in respect of the entire purchase price for all such notes unless such holder has properly notified us of its election to withdraw the purchase notice.

Any purchase notice may be withdrawn by the holder by a written notice of withdrawal delivered to the paying agent prior to the close of business on the business day prior to the purchase date.

The notice of withdrawal shall state:

the original principal amount being withdrawn;

the certificate numbers of the notes being withdrawn; and

the original principal amount, if any, of the notes that remain subject to the purchase notice.

If we elect to pay the purchase price, in whole or in part, in shares of our common stock, the number of such shares we deliver shall be equal to the portion of the purchase price to be paid in common stock divided by the market price of a share of common stock.

The market price of our common stock shall be an amount equal to the average of the sale prices of our common stock for the five-trading-day period ending on the third business day prior to the applicable purchase date, or, if such business day is not a trading day, then on the last trading day prior to such business day, appropriately adjusted to take into account any occurrence that would result in an adjustment of the conversion rate with respect to the common stock.

We will pay cash in lieu of, and based on the market price for, all fractional shares of common stock in the event we elect to deliver common stock in payment, in whole or in part, of the purchase price.

Because the market price of our common stock is determined prior to the applicable purchase date, holders of notes bear the market risk with respect to the value of the common stock to be received from the date such market price is determined to such purchase date. We may pay the purchase price or any portion of the purchase price in common stock only if the information necessary to calculate the market price is published in a daily newspaper of national circulation.

Upon determination of the actual number of shares of common stock in accordance with the foregoing provisions, we will promptly issue a press release and publish such information on our website.

Table of Contents

Our right to purchase notes, in whole or in part, with common stock is subject to our satisfying various conditions, including:

listing the common stock on the principal United States securities exchange on which our common stock is then listed or, if not so listed, on Nasdaq;

the registration of the common stock under the Securities Act and the Exchange Act, if required; and

any necessary qualification or registration under applicable state securities law or the availability of an exemption from such qualification and registration.

If such conditions are not satisfied with respect to a holder prior to the close of business on the purchase date, we will pay the purchase price of the notes of the holder entirely in cash. See **Certain United States Federal Income Tax Considerations** Sale, Exchange, Redemption and other Disposition of Notes. We may not change the form or components or percentages of components of consideration to be paid for the notes once we have given the notice that we are required to give to holders of notes, except as described in the first sentence of this paragraph.

In connection with any purchase offer, we will:

comply with the provisions of Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act which may then be applicable; and

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

Payment of the purchase price for a note for which a purchase notice has been delivered and not validly withdrawn is conditioned upon delivery of the note, together with necessary endorsements, to the paying agent at any time after delivery of the purchase notice. Payment of the purchase price for the note will be made as soon as practicable following the later of the purchase date or the time of delivery of the note.

If the paying agent holds money or securities sufficient to pay the purchase price of the note on the business day following the purchase date in accordance with the terms of the indenture, then, immediately after the purchase date, the note will cease to be outstanding and cash interest or the variable principal amount on such note will cease to accrue or increase, as the case may be, whether or not the note is delivered to the paying agent. Thereafter, all other rights of the holder shall terminate, other than the right to receive the purchase price upon delivery of the note.

No notes may be purchased for cash at the option of holders if there has occurred and is continuing an event of default with respect to the notes, other than a default in the payment of the purchase price with respect to such notes.

Change in Control Permits Purchase of Notes by Alaska Air Group at the Option of the Holder

In the event of a change in control of Alaska Air Group, each holder will have the right, at the holder's option, subject to the terms and conditions of the indenture, to require us to purchase for cash all or any portion of the holder's notes. However, the original principal amount submitted for purchase by a holder must be \$1,000 or an integral multiple of \$1,000.

We will be required to purchase the notes as of a date no later than 30 business days after the occurrence of such change in control at a cash price equal to the sum of the variable principal amount and accrued and unpaid cash interest, if any, on such note as of such date of purchase. Until March 21, 2008, the variable principal amount of a note will be equal to the original principal amount of \$1,000. During this period the change in control purchase price of a note will equal the original principal amount plus accrued and unpaid cash interest, if any, on such note. Beginning March 21, 2008, the variable principal amount of a note will be equal to the original principal amount of \$1,000 increased daily by the variable yield. Because the change in control purchase price of a note at any time after this date is dependent upon the variable principal amount of a note at that time, the change in control purchase price cannot be determined at this time.

Table of Contents

If, prior to such date of purchase upon a change in control, the notes have been converted to quarterly coupon notes following the occurrence of a tax event, we will be required to purchase the notes at a cash price equal to the restated principal amount plus accrued and unpaid interest from the date of the conversion to such date of purchase.

Within 15 days after the occurrence of a change in control, we are obligated to mail to the trustee and to all holders of notes at their addresses shown in the register of the registrar and to beneficial owners as required by applicable law a notice regarding the change in control, which notice shall state, among other things:

the events causing a change in control;

the date of such change in control;

the last date on which the purchase right may be exercised;

the change in control purchase price;

the change in control purchase date;

the name and address of the paying agent and the conversion agent;

the conversion rate and any adjustments to the conversion rate resulting from such change in control;

that notes with respect to which a change in control purchase notice is given by the holder may be converted only if the change in control purchase notice has been withdrawn in accordance with the terms of the indenture; and

the procedures that holders must follow to exercise these rights.

To exercise this right, the holder must deliver a written notice to the paying agent prior to the close of business on the business day prior to the change in control purchase date. The required purchase notice upon a change in control shall state:

the certificate numbers of the notes to be delivered by the holder;

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

that we are to purchase such notes pursuant to the applicable provisions of the notes.

Any such change in control purchase notice may be withdrawn by the holder by a written notice of withdrawal delivered to the paying agent prior to the close of business on the business day prior to the change in control purchase date.

The notice of withdrawal shall state:

the original principal amount being withdrawn;

the certificate numbers of the notes being withdrawn; and

the original principal amount, if any, of the notes that remain subject to a change in control purchase notice.

Payment of the change in control purchase price for a note for which a change in control purchase notice has been delivered and not validly withdrawn is conditioned upon delivery of the note, together with necessary endorsements, to the paying agent at any time after the delivery of such change in control purchase notice. Payment of this change in control purchase price for such note will be made promptly following the later of the change in control purchase date or the time of delivery of such note.

If the paying agent holds money sufficient to pay the change in control purchase price of the note on the business day following the change in control purchase date in accordance with the terms of the indenture, then, immediately after the change in control purchase date, the note will

cease to be outstanding and cash interest or the variable principal amount on the note will cease to accrue or increase, as the case may be,

Table of Contents

whether or not the note is delivered to the paying agent. Thereafter, all other rights of the holder shall terminate, other than the right to receive the change in control purchase price upon delivery of the note.

Under the indenture, a change in control of Alaska Air Group is deemed to have occurred upon the occurrence of any of the following:

the adoption of a plan relating to our liquidation or dissolution; or

the sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of our and our subsidiaries' assets, taken as a whole, to any person or group (as such terms are used in Section 13(d) of the Exchange Act); or

the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that any person or group becomes the beneficial owner (as such term is defined in Rule 13d-3 and Rule 13d-5 under the Exchange Act), directly or indirectly, of more than 50% of the voting power of our outstanding voting stock; or

the first day on which more than a majority of the members of our board of directors are not continuing directors.

A continuing director means any member of our board of directors who:

was a member of our board of directors on the date of original issuance of the notes; or

was nominated for election to our board of directors with the approval of, or whose election to our board of directors was ratified by, at least a majority of the continuing directors who were members of our board of directors at the time of such nomination or election.

The indenture does not permit our board of directors to waive our obligation to purchase notes at the option of holders in the event of a change in control.

In connection with any purchase offer in the event of a change in control, we will, to the extent applicable:

comply with the provisions of Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act which may then be applicable; and

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

The change in control purchase feature of the notes may, in certain circumstances, make more difficult or discourage a takeover of Alaska Air Group. The change in control purchase feature, however, is not the result of our knowledge of any specific effort:

to accumulate shares of common stock;

to obtain control of us by means of a merger, tender offer, solicitation or otherwise; or

part of a plan by management to adopt a series of anti-takeover provisions.

Instead, the change in control purchase feature is a standard term contained in other offerings of securities similar to the notes that have been marketed by the initial purchasers. The terms of the change in control purchase feature resulted from negotiations between the initial purchasers and us.

We could, in the future, enter into certain transactions, including certain recapitalizations, that would not constitute a change in control with respect to the change in control purchase feature of the notes but that would increase the amount of our or our subsidiaries' outstanding indebtedness. In addition, we could, in the future, enter into certain agreements that limit our ability to pay the change of control purchase price. Any failure to pay the change in control purchase price could result in an event of default under the indenture. The indenture does not contain any covenants or provisions that may afford holders of the notes protection in the event of a highly leveraged transaction or that prevent us from entering into such agreements.

Table of Contents

The definition of change of control includes a phrase relating to the sale, lease, transfer, conveyance or other disposition of all or substantially all of the properties or assets of our and our subsidiaries assets, taken as a whole. Although there is a limited body of case law interpreting the phrase substantially all, there is no precise established definition of the phrase under applicable law. Accordingly, the ability of a holder of notes to require us to repurchase its notes as a result of a sale, lease, transfer, conveyance or other disposition of less than all of our and our subsidiaries assets, taken as a whole, to another person or group may be uncertain.

No notes may be purchased at the option of holders upon a change in control if there has occurred and is continuing an event of default with respect to the notes, other than a default in the payment of the change in control purchase price with respect to the notes.

