SLM CORP
Form PREM14A
May 25, 2007

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
SCHEDULE 14A
Proxy Statement Pursuant to Section 14(A) of the Securities Exchange Act of 1934

Filed by the Registrant þ
Filed by a Party other than the Registrant o
Check the appropriate box:
þ Preliminary Proxy Statement
o Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
o Definitive Proxy Statement
o Definitive Additional Materials
o Soliciting Material Pursuant to §240.14a-12

SLM CORPORATION

(Name of Registrant as Specified In Its Charter)

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

Payment of Filing Fee (Check the appropriate box):
o No fee required.
þ Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

SLM Corporation voting common stock, par value $0.20 per share.

(2) Aggregate number of securities to which transaction applies:

411,478,750 shares of SLM Corporation common stock; 42,388,933 options to purchase shares of SLM Corporation common stock; restricted stock units to purchase 689,071.62 shares of SLM Corporation common stock; and deferred stock units to purchase 949,619 shares of SLM Corporation common stock

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

The filing fee was based upon the sum of (a) 411,478,750 shares of SLM Corporation common stock multiplied by the merger consideration of $60.00 per share, plus (b) $905,474,046 expected to be paid upon cancellation of outstanding options, plus (c) 689,071.62 restricted stock units multiplied by the merger consideration of $60.00 per share, plus (d) 949,619 deferred stock units multiplied by the merger consideration of $60.00 per share. In accordance with Section 14(g) of the Securities Exchange Act of 1934, as amended, the filing fee was determined by multiplying 0.00003070 by the sum of the preceding sentence.

(4) Proposed maximum aggregate value of transaction:

$25,692,520,483.20

(5) Total fee paid:

$788,760.38

o Fee paid previously with preliminary materials.

o Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

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12061 Bluemont Way
Reston, Virginia 20190

[ ], 2007

Dear Stockholder:

The board of directors of SLM Corporation, acting upon the unanimous recommendation of the transaction committee of the board of directors, has approved a merger agreement providing for the acquisition of SLM Corporation by Mustang Holding Company Inc., an entity owned by an investor group consisting of affiliates of J.C. Flowers & Co. LLC and each of JPMorgan Chase Bank, N.A. and Bank of America, N.A. If the merger contemplated by the merger agreement is completed, you will be entitled to receive $60.00 in cash, without interest and less any applicable withholding taxes, in exchange for each share of common stock owned by you at the effective time of the merger (unless you have exercised your appraisal rights with respect to the merger).

At a special meeting of our stockholders, you will be asked to vote on a proposal to approve and adopt the merger agreement. The special meeting will be held on [ ], 2007 at [ ] local time, at [ ]. Notice of the special meeting and the related proxy statement are enclosed.

The accompanying proxy statement provides you with detailed information about the special meeting, the merger agreement and the merger. A copy of the merger agreement is attached as Annex A to the proxy statement. We encourage you to read the entire proxy statement and the merger agreement carefully. You may also obtain more information about SLM Corporation from documents we have filed with the Securities and Exchange Commission.

Our board of directors has determined that the merger is fair to and in the best interests of SLM Corporation and its stockholders and recommends that you vote FOR the approval and adoption of the merger agreement. This recommendation is based, in part, upon the unanimous recommendation of the transaction committee of the board of directors consisting of four independent directors.

Your vote is very important. We cannot complete the merger unless a majority of the votes entitled to be cast by the holders of the outstanding shares of common stock are cast in favor of the approval and adoption of the merger agreement. **The failure of any stockholder to vote on the proposal to approve and adopt the merger agreement will have the same effect as a vote against the approval and adoption of the merger agreement.**

Whether or not you plan to attend the special meeting, please complete, date, sign and return, as promptly as possible, the enclosed proxy card in the accompanying reply envelope, or submit your proxy by telephone or the Internet. If you have Internet access, we encourage you to record your vote via the Internet. If you attend the special meeting and vote in person, your vote by ballot will revoke any proxy previously submitted.

Thank you in advance for your cooperation and continued support.