Events of Default and Acceleration

The following are events of default under the indenture:

default in the payment of the original principal amount, the variable principal amount (including, if the notes have been converted to quarterly coupon notes following a tax event, the restated principal amount), redemption price, purchase price, or change in control purchase price due with respect to the notes, when the same become due and payable;

default in payment of any interest under the notes, which default continues for 30 days, provided that a failure to make or provide for the payment in full of any of the first twelve scheduled cash interest payments on the notes within three business days of the applicable cash interest payment date will constitute an event of default with no additional grace or cure period if the proceeds from the U.S. government securities to be released from the pledge account prior to any such cash interest payment date equal or exceed the cash interest payable on such cash interest payment date;

our failure to comply with any of our other agreements in the notes or the indenture upon our receipt of notice of such default from the trustee or from holders of not less than 25% in aggregate original principal amount of the notes, and our failure to cure (or obtain a waiver of) such default within 60 days after we receive such notice;

default in the payment of indebtedness when due resulting in acceleration of other indebtedness of ours or indebtedness of our subsidiaries for borrowed money where the aggregate principal amount with respect to which the default and acceleration has occurred exceeds \$35 million, and such acceleration has not been rescinded or annulled within a period of 10 days after written notice to us by the trustee or to us and the trustee by the holders of at least 25% in original principal amount of the notes;

any guarantee that may be provided in the future with respect to the notes ceases to be in full force and effect or is declared null and void or any guarantor denies that it has any further liability under any such guarantee, or gives notice to such effect (other than by reason of the termination of the indenture or the release of any such guarantee in accordance with the applicable supplemental indenture), and such condition shall have continued for a period of 30 days after written notice of such failure requiring the guarantor or us to remedy the same shall have been given to us by the trustee or to us and the trustee by the holders of 25% in aggregate original principal amount of the notes outstanding; or

certain events of bankruptcy, insolvency or reorganization affecting us or certain of our subsidiaries.

If an event of default shall have happened and be continuing, either the trustee or the holders of not less than 25% in aggregate original principal amount of the notes then outstanding may declare the variable principal amount of the notes accrued through the date of such declaration, and any accrued and unpaid cash interest (or, if the notes have been converted to quarterly coupon notes following a tax event, the restated principal amount, plus accrued interest) through the date of such declaration, to be immediately due and payable. In the case of certain events of bankruptcy or insolvency, the variable principal amount of the notes accrued thereon, together with any accrued cash interest (or, if the notes have been converted to quarterly coupon notes following a tax event, the restated principal amount, plus accrued interest) through the occurrence of such event shall automatically become and be immediately due and payable.

Table of Contents

Mergers and Sales of Assets

The indenture provides that we may not consolidate with or merge into any person or convey, transfer or lease all or substantially all of our properties and assets to another person unless:

either (1) we are the surviving corporation, or (2) the resulting, surviving or transferee person is a corporation organized and existing under the laws of the United States, any state thereof or the District of Columbia, and such corporation (if other than us) assumes all our obligations under the notes and the indenture;

after giving effect to the transaction no event of default, and no event that, after notice or passage of time, would become an event of default, has occurred and is continuing; and

other conditions described in the indenture are met.

Upon the assumption of our obligations by such corporation in such circumstances, subject to certain exceptions, we shall be discharged from all obligations under the notes and the indenture. Although such transactions are permitted under the indenture, certain of the foregoing transactions occurring could constitute a change in control of Alaska Air Group, permitting each holder to require us to purchase the notes of such holder as described above.

Optional Conversion to Quarterly Coupon Notes Upon Tax Event

From and after the date of the occurrence of a tax event (as defined below) following March 21, 2008, we will have the option to elect, in lieu of having variable principal amount increase, to have interest accrue and be paid in cash at the variable interest rate per year on a restated principal amount per note equal to the accrued variable principal amount on such note on the date of the tax event or the date on which we exercise such option, whichever is later.

Such interest shall be payable quarterly on the interest payment dates of March 21, June 21, September 21 and December 21 of each year to holders of record at the close of business on the March 7, June 7, September 7 and December 7 immediately preceding the interest payment date. Interest will accrue from the most recent date to which interest, if applicable, has been paid or provided for or, if no interest is payable or has been paid or provided for, from the option exercise date. In the event that we exercise our option to pay interest in lieu of variable principal amount, the redemption price, purchase price and change in control purchase price on the notes will be adjusted. However, there will be no change in the holder's conversion rights.

A tax event means that we shall have received an opinion from independent tax counsel experienced in such matters to the effect that as a result of:

any amendment to, or change (including any announced prospective change) in, the federal laws (or any regulations thereunder) of the United States or taxing authority thereof; or

any amendment to, or change in, an interpretation or application of such laws or regulations by any legislative body, court, governmental agency or regulatory authority,

in each case which amendment or change is enacted, promulgated, issued or announced or which interpretation is issued or announced or which action is taken, on or after the date of this prospectus, there is more than an insubstantial risk that accruals of variable principal amount payable on the notes either:

would not be deductible on a current accrual basis; or

would not be deductible under any other method,

in either case in whole or in part, by us (by reason of deferral, disallowance, or otherwise) for United States federal income tax purposes.

The modification of the terms of notes by us upon a tax event as described above could possibly alter the timing of income recognition by holders of the notes with respect to the quarterly payments of interest due on

Table of Contents

the notes after the date on which we exercise our option to pay interest in lieu of variable principal amount or accrued interest, if any, on the notes.

Modification and Amendment

The trustee and we may modify or amend the indenture or the notes with the consent of the holders of not less than a majority in aggregate original principal amount of the notes then outstanding. However, the consent of the holders of each outstanding note would be required to:

alter the manner of calculation or rate of accrual of variable principal amount or interest on any note or change the time of payment;

make any note payable in money or securities other than that stated in the note;

change the stated maturity of any note;

reduce the original principal amount, variable principal amount, restated principal amount, redemption price, purchase price or change in control purchase price with respect to any note;

make any change that adversely affects the rights of a holder to convert any note;

make any change that adversely affects the right to require us to purchase a note;

impair the right to institute suit for the enforcement of any payment with respect to the notes or with respect to conversion of the notes; and

change the provisions in the indenture that relate to modifying or amending the indenture.

Without the consent of any holder of notes, the trustee and we may enter into supplemental indentures for any of the following purposes:

to evidence a successor to us and the assumption by that successor of our obligations under the indenture and the notes;

to add to our covenants for the benefit of the holders of the notes or to surrender any right or power conferred upon us;

in exchange for holders agreeing to waive their right to require us to purchase all or a portion of their notes on a specified date, to add additional dates on which holders may require us to purchase all or a portion of their notes and to pay such holders additional cash payments in connection therewith;

to secure our obligations in respect of the notes;

to make any change to comply with the Trust Indenture Act of 1939, or any amendment thereto, or to comply with any requirement of the SEC in connection with the qualification of the indenture under the Trust Indenture Act, or as necessary in connection with the registration of the notes and the shares of common stock issuable upon conversion of the notes under the Securities Act;

to cure any ambiguity or inconsistency in the indenture; or

to make any change that does not adversely affect the rights of any holder of the notes.

The holders of a majority in original principal amount of the outstanding notes may, on behalf of all the holders of all notes:

waive compliance by us with restrictive provisions of the indenture, as detailed in the indenture; and

waive any past default under the indenture and its consequences, except a default in the payment of the variable principal amount, restated principal amount, accrued and unpaid interest, redemption price, purchase price or change in control purchase price or obligation to deliver common stock

upon conversion with respect to any note or in respect of any provision which under the indenture cannot be modified or amended without the consent of the holder of each outstanding note affected.

Table of Contents

Discharge of the Indenture

We may satisfy and discharge our obligations under the indenture by delivering to the trustee for cancellation all outstanding notes or by depositing with the trustee, the paying agent or the conversion agent, if applicable, after the notes have become due and payable, whether at stated maturity or any redemption date, or any purchase date, or a change in control purchase date, or upon conversion or otherwise, cash or shares of common stock (as applicable under the terms of the indenture) sufficient to pay all of the outstanding notes and paying all other sums payable under the indenture.

Calculations in Respect of Notes

U.S. Bank National Association, as calculation agent, is responsible for making all calculations called for under the notes. These calculations include, but are not limited to, determination of the market prices of our common stock. The trustee will make all these calculations in good faith and, absent manifest error, its calculations will be final and binding on holders of notes. The trustee will provide us with a schedule of its calculations, and we are entitled to rely upon the accuracy of its calculations without independent verification.

Limitations of Claims in Bankruptcy

If a bankruptcy proceeding is commenced in respect of Alaska Air Group, the claim of a holder of a note is, under Title 11 of the United States Code, limited to the variable principal amount, together with any accrued and unpaid cash interest, on such note as of the date of the commencement of the proceeding.

Governing Law

The indenture and the notes are governed by, and construed in accordance with, the law of the State of New York.

Information Concerning the Trustee

U.S. Bank National Association is the trustee, registrar, paying agent, conversion agent and calculation agent under the indenture for the notes. U.S. Bank National Association is also the trustee under the pledge agreement.

Book-Entry System

The notes are only issued in the form of global securities held in fully-registered book-entry form. DTC or its nominee will be the sole registered holder of the notes for all purposes under the indenture. Owners of beneficial interests in the notes represented by the global securities will hold their interests pursuant to the procedures and practices of DTC. As a result, beneficial interests in any such securities will be shown on, and may only be transferred through, records maintained by DTC and its direct and indirect participants and any such interest may not be exchanged for certificated securities, except in limited circumstances. Owners of beneficial interests must exercise any rights in respect of their interests, including any right to convert or require purchase of their interests in the notes, in accordance with the procedures and practices of DTC. Beneficial owners will not be holders and will not be entitled to any rights under the global securities or the indenture. Alaska Air Group and the trustee, and any of their respective agents, may treat DTC as the sole holder and registered owner of the global securities.