Sincerely,

Albert L. Lord
Chairman of the Board

Neither the Securities and Exchange Commission nor any state securities regulatory agency has approved or disapproved the merger, passed upon the merits or fairness of the merger or passed upon the adequacy or accuracy of the disclosure in this document. Any representation to the contrary is a criminal offense.

The proxy statement is dated [ ], 2007, and is first being mailed to stockholders on or about [ ], 2007.

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12061 Bluemont Way
Reston, Virginia 20190

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS
To Be Held On [ ], 2007

[ ], 2007

Dear Stockholder:

A special meeting of stockholders of SLM Corporation, a Delaware corporation, will be held on [ ], 2007 at [ ] local time, at [ ], for the following purposes:

1. To consider and vote on a proposal to approve and adopt the Agreement and Plan of Merger, dated as of April 15, 2007, by and among SLM Corporation, Mustang Holding Company Inc., a Delaware corporation and Mustang Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Mustang Holding Company Inc. A copy of the merger agreement is attached as Annex A to the accompanying proxy statement. Pursuant to the terms of the merger agreement, Mustang Merger Sub, Inc. will merge with and into SLM Corporation and each outstanding share of SLM Corporation s common stock, par value $0.20 per share (other than shares held by the SLM Corporation as treasury stock or owned by Mustang Holding Company Inc. or Mustang Merger Sub, Inc. and shares held by stockholders, if any, who have properly demanded statutory appraisal rights), will be converted into the right to receive $60.00 in cash, without interest and less any applicable withholding taxes.

2. To approve the adjournment of the special meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes at the time of the meeting to approve and adopt the merger agreement.

Only stockholders of record on [ ] are entitled to notice of and to vote at the special meeting or at any adjournment or postponement of the special meeting. All stockholders of record are cordially invited to attend the special meeting in person.

The approval and adoption of the merger agreement requires the affirmative vote of a majority of the votes entitled to be cast by the holders of SLM Corporation s common stock. Even if you plan to attend the special meeting in person, we request that you complete, sign, date and return the enclosed proxy or submit your proxy by telephone or the Internet prior to the special meeting to ensure that your shares will be represented at the special meeting if you are unable to attend. **If you have Internet access, we encourage you to record your vote via the Internet.** If you fail to return your proxy card or fail to submit your proxy by telephone or the Internet, your shares will not be counted for purposes of determining whether a quorum is present at the meeting and will have the same effect as a vote against the approval and adoption of the merger agreement, but will not affect the outcome of the vote regarding the adjournment proposal, if necessary. If you are a stockholder of record, voting in person at the meeting will revoke any proxy previously submitted. If you hold your shares through a bank, broker or other custodian, you must obtain a legal proxy from such custodian in order to vote in person at the meeting.

If your shares are held by a bank or broker, please bring to the special meeting your statement evidencing your beneficial ownership of SLM Corporation common stock and photo identification.

Stockholders of SLM Corporation who do not vote in favor of the approval and adoption of the merger agreement will have the right to seek appraisal of the fair value of their shares of common stock if they deliver a demand for appraisal before the vote is taken on the merger agreement and comply with all requirements of Delaware law, which are

summarized in the accompanying proxy statement.

WHETHER OR NOT YOU PLAN TO ATTEND THE SPECIAL MEETING, PLEASE COMPLETE, DATE, SIGN AND RETURN, AS PROMPTLY AS POSSIBLE, THE ENCLOSED PROXY IN THE ACCOMPANYING REPLY ENVELOPE, OR SUBMIT YOUR PROXY BY TELEPHONE OR THE INTERNET. IF YOU HAVE INTERNET ACCESS, WE ENCOURAGE YOU TO RECORD YOUR VOTE VIA THE INTERNET. STOCKHOLDERS WHO ATTEND THE MEETING MAY REVOKE THEIR PROXIES AND VOTE IN PERSON.