Exchange of Global Securities

Notes represented by a global security will be exchangeable for certificated securities with the same terms only if:

DTC has notified us that it is unwilling or unable to continue as depository or if DTC ceases to be a clearing agency registered under the Exchange Act and a successor depository is not appointed by us within 90 days;

Table of Contents

we decide to discontinue use of the system of book-entry transfer through DTC (or any successor depositary); or

a default under the indenture occurs and is continuing.

DTC has advised us as follows: DTC is a limited-purpose trust company organized under the New York Banking Law, a banking organization within the meaning of the New York Uniform Commercial Code, and a clearing agency registered pursuant to the provisions of Section 17A of the Exchange Act. DTC facilitates the settlement of transactions among its participants through electronic computerized book-entry changes in participants' accounts, eliminating the need for physical movement of securities certificates. DTC's participants include securities brokers and dealers, including the initial purchasers, banks, trust companies, clearing corporations and other organizations, some of whom and/or their representatives, own DTC. Access to DTC's book-entry system is also available to others, such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a participant, either directly or indirectly.

Registration Rights

We have entered into a registration rights agreement described below with the initial purchasers of the notes pursuant to which we agreed to, at our expense, for the benefit of the holders, file with the SEC a shelf registration statement covering resale of the notes and the shares of common stock issued upon conversion of the notes within 120 days after the first date of original issuance of the notes. We agreed to use our reasonable best efforts to cause the shelf registration statement to become effective within 210 days of such first date of original issuance, and to keep a shelf registration statement effective until the earlier of (i) the sale pursuant to a shelf registration statement of all the securities registered thereunder and (ii) the expiration of the holding period applicable to such securities held by persons that are not affiliates of Alaska Air Group under Rule 144(k) under the Securities Act or any successor provision, subject to certain permitted exceptions. We are permitted to suspend the use of a prospectus that is part of a shelf registration statement under certain circumstances relating to corporate developments, public filings with the SEC and similar events for a period not to exceed 45 days in any three-month period and not to exceed an aggregate of 120 days in any 12-month period. We agreed to pay predetermined liquidated damages as described herein (liquidated damages) to holders of the notes and holders of shares of common stock issuable upon conversion of the notes if a shelf registration statement is not timely filed or made effective or if the prospectus is unavailable for periods in excess of those permitted above. Such liquidated damages shall accrue until such failure to file or become effective or unavailability is cured, (i) in respect of any notes, at a rate per year equal to 0.25% for the first 90 day period after the occurrence of such event and 0.5% thereafter of the applicable principal amount (as defined below) thereof and, (ii) in respect of any shares of common stock issued upon conversion at a rate per year equal to 0.25% for the first 90 day period and 0.5% thereafter of the then applicable conversion price (as defined below). So long as the failure to file or become effective or unavailability continues, we will pay liquidated damages in cash on March 21, June 21, September 21 and December 21 of each year to the holders of record of the notes or shares of common stock on the immediately preceding March 7, June 7, September 7 and December 7. When such registration default is cured, accrued and unpaid liquidated damages will be paid in cash to the record holder as of the date of such cure.

A holder who sells notes and shares of common stock issued upon conversion of the notes pursuant to the shelf registration statement generally will be required to be named as a selling security holder in the related prospectus, deliver a prospectus to purchasers and be bound by certain provisions of the registration rights agreement that are applicable to such holder, including certain indemnification provisions. We will pay all expenses of a shelf registration statement, provide to each registered holder copies of such prospectus, notify each registered holder when the shelf registration statement has become effective and take certain other actions as are required to permit, subject to the foregoing, unrestricted resales of the notes and the shares of common stock issued upon conversion of the notes.

The term applicable principal amount means, as of any date of determination, with respect to each \$1,000 original principal amount of notes, the original or accrued variable principal amount, as applicable, with respect to such notes through such date of determination, if the notes have been converted to quarterly coupon

Table of Contents

notes following a tax event, the restated principal amount with respect to the notes, or, if no notes are then outstanding, such sum calculated as if such notes were then outstanding.

The term *applicable conversion price* means, as of any date of determination, the applicable variable principal amount per \$1,000 original principal amount of notes as of such date of determination divided by the conversion rate in effect as of such date of determination or, if no notes are then outstanding, the conversion rate that would be in effect were notes then outstanding.

We agreed in the registration rights agreement to give notice to all holders of the filing and effectiveness of a shelf registration statement by release made to Reuters Economic Services and Bloomberg Business News or other reasonable means of distribution. At least five business days prior to any intended distribution of notes and our shares of common stock issuable in respect of the notes pursuant to the shelf registration statement, a holder must complete and deliver to us a notice and questionnaire. Holders are required to complete and deliver the questionnaire prior to the effectiveness of a shelf registration statement so that such holder may be named as a selling security holder in the related prospectus. Upon receipt of such a completed questionnaire, together with such other information as may be reasonably requested by us, from a holder following the effectiveness of a shelf registration statement, we will, as promptly as practicable, file such amendments to a shelf registration statement or supplements to a related prospectus as are necessary to permit such holder to deliver such prospectus to purchasers of notes and our shares of common stock issuable upon conversion of the notes, subject to our right to suspend the use of the prospectus as described above. Any holder that does not complete and deliver a questionnaire or provide such other information will not be named as a selling security holder in the prospectus and therefore will not be permitted to sell the notes or our shares of common stock issuable upon conversion of the notes pursuant to the shelf registration statement.

The summary herein of certain provisions of the registration rights agreement is subject to, and is qualified in its entirety by reference to, all the provisions of the registration rights agreement.

CERTAIN UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS

The following summary discusses certain material U.S. federal income tax (and if you are a non-U.S. holder, as defined below, certain U.S. federal estate tax) consequences relating to your purchase, ownership, and disposition of notes and shares of common stock into which notes may be converted. To the extent the following discussion relates to legal conclusions under current U.S. federal income tax law, and subject to the qualifications herein, it represents the opinion of O Melveny & Myers LLP. Except where noted, this summary deals only with notes and shares of common stock of which you are the beneficial owner and which you hold as capital assets. Additionally, this summary does not deal with special situations, such as tax consequences:

if you are a dealer in securities or currencies, a bank, a financial institution, an insurance company, a tax-exempt entity or a trader in securities that elects to use a mark-to-market method of accounting for your securities holdings;

if you hold notes or common stock as part of a hedging, integrated, constructive sale or conversion transaction or a straddle;

if your *functional currency* is not the U.S. dollar;

under the alternative minimum tax regime, if applicable; or

under any state, local or foreign laws.

The discussion below is based upon the provisions of the Internal Revenue Code of 1986, as amended (the *Code*), and U.S. Treasury regulations, rulings and judicial decisions as of the date hereof. Those authorities may be changed, perhaps retroactively, so as to result in U.S. federal income tax consequences different from those discussed below. There can be no assurance that the Internal Revenue Service (the *IRS*) will not challenge one or more of the tax consequences discussed herein. If a partnership holds our notes or common stock, the tax treatment of a partner in the partnership will generally depend upon the status

Table of Contents

of the partner and the activities of the partnership. If you are a partner of a partnership holding our notes or common stock, you should consult your tax adviser. Whether a note is treated as debt (and not equity) for U.S. federal income tax purposes is an inherently factual question and no single factor is determinative. We will treat the notes as indebtedness for U.S. federal income tax purposes and the following discussion assumes that such treatment will be respected.

For purposes of this summary, you are a U.S. holder if you are the beneficial owner of a note or common stock and you are:

a citizen or resident of the United States;

a corporation or partnership created or organized in or under the laws of the United States or any political subdivision of the United States;

an estate the income of which is subject to U.S. federal income taxation regardless of its source; or

a trust (1) subject to the primary supervision of a court within the United States and one or more U.S. persons have authority to control all of your substantial decisions or (2) with a valid election in effect under applicable U.S. Treasury regulations to be treated as a U.S. person.

If you are the beneficial owner of a note or common stock and you are not a U.S. holder, you are referred to herein as a non-U.S. holder.

Interest and Yield on Notes

The notes will bear interest at a variable interest rate that is a qualified floating rate and thus should be treated as variable rate debt instruments under the U.S. Treasury regulations governing original issue discount (OID), in part because:

the issue price of the notes will not substantially exceed the total noncontingent principal payments due under the notes;

because the variation in the value of the variable rate on the notes can reasonably be expected to measure contemporaneous variations in the cost of newly borrowed funds in U.S. dollars and there is no reasonable expectation that the 5.25% cap on the variable yield after March 21, 2008 will cause the yield on the notes to be significantly less than the expected yield determined without the cap, the notes will provide for stated interest, paid or compounded at least annually, at one or more qualified floating rates; and

as of the date of issuance of the notes, we believed and took the position that the possibility that any liquidated damages described under the heading Description of Notes Registration Rights was a remote or incidental contingency within the OID regulations.

Because the notes do not provide for any payments of stated interest after March 21, 2008, the notes will be considered issued with OID equal to the excess of their stated redemption price at maturity over their issue price of \$1,000. The stated redemption price at maturity of the notes will include all payments on the notes, including any payment of stated interest paid on or before March 21, 2008.

You generally will be required to accrue and include OID on the notes in gross income pursuant to the following method. First, each note will be converted into an equivalent fixed rate debt instrument by substituting for the variable rate provided for under the terms of the notes a fixed rate equal to the value of the variable rate as of the issue date, namely 3.79%. The amount and accrual of OID on a note will then be determined for each quarterly accrual period (and spread ratably to each day during such accrual period) based on a 3.79% yield and the adjusted issue price for the note (which will reflect OID accrued in prior quarterly accrual periods). Finally, you will need to make adjustments and increase (or decrease) the amount of OID that accrues during a quarterly accrual period to the extent the interest actually accrued or paid during the accrual period exceeds (or is less than) the interest assumed to be accrued at the 3.79% yield under the equivalent fixed rate debt instrument.