Mary F. Eure
Corporate Secretary

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SUMMARY

The following summary highlights selected information in this proxy statement and may not contain all the information that may be important to you. Accordingly, we encourage you to read carefully this entire proxy statement, its annexes and the documents referred to or incorporated by reference in this proxy statement. Each item in this summary includes a page reference directing you to a more complete description of that topic. See Where You Can Find More Information beginning on page [ ].

The Parties to the Merger (Page [ ])

SLM Corporation, a Delaware corporation, which we refer to as the Company, is the nation s leading provider of saving-and paying-for-college programs. The Company originates education loans and serves nearly 10 million student and parent customers. The Company and its subsidiaries offer debt management services as well as business and technical products to a range of business clients, including higher education institutions, student loan guarantors and state and federal agencies.

Mustang Holding Company Inc., which we refer to as Parent, is a newly formed Delaware corporation. Parent was formed solely for the purpose of effecting the merger and the transactions related to the merger. Parent has not engaged in any business except activities incidental to its formation and in connection with the transactions contemplated by the Agreement and Plan of Merger, dated as of April 15, 2007, by and among the Company, Parent and Mustang Merger Sub, Inc., which we refer to as the merger agreement. Following completion of the merger, Parent will be owned 50.2% by investment vehicles affiliated with J.C. Flowers & Co. LLC, which we refer to as J.C. Flowers, and 24.9% by each of JPMorgan Chase Bank, N.A., which we refer to as JPMorgan Chase, and Bank of America, N.A., which we refer to as Bank of America. We refer to each of J.C. Flowers, JPMorgan Chase and Bank of America as an Investor and collectively as the Investor Group.

Mustang Merger Sub, Inc., which we refer to as Merger Sub, is a newly formed Delaware corporation and a wholly owned subsidiary of Parent that was formed solely for the purpose of completing the merger. Merger Sub has not engaged in any business except activities incidental to its organization and in connection with the transactions contemplated by the merger agreement.

The Merger (Page [ ])

The merger agreement provides that Merger Sub will merge with and into the Company at the effective time of the merger, which we refer to as the merger. The Company will be the surviving corporation in the merger and following the merger will continue to do business as SLM Corporation or Sallie Mae . We refer to the Company after the completion of the merger as the surviving corporation. In the merger, each outstanding share of the Company s common stock, par value $0.20 per share (other than shares held by the Company as treasury stock or owned by Parent or Merger Sub and shares held by stockholders who have properly demanded statutory appraisal rights), will be converted into the right to receive $60.00 in cash, without interest and less any applicable withholding taxes, which we refer to in this proxy statement as the merger consideration. Prior to completion of the merger, the Company will not pay dividends on the Company s common stock.

Effects of the Merger (Page [ ])

If the merger is completed, you will be entitled to receive $60.00 in cash, without interest and less any applicable withholding taxes, for each share of the Company s common stock owned by you, unless you have exercised your

statutory appraisal rights with respect to the merger. As a result of the merger, the Company will cease to be a publicly traded company. You will not own any shares of the surviving corporation.

The Special Meeting (Page [ ])

Time, Place and Date

The special meeting will be held on [ ], 2007 at [ ] local time, at [ ].

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Purpose

At the special meeting, you will be asked to consider and vote upon the approval and adoption of the merger agreement, pursuant to which Merger Sub will merge with and into the Company.

Record Date and Quorum

You are entitled to vote at the special meeting if you owned shares of the Company s common stock at the close of business on [ ], 2007, the record date for the special meeting. You will have one vote for each share of the Company s common stock that you owned on the record date. As of the record date there were [ ] shares of the Company s common stock outstanding and entitled to vote. A majority of the total voting power of the Company s common stock issued, outstanding and entitled to vote at the special meeting constitutes a quorum for the purpose of considering the proposals.

Vote Required

The approval and adoption of the merger agreement requires the affirmative vote of a majority of the votes entitled to be cast by the holders of the outstanding shares of the Company s common stock. Approval of the proposal to adjourn the special meeting, if necessary or appropriate, for the purpose of soliciting additional proxies requires the affirmative vote of a majority of the Company s common stock represented in person or by proxy at the special meeting and entitled to vote on the matter, whether or not a quorum is present.