Table of Contents

If the notes do not qualify as variable rate debt instruments under the OID regulations (e.g., because the IRS disagrees with our determination that the 5.25% cap on the variable yield after March 21, 2008 will not cause the yield on the notes to be significantly less than the expected yield determined without the cap), then the notes would be treated as contingent payment debt instruments. In general, the U.S. Treasury regulations governing the U.S. federal income tax treatment of contingent payment debt instruments cause the timing and character of income, gain or loss reported on a contingent payment debt instrument to differ substantially from the timing and character of income, gain or loss that would be reported on a contingent payment debt instrument under general principles of current U.S. federal income tax law. Specifically, the regulations generally would require you to include future contingent and noncontingent interest payments in income as such interest accrues based upon a projected payment schedule. You would be required to include such interest payments under the noncontingent bond method for nonconvertible debt instruments, which would result in higher interest accruals for you. Moreover, any gain you recognize on the sale, exchange, or retirement of a note generally would be treated as ordinary income and all or a portion of any loss realized could be treated as ordinary loss as opposed to capital loss, depending upon the circumstances. The remainder of this discussion assumes that the notes will not be treated as contingent payment debt instruments.

Market Discount

In addition, if a U.S. holder purchases notes for an amount that is less than the issue price of the notes, such U.S. holder will be treated as having purchased such note at a market discount, unless the amount of such market discount is less than a specified *de minimis* amount. Under the market discount rules, a U.S. holder will be required to treat any gain on the maturity, sale, exchange, retirement or other disposition of notes as ordinary income to the extent of the market discount which has not previously been included in income and is treated as having accrued on such notes at the time of such disposition. In addition, a U.S. holder may be required to defer, until the maturity of the notes or earlier disposition in a taxable transaction, the deduction of all or a portion of the interest expense on any indebtedness incurred or continued to purchase or carry such notes.

Any market discount will be considered to accrue ratably during the period from the date of acquisition to the maturity date of the notes, unless the U.S. holder elects to accrue on a constant yield method. A U.S. holder of notes may elect to include market discount in income currently as it accrues (on either a ratable or constant yield method), in which case the rule described above regarding deferral of interest deductions will not apply. This election to include market discount in income currently, once made, applies to all market discount obligations acquired in or after the first taxable year to which the election applies and may not be revoked without the consent of the IRS. U.S. holders should consult with their own tax advisors regarding this election.

Amortizable Bond Premium

A. U.S. holder that purchases notes for an amount greater than the sum of all amounts payable on the notes after the purchase date, will be considered to have purchased such notes with a bond premium. The U.S. holder may elect, subject to certain limitations, to deduct the allowable amortizable bond premium when computing such holder's taxable income. Any election to amortize bond premium applies to all debt obligations (other than debt obligations the interest on which is excludible from gross income) held by the U.S. holder at the beginning of the first taxable year to which the election applies or thereafter acquired by the U.S. holder, and may not be revoked without the consent of the IRS. U.S. holders should consult with their tax advisors regarding this election.

Acquisition Premium

A. U.S. holder that purchases notes for an amount (i) less than or equal to the sum of all amounts payable on the notes after the purchase date and (ii) in excess of its issue price (any such excess being acquisition premium) and does not elect to treat all interest on the notes as OID shall reduce the daily portions of OID by a fraction, the numerator of which is the excess of the U.S. holder's adjusted basis in the notes immediately after its purchase over the adjusted issue price of the notes, and the denominator of which

Table of Contents

is the excess of the sum of all amounts payable on the notes after the purchase date over the notes' adjusted issue price.

Constructive Dividend

The conversion price of the notes will be adjusted in certain circumstances. If those adjustments (or failures to make adjustments) have the effect of increasing your proportionate interest in our assets or earnings, they may result in a deemed distribution to you which would be taxable to you as a dividend, return of capital, or capital gain in accordance with the rules described under 'Certain United States Federal Income Tax Considerations' 'Dividends on Common Stock' below.

Sale, Exchange, Redemption and Other Disposition of Notes

Except as provided below under 'Certain United States Federal Income Tax Considerations' 'Conversion of Notes into Common Stock' below and 'Market Discount' above, you will generally recognize gain or loss upon the sale, exchange, redemption or other disposition of a note equal to the difference between the amount realized upon the sale, exchange, redemption or other disposition and your adjusted tax basis in the note, which will be equal to the amount paid for the note, increased by the amount of OID previously included in income and decreased by the amount of payments of interest and principal. Any gain or loss recognized on a disposition of the note will be capital gain or loss. If you are a noncorporate U.S. holder and have held the note for more than one year, such capital gain will be subject to tax at a maximum rate of 15%. Your ability to deduct capital losses may be limited.

Conversion of Notes Into Common Stock

Upon conversion of your notes into shares of our common stock, and to the extent not previously included in gross income, you will be required to include in gross income as ordinary income the OID and market discount, if any, accrued on your notes through the date of conversion and not previously included in income. Except as set forth in the prior sentence, you will not, however, recognize any income, gain or loss upon such conversion except to the extent of cash received in lieu of a fractional share of common stock. Any cash you receive in lieu of a fractional share of common stock generally should be treated as a payment in exchange for such fractional share. The amount of your gain or loss will be equal to the difference between the amount of cash you receive in respect of such fractional share and the portion of your adjusted tax basis in the note that is allocable to the fractional share. Your tax basis in the shares of common stock received upon a conversion will equal the allocable portion of your adjusted tax basis in the note that was converted into such shares and your holding period for the shares will generally include the period during which you held the notes. However, to the extent any shares of our common stock you receive upon converting your notes are allocable to OID or market discount accrued on your notes, your holding period for those shares may commence on the day following the date of their delivery, although there is no authority precisely on point.

Dividends on Common Stock

If, after you convert a note into shares of our common stock, we make a distribution of cash or other property (other than certain pro rata distributions of our common stock) in respect of that stock, the distribution will be treated as a dividend, taxable to you as ordinary income, to the extent it is paid from our current or accumulated earnings and profits. If the distribution exceeds our current or accumulated earnings and profits, the excess will be treated first as a tax-free return of your investment, up to your basis in your shares. Any remaining excess will be treated as capital gain. If you are a corporation, you may be able to claim a dividend received deduction for a portion of any distribution received that is considered a dividend.

Sale or Other Disposition of Common Stock

You will generally recognize capital gain or loss on a sale or other disposition of your shares of our common stock. Your gain or loss will equal the difference between the proceeds you received and your adjusted tax basis in your shares. The proceeds received will include the amount of any cash and the fair

Table of Contents

market value of any other property received for the shares. If you are a noncorporate U.S. holder and your holding period for the shares (determined under the rules discussed under **Certain United States Federal Income Tax Considerations Conversion of Notes into Common Stock** above) exceeds one year, your capital gain will be subject to tax at a maximum rate of 15%. Your ability to deduct capital losses may be limited.

Exercise of the Optional Redemption or Purchase Right

If you require us to purchase a note on a purchase date and we issue shares of our common stock in full satisfaction of the purchase price, the exchange of your note for shares of our common stock should be treated in the same manner as a conversion. If you require us to purchase a note on a purchase date and if we deliver a combination of cash and shares of our common stock in payment of the purchase price, then, in general:

you should recognize gain (but not loss) to the extent that the cash and the value of the shares exceed your adjusted tax basis in the note, but in no event should the amount of recognized gain exceed the amount of cash you receive;

to the extent not previously included in gross income, you will be required to include in gross income as ordinary income the OID accrued on your notes through the date of conversion;

your basis in the shares received should be the same as the basis in the note purchased by us (exclusive of any basis allocable to a fractional share), decreased by the amount of cash you receive (other than cash received in lieu of a fractional share), and increased by the amount of gain, if any, you recognize (other than gain with respect to a fractional share); and

subject to the possible exception discussed under **Certain United States Federal Income Tax Considerations Conversion of Notes into Common Stock** above, your holding period for the shares received in the exchange should include the holding period for the note that was purchased.

If we elect to exercise our option to purchase a note or if a U.S. holder requires us to purchase a note on a purchase date and if, in either event, we deliver to a holder cash in full satisfaction of the purchase price, the purchase will be treated the same as a sale of the note, as described above under **Certain United States Federal Income Tax Considerations Sale, Exchange, Redemption and Other Disposition of Notes** above.

New Tax Legislation

As part of the Jobs and Growth Tax Relief Reconciliation Act of 2003 (the **Act**), signed into law on May 28, 2003, the maximum tax rate on dividends was generally reduced to 15% for tax years through 2008. In general, a dividend would not be eligible for the 15% rate if the stock was held for 60 days or less. In addition, the Act established a maximum tax rate of 15% on net long-term capital gains of individuals, trusts and estates effective for gains properly taken into account after May 5, 2003. The Act also had the effect of reducing the backup withholding rate. Investors are encouraged to consult with their own tax advisors regarding the application to them of the provisions of the Act.

Non-U.S. Holders

The following is a summary of certain material U.S. federal tax consequences that will apply to you if you are a non-U.S. holder of notes or common stock. Special rules may apply to you if you are a controlled foreign corporation, passive foreign investment company, or foreign personal holding company for U.S. federal income tax purposes, or a U.S. expatriate. Those special rules are not discussed in this summary. You should consult your own tax adviser to determine the U.S. federal, state, local and other tax consequences that may be relevant to you.

Table of Contents

Payment of Interest to Non-U.S. Holders

Payments of principal and interest (including OID) on a note to you will not be subject to U.S. federal income or withholding tax if:

the payments are not effectively connected with your conduct of a trade or business in the United States;

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

you are not a controlled foreign corporation related to us;

you are not a bank, a foreign tax exempt organization or a foreign private foundation for United States federal income tax purposes; and

prior to payment, we or our agent receive a statement (generally made on a properly completed and duly executed IRS Form W-8BEN) certifying that you are the beneficial owner of the note and not a United States person.

Special certification rules may apply if you hold your note through certain intermediaries or through pass-through entities.

If you cannot satisfy the requirements described above, payments of interest and OID on a note to you will generally be subject to U.S. federal income and withholding tax at a rate of 30% unless:

you are entitled to the benefits of an applicable income tax treaty and claim an exemption from or reduction in such tax (generally by providing a properly completed and duly executed IRS Form W-8BEN on which you will claim the benefits of such treaty); or

the interest or OID is effectively connected with your conduct of a trade or business in the United States and we or our agent receive a statement certifying to that effect (generally on a properly completed and duly executed IRS Form W-8ECI).

If the interest or OID on a note is effectively connected with your conduct of a trade or business in the United States (and, if you are entitled to the benefits of an applicable income tax treaty, such interest or OID is attributable to your U.S. permanent establishment), you will be subject to U.S. federal income tax on such interest or OID on a net income basis, generally under the same rules that would apply if you were a U.S. holder. In addition, if you are a foreign corporation, you could be subject to a branch profits tax equal to 30% (or lower applicable treaty rate) of your adjusted effectively connected earnings and profits for the taxable year.

Conversion of the Notes by Non-U.S. Holders

As a non-U.S. holder, you will generally not recognize any income, gain or loss on converting a note into our common stock. Any gain resulting from your receipt of cash in lieu of a fractional share of stock would also generally not be subject to U.S. federal income tax. See Certain United States Federal Income Tax Considerations Non-U.S. Holders Sale, Exchange or Redemption of Notes or Common Stock below.

Dividends Paid to Non-U.S. Holders

Any dividends paid to you with respect to our common stock (and any deemed dividends resulting from certain adjustments, or failure to make adjustments, to the number of shares of common stock to be issued on conversion, see Certain United States Federal Income Tax Considerations Constructive Dividend above) will generally be subject to U.S. federal income and withholding tax at rate of 30% unless:

you are entitled to the benefits of an applicable income tax treaty and claim an exemption from or reduction in such tax (generally by providing a properly completed and duly executed IRS Form W-8BEN on which you will claim the benefits of such treaty); or

Table of Contents

the dividends or deemed dividends are effectively connected with your conduct of a trade or business in the United States and we or our agent receives a statement certifying to that effect (generally on a properly completed and duly executed IRS Form W-8ECI).

If the dividends or deemed dividends are effectively connected with your conduct of a trade or business in the United States (and, if you are entitled to the benefits of an applicable income tax treaty, such dividends or deemed dividends are attributable to your U.S. permanent establishment), you will be subject to U.S. federal income tax on such dividends or deemed dividends on a net income basis, generally under the same rules that would apply if you were a U.S. holder. In addition, if you are a foreign corporation, you could be subject to a branch profits tax equal to 30% (or lower applicable treaty rate) of your adjusted effectively connected earnings and profits for the taxable year.

Sale, Exchange or Redemption of Notes or Common Stock by Non-U.S. Holders

The gain you may realize upon a sale, exchange, redemption or other disposition of a note or share of our common stock generally will not be subject to U.S. federal income or withholding tax unless:

the gain is effectively connected with your conduct of a trade or business in the United States (and, if you are entitled to the benefits of an applicable income tax treaty, the gain is attributable to your U.S. permanent establishment);

you are 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 U.S. real property holding corporation for U.S. federal income tax purposes.

If the gain you realize is described in the first bullet point above, you will be subject to U.S. federal income tax on such gain on a net income basis, generally under the same rules that would apply if you were a U.S. holder. In addition, if you are a foreign corporation, you could be subject to a branch profits tax equal to 30% (or lower applicable treaty rate) of your adjusted effectively connected earnings and profits for the taxable year.

If the gain you realize is described in the second bullet point above, subject to any provision to the contrary under an applicable tax treaty, you will generally be subject to a flat 30% U.S. federal income tax on such gain.

We believe we are not and do not anticipate becoming a U.S. real property holding corporation for U.S. federal income tax purposes. However, there can be no assurances that we will not become a U.S. real property holding corporation in the future.

U.S. Federal Estate Tax

If you are a non-U.S. holder other than an individual, you will not be subject to the United States federal estate tax. If you are a non-U.S. holder and an individual, your notes will not be included in your gross estate for United States federal estate tax purposes unless at the time of death (i) you were a citizen or resident of the United States (as defined for United States federal estate tax purposes) and (ii) either (a) payments of interest or OID on the notes would have been effectively connected with your conduct of a trade or business in the United States or (b) you actually or constructively owned 10 percent or more of the total combined voting power of all classes of our stock entitled to vote.

By contrast, common stock held by you at the time of your death will be included in your gross estate for U.S. estate tax purposes unless an applicable estate tax treaty provides otherwise.

You should consult with your own tax adviser regarding the potential application of the U.S. federal estate tax rules to you and your estate before considering an investment in the notes.

Table of Contents

Information Reporting and Backup Withholding

If you are a U.S. holder, in general, information reporting requirements will apply to certain payments of principal and interest on the notes, dividends paid on the common stock, and the proceeds of a sale of notes or shares of our common stock unless you are an exempt recipient (such as a corporation). A 28% backup withholding tax will apply to such payments if you fail to provide your taxpayer identification number or a certification of foreign status or to report in full dividend and interest income, or if you fail to otherwise establish an exemption.

If you are a non-U.S. holder and you have provided a certification of non-U.S. status (e.g., on a properly executed and duly executed IRS Form W-8BEN), in general, you will not be subject to information reporting or backup withholding with respect to payments that we make to you provided that we do not have actual knowledge or reason to know that you are a United States person. In addition, you will not be subject to information reporting or backup withholding with respect to the proceeds of a sale of a note or share of common stock, even if such sale is effected within the United States or conducted through a U.S.-related financial intermediary, as long as the payor does not have actual knowledge or reason to know that you are a United States person.

We are required to and will report annually to the IRS and to you the amount of, and the tax withheld, if any, with respect to, any interest or dividends paid to you. Copies of these information returns may be made available to the tax authorities of the country in which you are a resident under the provisions of a specific treaty or agreement.

Any amounts withheld under the backup withholding rules will be allowed as a refund or a credit against your U.S. federal income tax liability provided the required information is furnished timely to the IRS.

Table of Contents**SELLING SECURITY HOLDERS**

We originally issued the notes in a private placement in March 2003. The notes were resold by the initial purchasers to qualified institutional buyers within the meaning of Rule 144A under the Securities Act in transactions exempt from registration under the Securities Act. The selling security holders may from time to time offer and sell pursuant to this prospectus any or all of the notes listed below and shares of our common stock issued upon conversion of those notes. When we refer to the selling security holders in this prospectus, we mean those persons listed in the table below, as well as the permitted pledgees, donees, assignees, transferees, successors and others who later hold any of the selling security holders' interests.

The table below sets forth the name of each selling security holder, the principal amount at maturity of notes, as of June 4, 2004, that each selling security holder may offer pursuant to this prospectus and the number of shares of our common stock into which those notes are convertible. Unless set forth below, none of the selling security holders has, or within the past three years has had, any material relationship with us or any of our predecessors or affiliates.

We have prepared the table below based on information given to us by the selling security holders on or prior to June 4, 2004. However, any or all of the notes or shares of our common stock listed below may be offered for sale pursuant to this prospectus by the selling security holders from time to time. Accordingly, no estimate can be given as to the amounts of notes or our common stock that will be held by the selling security holders upon consummation of any sales pursuant to this prospectus. In addition, the selling security holders listed in the table below may have acquired, sold or transferred, in transactions exempt from the registration requirements of the Securities Act, some or all of their notes since the date as of which the information in the table is presented.

Information about the selling security holders may change over time. Any changed information will be set forth in prospectus supplements to the extent we are advised of the changes. From time to time, additional information concerning ownership of the notes and our common stock may rest with certain holders thereof not named in the table below and of whom we are unaware.