Common Stock Ownership of Directors and Executive Officers

As of the record date, the directors and executive officers of the Company held less than [ ]% in the aggregate of the shares of the Company s common stock entitled to vote at the special meeting. All of our directors and executive officers have advised the Company that they plan to vote all of their shares in favor of the approval and adoption of the merger agreement.

Voting and Proxies

Any stockholder of record entitled to vote at the special meeting may submit a proxy by telephone, the Internet, returning the enclosed proxy card by mail or voting in person by appearing at the special meeting. If your shares of the Company s common stock are held in street name by your broker, you should instruct your broker on how to vote your shares of the Company s common stock using the instructions provided by your broker. If you do not provide your broker with instructions, your shares of the Company s common stock will not be voted and that will have the same effect as a vote **AGAINST** the approval and adoption of the merger agreement. The persons named in the accompanying proxy will also have discretionary authority to vote on any adjournments or postponements of the special meeting.

Revocability of Proxy

Any stockholder of record who executes and returns a proxy card (or submits a proxy via telephone or the Internet) may revoke the proxy at any time before it is voted at the special meeting in any one of the following ways:

- if you hold your shares in your name as a stockholder of record, by notifying our Secretary, Mary F. Eure, in writing, at 12061 Bluemont Way, Reston, Virginia 20190;

by attending the special meeting and voting in person (your attendance at the meeting will not, by itself, revoke your proxy; you must vote in person at the meeting);

by submitting a later-dated proxy card;

if you voted by telephone or the Internet, by voting a second time by telephone or Internet; or

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if you have instructed a broker, bank or other nominee to vote your shares of the Company s common stock, by following the directions received from your broker, bank or other nominee to change those instructions.

Treatment of Options and Other Awards (Page [ ])

Stock Options. Upon the completion of the merger, each outstanding option to acquire the Company s common stock granted under our equity incentive plans, whether or not vested, that remains outstanding as of the closing of the merger will be cancelled and converted into the right to receive a cash payment equal to the number of shares of the Company s common stock underlying the option multiplied by the amount (if any) by which $60.00 exceeds the applicable exercise price of the option, less any applicable withholding taxes.

Restricted Stock Units. Upon the completion of the merger, all restricted stock units, whether or not vested, will be cancelled and converted into the right to receive a cash payment equal to the number of shares of the Company s common stock underlying the restricted stock units multiplied by $60.00, less any applicable withholding taxes.

Deferred Stock Units. Upon the completion of the merger, all amounts held in participant accounts under the deferred compensation plans that are denominated in the Company s common stock will be converted into the right to receive a cash payment equal to the number of shares of the Company s common stock deemed held in such accounts multiplied by $60.00. This obligation will be payable or distributable in accordance with the terms of our deferred compensation plans, as amended to comply with Section 409A of the Internal Revenue Code.

Restricted Stock. Upon the completion of the merger, each share of restricted stock, whether or not vested, will be cancelled and converted into the right to receive a cash payment equal to the number of shares of the Company s common stock represented by the share of restricted stock multiplied by $60.00, less any applicable withholding taxes.

Employee Stock Purchase Plan. The Company has taken all action necessary to cause our Employee Stock Purchase Plan to be suspended as of the end of April 2007. The Company has caused the then current offering periods to end and such periods are the final offering periods under the plan. Upon completion of the merger, the Employee Stock Purchase Plan will be terminated.

Recommendation of the Transaction Committee and Our Board of Directors (Page [ ])

Transaction Committee. The transaction committee is a committee of independent members of our board of directors that was formed on February 7, 2007, for the purpose of evaluating strategic alternatives of the Company. The transaction committee unanimously determined that the merger is advisable and that it is in the best interests of the Company and its stockholders to effect the transactions contemplated by the merger agreement and unanimously recommended that the board of directors (i) authorize and approve entry by the Company into the merger agreement and the transactions contemplated thereby and (ii) recommend the approval and adoption of the merger agreement and the merger by the Company s stockholders. For a discussion of the material factors considered by the transaction committee in reaching its conclusions, see The Merger Reasons for the Merger; Recommendation of the Transaction Committee and Our Board of Directors beginning on page [ ].