Name	Original Principal Amount of Notes Beneficially Owned That May Be Sold	Percentage of Notes Outstanding Before Offering*	Number of Shares of Common Stock Held Before Offering(1)	Number of Shares of Common Stock Offered for Sale(1)(2)	Number of Shares of Common Stock Held After Offering(3)
1976 Distribution Trust FBO A.R. Lauder/ Zinterhofer(4)	9,000	*	346	346	
2000 Revocable Trust FBO A.R. Lauder/ Zinterhofer(5)	9,000	*	346	346	
Argent Classic Convertible Arbitrage Fund L.P.(6)	300,000	*	11,538	11,538	
Argent Classic Convertible Arbitrage (Bermuda) Fund Ltd.(7)	700,000	*	26,923	26,923	
Argent Low Lev Convertible Arbitrage Fund LLC(8)	300,000	*	11,538	11,538	
Argent Low Lev Convertible Arbitrage Fund Ltd.(9)	1,800,000	1.20	69,230	69,230	
Afra Health Fund(10)(a)	270,000	*	10,384	10,384	
Alcon Laboratories(11)	377,000	*	14,499	14,499	
Arapahoe County Colorado(12)	41,000	*	1,576	1,576	
Asante Health Systems(13)	83,000	*	3,192	3,192	

Table of Contents

Name	Original Principal Amount of Notes Beneficially Owned That May Be Sold	Percentage of Notes Outstanding Before Offering*	Number of Shares of Common Stock Held Before Offering(1)	Number of Shares of Common Stock Offered for Sale(1)(2)	Number of Shares of Common Stock Held After Offering(3)
Barclays Global Investors Diversified Alpha Plus Funds c/o Forest Investment Mgmt LLC(14)(a)	284,000	*	10,923	10,923	
BNP Paribas Arbitrage(15)	6,500,000	4.33	249,999	249,999	
BNP Paribas Equity Strategies SNC	627,000	*	24,115	24,115	
BP Amoco PLC Master Trust(16)	482,000	*	18,538	18,538	
British Virgin Islands Social Security Board(17)	86,000	*	3,307	3,307	
Calamos Convertible Fund Calamos Investment Trust(18)	2,500,000	1.67	96,153	96,153	
Calamos Market Neutral Fund Calamos Investment Trust(19)	2,500,000	1.67	96,153	96,153	
City and County of San Francisco Retirement System(20)	1,437,000	*	55,269	55,269	
City of New Orleans(21)	198,000	*	7,615	7,615	
City University of New York(22)	146,000	*	5,615	5,615	
CNH CA Master Account, L.P.(23)	2,100,000	1.40	80,769	80,769	
Coastal Convertibles LTD(24)	1,000,000	*	38,461	38,461	
Cooperneff Convertible Strategies (Cayman) Master Fund LP	681,000	*	26,192	26,192	
Credit Suisse First Boston Europe Limited(25)(a)	30,750,000	20.50	1,182,691	1,182,691	
CQS Convertible & Quantitative Strategies Master Fund Limited(26)	42,000,000	28.00	1,615,383	1,615,383	
Deutsche Bank Securities Inc.(27)(a)	3,999,000	2.67	153,845	153,845	
DKR SoundShore Oasis Holding Fund Ltd.(28)	2,500,000	1.67	96,153	96,153	
DKR SoundShore Strategic Holding Fund Ltd.(29)	1,000,000	*	38,461	38,461	
The Grable Foundation(30)	34,000	*	1,307	1,307	
Grady Hospital Foundation(31)	129,000	*	4,961	4,961	
HFR CA Select Fund(32)	800,000	*	30,769	30,769	
Hotel Union & Hotel Industry of Hawaii Pension Plan(33)	170,000	*	6,538	6,538	
Independence Blue Cross(34)	223,000	*	8,576	8,576	
Jefferies and Company Inc.(35)	5,000	*	192	192	
KBC Financial Products (Cayman Islands) Ltd.(36)	3,515,000	2.34	135,192	135,192	
KBC Financial Products USA Ltd.(37)	75,000	*	2,884	2,884	
Laurel Ridge Capital LP(38)	1,000,000	*	38,461	38,461	
LLT Ltd.(39)(a)	148,000	*	5,692	5,692	
Lyxor/ Forest Fund Ltd.(40)(a)	1,343,000	*	51,653	51,653	
Lyxor Master Fund Ref: Argent/ LowLev c/o Argent Mgmt Co.(41)	500,000	*	19,230	19,230	

Table of Contents

Name	Original Principal Amount of Notes Beneficially Owned That May Be Sold	Percentage of Notes Outstanding Before Offering*	Number of Shares of Common Stock Held Before Offering(1)	Number of Shares of Common Stock Offered for Sale(1)(2)	Number of Shares of Common Stock Held After Offering(3)
Mainstay Convertible Fund(42)(a)	4,470,000	2.98	171,922	171,922	
Mainstay VP Convertible Fund(43)(a)	2,120,000	1.41	81,538	81,538	
Merrill Lynch Insurance Group(44)	179,000	*	6,884	6,884	
Municipal Employees Benefit Trust(45)	234,000	*	8,999	8,999	
New Orleans Firefighters Pension/ Relief Fund(46)	132,000	*	5,076	5,076	
New York Life Insurance Company (Post 82)(47)(a)	4,900,000	3.27	188,461	188,461	
New York Life Insurance Company (Pre 82)(48)(a)	2,245,000	1.50	86,346	86,346	
New York Life Separate Account #7(49)(a)	105,000	*	4,038	4,038	
Occidental Petroleum Corporation(50)	252,000	*	9,692	9,692	
Policeman and Firemen Retirement System of the City of Detroit(51)	281,000	*	10,807	10,807	
Polygon Global Opportunities Master Fund(52)	5,000,000	3.33	192,307	192,307	
Pro-mutual(53)	730,000	*	2,538	2,538	
Relay II Holdings(54)(a)	179,000	*	6,884	6,884	
RBC Alternative Assets LP(55)(a)	22,000	*	846	846	
San Diego County Employee Retirement Association(56)	1,000,000	*	38,461	38,461	
Silverback Master LTD	3,500,000	2.33	134,615	134,615	
Single Hedge US Convertible Arbitrage Fund	103,000	*	3,961	3,961	
Sphinx Convertible Arb Fund Faster Fund Ltd.(57)	179,000	*	6,884	6,884	
Sphinx Convertible Arb SPC c/o Forest Investment Mgmt LLC(58)(a)	104,000	*	3,999	3,999	
SSI Blended Market Neutral L.P.(59)	326,000	*	12,538	12,538	
SSI Hedge Convertible Market Neutral L.P.(60)	352,000	*	13,538	13,538	
Sturgeon Limited(61)	89,000	*	3,423	3,423	
TCW Group, Inc.(62)	4,175,000	2.78	160,576	160,576	
Topanga XI	1,146,000	*	44,076	44,076	
Trustmark Insurance(63)	334,000	*	12,846	12,846	
Univest Conv Arb Fund Ltd.(64)(a)	159,000	*	6,115	6,115	
Viacom Inc. Pension Plan Master Trust(65)	15,000	*	576	576	
Xavex Convertible Arbitrage 2 Fund(66)	100,000	*	3,846	3,846	
Xavex Convertible 4 Fund c/o Forest Investment Mgmt LLC(67)(a)	128,000	*	4,923	4,923	
Zazove Convertible Arbitrage Fund L.P.(68)	1,250,000	*	48,076	48,076	

Table of Contents

Name	Original Principal Amount of Notes Beneficially Owned That May Be Sold	Percentage of Notes Outstanding Before Offering*	Number of Shares of Common Stock Held Before Offering(1)	Number of Shares of Common Stock Offered for Sale(1)(2)	Number of Shares of Common Stock Held After Offering(3)
Zazove Income Fund, L.P.(69)	1,200,000	*	46,153	46,153	
Zurich Institutional Benchmarks Master Fund, Ltd.(70)	2,000,000	1.33	76,923	76,923	
Zurich Institutional Benchmarks Master Fund Ltd.(71)	1,972,000	1.31	75,846	75,846	
Any other holder of notes or future transferee from any such holder(72)	398,000	*	15,307	15,307	
Total	150,000,000	100.00	5,769,225	5,769,225	

* Less than 1%

- (a) The selling security holder and/or certain of its affiliates are NASD registered broker-dealers. The selling security holder has advised the Registrant that it has purchased the securities covered by the Registration Statement in the ordinary course of its business, and that, at the time of the purchase of such securities, it did not have any agreements or understandings, directly or indirectly, with any person to distribute the securities.
- (1) The number of conversion shares shown in the table above assumes conversion of the full amount of notes held by such holder at the initial conversion rate of 38.4615 shares per \$1,000 principal amount at maturity of notes. This conversion rate is subject to certain adjustments. Accordingly, the number of shares of common stock issuable upon conversion of the notes may increase or decrease from time to time. Under the terms of the indenture, fractional shares will not be issued upon conversion of the notes. Cash will be paid instead of fractional shares, if any. As of May 20, 2004, we had 26,812,037 shares of common stock outstanding.
- (2) The shares of common stock that may be sold upon conversion of the notes by any selling security holder will not represent 1% or more of our outstanding common stock, except Credit Suisse First Boston Europe Limited (4.4%) and CQS Convertible & Quantitative Strategies Master Fund Limited (6.0%).
- (3) Assumes all of the notes and shares of common stock issuable upon their conversion are sold in the offering.
- (4) Advent Capital Management, LLC is the investment advisor of this entity and Paul Latronica, a vice president of the investment advisor, has the power to direct the voting and disposition of the securities held by this entity.
- (5) Advent Capital Management, LLC is the investment advisor of this entity and Paul Latronica, a vice president of the investment advisor, has the power to direct the voting and disposition of the securities held by this entity.
- (6) Nathaniel Brown, as principal of Argent Classic Convertible Arbitrage Fund L.P., exercises sole voting or dispositive power with respect to these securities.
- (7) Nathaniel Brown, as principal of Argent Classic Convertible Arbitrage (Bermuda) Fund Ltd., exercises sole voting or dispositive power with respect to these securities.
- (8) Nathaniel Brown, as principal of Argent Low Lev Convertible Arbitrage Fund LLC, exercises sole voting or dispositive power with respect to these securities.
- (9) Nathaniel Brown, as principal of Argent Low Lev Convertible Arbitrage Fund Ltd., exercises sole voting or dispositive power with respect to these securities.

- (10) The selling security holder is a fund of Mackay Shields, LLC, an indirect wholly-owned subsidiary of New York Life Insurance Company.

Table of Contents

- (11) Advent Capital Management, LLC is the investment advisor of this entity and Paul Latronica, a vice president of the investment advisor, has the power to direct the voting and disposition of the securities held by this entity.
- (12) Advent Capital Management, LLC is the investment advisor of this entity and Paul Latronica, a vice president of the investment advisor, has the power to direct the voting and disposition of the securities held by this entity.
- (13) Advent Capital Management, LLC is the investment advisor of this entity and Paul Latronica, a vice president of the investment advisor, has the power to direct the voting and disposition of the securities held by this entity.
- (14) The selling securityholder is controlled by Forest Partners II LP, of which Michael A. Boyd is General Partner. Michael A. Boyd is the principal of Michael A. Boyd Inc. and exercises sole voting and dispositive power with respect to these securities.
- (15) The selling securityholder is controlled by Forest Partners II LP, of which Michael A. Boyd is General Partner. Michael A. Boyd is the principal of Michael A. Boyd Inc. and exercises sole voting and dispositive power with respect to these securities.
- (16) SSI Investment Management, Inc., exercises sole voting or dispositive power with respect to these securities. Major shareholders of SSI Investment Management are John Gottfurcht, George Douglas and Amy Jo Gottfurcht.
- (17) Advent Capital Management, LLC is the investment advisor of this entity and Paul Latronica, a vice president of the investment advisor, has the power to direct the voting and disposition of the securities held by this entity.
- (18) Nick Calamos, as Senior Executive Vice President, Chief Investment Officer and Director of Investments for Calamos Asset Management, Inc., has sole voting or dispositive power with respect to these securities.
- (19) Nick Calamos, as Senior Executive Vice President, Chief Investment Officer and Director of Investments for Calamos Asset Management, Inc., has sole voting or dispositive power with respect to these securities.
- (20) Advent Capital Management, LLC is the investment advisor of this entity and Paul Latronica, a vice president of the investment advisor, has the power to direct the voting and disposition of the securities held by this entity.
- (21) Advent Capital Management, LLC is the investment advisor of this entity and Paul Latronica, a vice president of the investment advisor, has the power to direct the voting and disposition of the securities held by this entity.
- (22) Advent Capital Management, LLC is the investment advisor of this entity and Paul Latronica, a vice president of the investment advisor, has the power to direct the voting and disposition of the securities held by this entity.
- (23) CNH Partners, LLC is the Investment Advisor of the selling security holder and has sole voting and dispositive power over the Registrable Securities. Investment Principals for the Advisor are Rober Krail, Mark Mitchell, and Todd Pulvino. They have voting and dispositive power over these securities.
- (24) Jay Lurie, a principal of Harbor Capital Management LLC, has voting and dispositive power over these securities.
- (25) David Clarkson, Managing Director of Credit Suisse First Boston Europe Limited, has voting and dispositive power over these securities.
- (26) The selling security holder is a wholly-owned subsidiary of CQS Convertible and Quantitative Strategies Feeder Fund Limited, which is incorporated in the Cayman Islands (the Feeder Fund). Voting control of the Feeder Fund resides in its Management Shares, which are held in trust by Queensgate Bank & Trust Company Ltd. pursuant to a Trust Deed dated March 15, 2000. Under Clause 3(c) of the Trust Deed, Queensgate is entitled to exercise voting and dispositive power over the Management Shares.

Table of Contents

- (27) Includes \$1,609,000 aggregate principal amount held by Deutsche Bank Securities, Inc. (Deutsche Bank) and \$2,700,000 aggregate principal amount held by DBAG London, an affiliate of Deutsche Bank. Deutsche Bank is a reporting company under the Securities Exchange Act of 1934 and exercises sole voting and dispositive power with respect to these securities.
- (28) DKR Capital Partners L.P. (DKR LP) is a registered investment advisor with the Securities and Exchange Commission and as such, serves as the managing general partner to DKR Oasis Management Company L.P., the investment manager to DKR SoundShore Oasis Holding Fund Ltd. (the Fund). DKR LP has retained certain portfolio managers to act as the portfolio manager to the Fund managed by DKR LP. As such, DKR LP and certain portfolio managers to act as the portfolio manager to the Fund managed by DKR LP. Seth Fischer has voting and dispositive power over the securities held by the Fund.
- (29) DKR Capital Partners L.P. (DKR LP) is a registered investment advisor with the Securities and Exchange Commission and as such, is the investment manager to DKG SoundShore Strategic Holding Fund Ltd (the Fund). DKR LP has retained certain portfolio managers to act as the portfolio manager to the Fund managed by DKR LP. As such, DKR LP and certain portfolio managers have shared dispositive and voting power over the securities.
- (30) Advent Capital Management, LLC is the investment advisor of this entity and Paul Latronica, a vice president of the investment advisor, has the power to direct the voting and disposition of the securities held by this entity.
- (31) Advent Capital Management, LLC is the investment advisor of this entity and Paul Latronica, a vice president of the investment advisor, has the power to direct the voting and disposition of the securities held by this entity.
- (32) Gene T. Pretti, a principal of this entity, has voting and dispositive power over the securities.
- (33) Advent Capital Management, LLC is the investment advisor of this entity and Paul Latronica, a vice president of the investment advisor, has the power to direct the voting and disposition of the securities held by this entity.
- (34) Advent Capital Management, LLC is the investment advisor of this entity and Paul Latronica, a vice president of the investment advisor, has the power to direct the voting and disposition of the securities held by this entity.
- (35) SSI Investment Management, Inc. exercises sole voting or dispositive power with respect to these securities. Major shareholders of SSI Investment Management are John Gottfurcht, George Douglas and Amy Jo Gottfurcht.
- (36) KBC Financial Products (Cayman Islands) Ltd. exercises voting and investment control over any securities of common stock issuable upon conversion of the securities owned by the selling holder. Mr. Ivan Rehder, Managing Director, exercises voting and investment control on behalf of KBC Financial Products (Cayman Islands) Ltd.
- (37) KBC Financial Products (USA) Inc. exercises voting and investment control over any securities of common stock issuable upon conversion of the securities owned by the selling holder. Luke Edwards, Managing Director, exercises voting and investment control on behalf of KBC Financial Products (USA) Inc.
- (38) Van Nguyen, John Illyzzi, Andrew Mitchell, Nathaniel Newlin, Timothy Walton, and Venkatesh Reddy are the controlling persons of Laurel Ridge Capital, L.P. and share voting and dispositive power over these securities.
- (39) The selling securityholder is controlled by Forest Partners II LP, of which Michael A. Boyd is General Partner. Michael A. Boyd is the principal of Michael A. Boyd Inc. and exercises sole voting and dispositive power with respect to these securities.
- (40) The selling securityholder is controlled by Forest Partners II LP, of which Michael A. Boyd is General Partner. Michael A. Boyd is the principal of Michael A. Boyd Inc. and exercises sole voting and dispositive power with respect to these securities.

Table of Contents

- (41) The selling securityholder is controlled by Forest Partners II LP, of which Michael A. Boyd is General Partner. Michael A. Boyd is the principal of Michael A. Boyd Inc. and exercises sole voting and dispositive power with respect to these securities.
- (42) The selling security holder is a fund of Mackay Shields, LLC, an indirect wholly-owned subsidiary of New York Life Insurance Company.
- (43) The selling security holder is a fund of Mackay Shields, LLC, an indirect wholly-owned subsidiary of New York Life Insurance Company.
- (44) Advent Capital Management, LLC is the investment advisor of this entity and Paul Latronica, a vice president of the investment advisor, has the power to direct the voting and disposition of the securities held by this entity.
- (45) Advent Capital Management, LLC is the investment advisor of this entity and Paul Latronica, a vice president of the investment advisor, has the power to direct the voting and disposition of the securities held by this entity.
- (46) Advent Capital Management, LLC is the investment advisor of this entity and Paul Latronica, a vice president of the investment advisor, has the power to direct the voting and disposition of the securities held by this entity.
- (47) The selling security holder is a fund of Mackay Shields, LLC, an indirect wholly-owned subsidiary of New York Life Insurance Company.
- (48) The selling security holder is a fund of Mackay Shields, LLC, an indirect wholly-owned subsidiary of New York Life Insurance Company.
- (49) The selling security holder is a fund of Mackay Shields, LLC, an indirect wholly-owned subsidiary of New York Life Insurance Company.
- (50) Advent Capital Management, LLC is the investment advisor of this entity and Paul Latronica, a vice president of the investment advisor, has the power to direct the voting and disposition of the securities held by this entity.
- (51) Advent Capital Management, LLC is the investment advisor of this entity and Paul Latronica, a vice president of the investment advisor, has the power to direct the voting and disposition of the securities held by this entity.
- (52) The Board of Directors of Polygon Global Opportunities Master Fund: Alex Jackson, Byron Kruef, Brandon Jones, Erik Caspersen, Greville Ward, Reade Griffith, have voting and dispositive power over these securities.
- (53) Advent Capital Management, LLC is the investment advisor of this entity and Paul Latronica, a vice president of the investment advisor, has the power to direct the voting and disposition of the securities held by this entity.
- (54) The selling securityholder is controlled by Forest Partners II LP, of which Michael A. Boyd is General Partner. Michael A. Boyd is the principal of Michael A. Boyd Inc. and exercises sole voting and dispositive power with respect to these securities.
- (55) Forest Investment Mngt. LLC is 100% owned by Forest Partners II LP. Michael A. Boyd is the General Partner. Michael A. Boyd is the principal of Michael A. Boyd Inc. and exercises sole voting and dispositive power with respect to these securities.
- (56) Advent Capital Management, LLC is the investment advisor of this entity and Paul Latronica, a vice president of the investment advisor, has the power to direct the voting and disposition of the securities held by this entity.
- (57) SSI Investment Management, Inc. has voting or dispositive power with respect to these securities. Major shareholders of SSI Investment Management are John Gottfurcht, George Douglas and Amy Jo Gottfurcht.