Board of Directors. The board of directors, acting upon the unanimous recommendation of the transaction committee, (i) determined that the merger agreement and the merger are fair to and in the best interests of the Company and its stockholders and declared the merger to be advisable, (ii) approved the execution, delivery and performance of the merger agreement and the completion of the transactions contemplated thereby, including the merger, and (iii) resolved to recommend that the stockholders approve the adoption of the merger agreement and directed that such matter be submitted to the stockholders for their approval. The board of directors recommends that

stockholders vote **FOR** the approval and adoption of the merger agreement and **FOR** the adjournment of the special meeting, if necessary or appropriate, to solicit additional proxies.

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Interests of the Company s Directors and Executive Officers in the Merger (Page [ ])

In considering the recommendation of the board of directors, you should be aware that our directors and executive officers may have interests in the merger that are different from, or in addition to, your interests as a stockholder, that may present actual or potential conflicts of interest.

Opinions of Financial Advisors (Page [ ])

In connection with the merger, the transaction committee s financial advisors, UBS Securities LLC, which we refer to as UBS, and Greenhill & Co., LLC, which we refer to as Greenhill, each separately delivered to the transaction committee and the board of directors a written opinion, each dated April 15, 2007, as to the fairness, from a financial point of view and as of the date of such opinion, of the merger consideration to be received by the holders of the Company s common stock (other than, in the case of UBS opinion, Parent, holders of beneficial interests in Parent and their respective affiliates to the extent they are holders of the Company s common stock and, in the case of Greenhill s opinion, affiliates of or holders of beneficial interests in Parent or Merger Sub to the extent they are holders of the Company s common stock). The full text of the written opinions of UBS and Greenhill are attached to this proxy statement as Annex B and Annex C, respectively. Holders of the Company s common stock are encouraged to read these opinions carefully in their entirety for a description of the assumptions made, procedures followed, matters considered and limitations on the review undertaken. **UBS and Greenhill s opinions were provided to the transaction committee and board of directors and were directed only to fairness of the merger consideration from a financial point of view, do not address any other aspect of the merger or any related transaction and do not constitute a recommendation to any stockholder as to how to vote or act with respect to the merger or any matters relating to the merger.**

Financing (Page [ ])

Parent and Merger Sub estimate that the total amount of funds necessary to complete the merger and related transactions will be approximately $25.3 billion, which will be funded by new credit facilities, private offerings of debt securities and equity financing provided by the Investor Group. Funding of the equity and debt financing is subject to the satisfaction of the conditions set forth in the commitment letters under which such financing will be provided. See The Merger Financing of the Merger beginning on page [ ]. The following arrangements are in place for the financing of the merger, including the payment of the aggregate merger consideration and the payment of related transaction costs, charges, fees and expenses:

Equity Financing. Parent has received equity commitment letters from each Investor, pursuant to which, and subject to the conditions contained therein, the Investors have agreed severally to make or secure aggregate capital contributions of up to approximately $8.8 billion to Parent.

Debt Financing. Parent has received a debt commitment letter from Bank of America and JPMorgan Chase, which we refer to collectively as the Lender Parties, and certain of their respective affiliates to provide Parent (i) up to $12.5 billion under a senior secured term loan facility and (ii) to the extent Parent does not issue up to $4.0 billion in aggregate principal amount of senior second lien secured notes in a Rule 144A offering or other private placement, $4.0 billion under a senior second lien secured bridge facility.