Table of Contents

- (58) The selling securityholder is controlled by Forest Partners II LP, of which Michael A. Boyd is General Partner. Michael A. Boyd is the principal of Michael A. Boyd Inc. and exercises sole voting and dispositive power with respect to these securities.
- (59) SSI Investment Management, Inc. has voting or dispositive power with respect to these securities. Major shareholders of SSI Investment Management are John Gottfurcht, George Douglas and Amy Jo Gottfurcht.
- (60) SSI Investment Management, Inc. has voting or dispositive power with respect to these securities. Major shareholders of SSI Investment Management are John Gottfurcht, George Douglas and Amy Jo Gottfurcht.
- (61) Sturgeon Limited shares dispositive power with CooperNeff Advisors, Inc. CooperNeff Advisors, Inc. exercises sole voting power with respect to these securities.
- (62) Thomas Lyon, Managing Director of TCW Group, Inc., has voting and dispositive power over these securities.
- (63) Advent Capital Management, LLC is the investment advisor of this entity and Paul Latronica, a vice president of the investment advisor, has the power to direct the voting and disposition of the securities held by this entity.
- (64) The selling securityholder is controlled by Forest Partners II LP, of which Michael A. Boyd is General Partner. Michael A. Boyd is the principal of Michael A. Boyd Inc. and exercises sole voting and dispositive power with respect to these securities.
- (65) SSI Investment Management, Inc. exercises sole voting or dispositive power with respect to these securities. Major shareholders of SSI Investment Management are John Gottfurcht, George Douglas and Amy Jo Gottfurcht.
- (66) Nathaniel Brown, as principal of this entity, exercises sole voting or dispositive power with respect to these securities.
- (67) The selling securityholder is controlled by Forest Partners II LP, of which Michael A. Boyd is General Partner. Michael A. Boyd is the principal of Michael A. Boyd Inc. and exercises sole voting and dispositive power with respect to these securities.
- (68) Gene T. Pretti, a principal of this entity, has voting and dispositive power over the securities.
- (69) Gene T. Pretti, a principal of this entity, has voting and dispositive power over the securities.
- (70) Gene T. Pretti, a principal of this entity, has voting and dispositive power over the securities.
- (71) SSI Investment Management, Inc. exercises sole voting or dispositive power with respect to these securities. Major shareholders of SSI Investment Management are John Gottfurcht, George Douglas and Amy Jo Gottfurcht. Zazove Associates LLC exercises sole voting or dispositive power with respect to 1,000,000 of these securities.
- (72) New selling security holders, if any, will be set forth from time to time in post-effective amendments to the registration statement of which this prospectus is a part or supplements to this prospectus, as required.

PLAN OF DISTRIBUTION

We will not receive any proceeds from the sale of the notes and the underlying common stock offered by this prospectus. The selling security holders and their successors, which includes their transferees, distributees, pledgees or donees or their successors, may sell the notes and the underlying common stock directly to purchasers or through underwriters, broker-dealers or agents. Underwriters, broker-dealers or agents may receive compensation in the form of discounts, concessions or commissions from the selling security holders or the purchasers. These discounts, concessions or commissions may be in excess of those customary in the types of transactions involved.

Table of Contents

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

Fixed prices;

Prevailing market prices at the time of sale;

Prices related to such prevailing market prices;

Varying prices determined at the time of sale; or

Negotiated prices.

The sales may be effected in transactions in the following manner (which may involve block transactions or transactions in which the same broker acts as agent on both sides of the transaction, known as crosses):

On any national securities exchange or quotation service on which the notes or the common stock may be listed or quoted at the time of sale;

In the over-the-counter market; or

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

From time to time, one or more of the selling security holders may distribute, devise, gift, pledge, hypothecate or grant a security interest in some or all of the securities owned by them. Any such distributees, devisees or donees will be deemed to be selling security holders. Any such pledgees, secured parties or persons to whom the securities have been hypothecated will, upon foreclosure in the event of default, be deemed to be selling security holders.

The aggregate proceeds to the selling security holders from the sale of the notes or underlying common stock will be the purchase price of the notes or common stock less any discounts and commissions. A selling security holder reserves the right to accept and, together with their agents, to reject, any proposed purchase of notes or common stock to be made directly or through agents. We will not receive any of the proceeds from this offering.

Our outstanding common stock is listed for trading on the New York Stock Exchange. We do not intend to list the notes for trading on any national securities exchange or any over-the-counter market. The initial purchasers of the notes have advised us that they are making and intend to continue making a market in the notes; however, they are not obligated to do so and may stop such market making at any time without notice. In addition, such market making activity will be subject to the limits imposed by the Securities Act and the Exchange Act. Therefore, we cannot guarantee that any trading market will develop for the notes. Even if a market does develop, the market may not be maintained.

The notes and underlying common stock may be sold in some states only through registered or licensed brokers or dealers. The selling security holders and any underwriters, broker-dealers or agents that participate in the sale of the notes and common stock into which the notes are convertible may be deemed to be underwriters within the meaning of Section 2(11) of the Securities Act. Any discounts, commissions, concessions or profit they earn on any resale of the shares may be underwriting discounts and commissions under the Securities Act. Selling security holders who are underwriters within the meaning of Section 2(11) of the Securities Act will be subject to the prospectus delivery requirements of the Securities Act. The selling security holders have acknowledged that they understand their obligations to comply with the provisions of the Exchange Act and the rules thereunder relating to stock manipulation including, but not limited to, Regulation M, and have agreed that they will not engage in any transaction in violation of such provisions.

In addition, any securities covered by this prospectus which qualify for sale pursuant to Rule 144 or Rule 144A of the Securities Act may be sold under Rule 144 or Rule 144A rather than pursuant to this prospectus. A selling security holder may not sell any notes or common stock described herein and may not transfer, devise or gift such securities by other means not described in this prospectus.

If required, the specific notes or common stock to be sold, the names of the selling security holders, the respective purchase prices and public offering prices, the names of any agent, dealer or underwriter, and any applicable commissions or discounts with respect to a particular offer will be set forth in an accompanying

Table of Contents

prospectus supplement or, if appropriate, a post-effective amendment to the Registration Statement of which this prospectus is a part.

Pursuant to the registration rights agreement filed as an exhibit to the Registration Statement of which this prospectus is a part, we and the selling security holders will be indemnified by each other against certain liabilities, including certain liabilities under the Securities Act or will be entitled to contribution in connection with these liabilities.

We have agreed to pay substantially all of the expenses incidental to the registration, offering and sale of the notes and underlying common stock to the public other than applicable transfer taxes and commissions, fees and discounts of underwriters, brokers, dealers and agents.

LEGAL MATTERS

The validity of the securities offered in this prospectus and certain material federal income tax consequences of the ownership of the notes have been passed upon for us by O Melveny & Myers LLP, Menlo Park, California.

EXPERTS

The consolidated financial statements and the related financial statement schedule incorporated in this prospectus by reference from the Company's Annual Report on Form 10-K/A for the year ended December 31, 2003 have been audited by Deloitte & Touche LLP, Independent Registered Public Accounting Firm, as stated in their report incorporated herein by reference (which expresses an unqualified opinion and includes explanatory paragraphs relating to the adoption of SFAS No. 142 Goodwill and Other Intangible Assets discussed in Note 15 and the revision described in Note 17) and have been so incorporated in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and special reports, proxy statements and other information with the Securities and Exchange Commission, or SEC, under the Exchange Act. You may read and copy this information at the following locations of the SEC:

Public Reference Room
450 Fifth Street, N.W.
Room 1024
Washington, D.C. 20549

Pacific Regional Office
5670 Wilshire Boulevard
Suite 1100
Los Angeles, CA 90036-3648

You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330.

The SEC also maintains an internet web site that contains reports, proxy statements and other information about issuers, including Alaska Air Group, Inc., that file electronically with the SEC. The address of that site is www.sec.gov. We make available without charge our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports on our web site at www.alaskaair.com as soon as practicable after we electronically file or furnish such reports with the SEC.

Table of Contents

INCORPORATION OF DOCUMENTS BY REFERENCE

The SEC allows us to incorporate by reference the information we file with them, which means that we can disclose important information to you by referring you to these documents. The information incorporated by reference is an important part of this prospectus, and information that we file later with the SEC will automatically update and supersede this information. Our periodic reports are filed with the SEC under SEC File Number 1-8957. We hereby incorporate by reference the following:

Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2004, filed May 11, 2004.

Annual Report on Form 10-K for the fiscal year ended December 31, 2003, filed March 11, 2004, as amended by Amendment No. 1 on Form 10-K/A filed on May 21, 2004.

The description of our common stock contained in the Registration Statement on Form 8-A filed on September 19, 1985 under Section 12(b) of the Securities Exchange Act of 1934, as amended, including any amendments or reports filed for the purpose of updating such description.

In addition, all filings filed by us with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, after the date of the initial filing of this Registration Statement and prior to the termination of the offering of the securities shall be deemed to be incorporated by reference herein and part hereof from the date of filing the documents, other than information in the documents that is not deemed to be filed with the SEC. A statement contained herein or in a document incorporated or deemed to be incorporated by reference herein, shall be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained in any subsequently filed document which is incorporated by reference herein, modifies or supersedes the statement. Any statements so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this prospectus. Unless specifically stated to the contrary, none of the information that we disclose under Items 9 or 12 of any Current Report on Form 8-K that we may from time to time furnish to the SEC will be incorporated by reference into, or otherwise included in, this prospectus.

To obtain a copy of these filings at no cost, you may write or telephone us at the following address:

Secretary

Alaska Air Group, Inc.
19300 Pacific Highway South
Seattle, Washington 98188
(206) 433-3200