Other Financings. On April 30, 2007, the Lender Parties and certain affiliates thereof entered into Participation Purchase and Security Agreements with subsidiaries of the Company pursuant to which such Lender Parties and their affiliates agreed to purchase participation interests in eligible FFELP and private credit loans up to an aggregate amount of $30.0 billion. These arrangements will be available until the earliest to occur of (i) February 15, 2008,

(ii) the closing date of the merger and (iii) ninety days after termination of the merger agreement (or fifteen days after the date of termination of the merger agreement in connection with a superior proposal, as defined in the merger agreement).

In addition, the Lender Parties have agreed to provide upon closing, subject to the conditions set forth in the debt commitment letter, (i) three-year asset-backed commercial paper conduit facilities (with 364-day committed liquidity support facilities) of not more than $28.0 billion in the aggregate, for securitization of

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FFELP and private credit loans of the surviving corporation and its subsidiaries, (ii) forward flow purchase facilities regarding the purchase and sale of certain FFELP and private credit student loans for an aggregate purchase price of up to $180.0 billion over five years following the Closing Date and (iii) a loan purchase facility regarding the purchase and sale of eligible unencumbered assets for an aggregate purchase price of up to $20.0 billion over the 364 days following the Closing Date.

Antitrust and Other Regulatory Approvals (Page [ ])

We have agreed to use our reasonable best efforts to obtain all regulatory approvals required to complete the transactions contemplated by the merger agreement. Under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, which we refer to as the HSR Act, and the rules promulgated thereunder by the Federal Trade Commission, which we refer to as the FTC, the merger may not be completed until notification and report forms have been filed with the FTC and the Antitrust Division of the Department of Justice, which we refer to as the DOJ, and applicable waiting periods have expired or been terminated. The Company and Parent filed notification and report forms under the HSR Act with the FTC and the Antitrust Division of the DOJ on May 18, 2007. We have filed or intend to file for other approvals, including those from the Federal Deposit Insurance Corporation and other federal and state regulatory authorities.

Material U.S. Federal Income Tax Consequences (Page [ ])

The exchange of shares of the Company s common stock for cash pursuant to the merger agreement generally will be a taxable transaction to U.S. Holders for U.S. federal income tax purposes. U.S. Holders who exchange their shares of the Company s common stock in the merger will generally recognize capital gain or loss in an amount equal to the difference, if any, between the cash received in the merger and their adjusted tax basis in their shares of the Company s common stock. You should consult your own tax advisor for a complete analysis of the effect of the merger for federal, state, local and foreign tax purposes.

Conditions to the Merger (Page [ ])

Conditions to Each Party s Obligations. Each party s obligation to complete the merger is subject to the satisfaction or waiver of the following conditions:

- approval and adoption of the merger agreement by the affirmative vote of a majority of the votes entitled to be cast by holders of the outstanding shares of the Company s common stock;
- absence of any applicable law prohibiting the completion of the merger; and
- the expiration or termination of any applicable waiting period under the HSR Act relating to the merger and the receipt of such other approvals and consents the failure of which to obtain would result in a material adverse effect (as defined in the merger agreement) on the Company.

Conditions to Parent s and Merger Sub s Obligations. The obligation of Parent and Merger Sub to complete the merger is subject to the satisfaction or waiver of the following additional conditions:

- the Company must have performed in all material respects all of its obligations required to be performed by it at or prior to the effective time of the merger;
- subject to certain materiality thresholds, the representations and warranties of the Company set forth in the merger agreement must be true and correct as of the date of the merger agreement and as of the effective time

of the merger as though made on and as of the effective time of the merger (except that representations and warranties that by their terms speak specifically as of the date of the merger agreement or another date must be true and correct as of such date); and

Parent must have received a certificate signed on behalf of the Company by an executive officer of the Company to the foregoing effect.

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Conditions to the Company s Obligations. Our obligation to complete the merger is subject to the satisfaction or waiver of the following further conditions:

- each of Parent and Merger Sub must have performed in all material respects all of its obligations required to be performed by it at or prior to the effective time of the merger;
- the representations and warranties of Parent and Merger Sub contained in the merger agreement must be true in all material respects at and as of the effective time of the merger as if made at and as of such time (except that representations and warranties that by their terms speak specifically as of the date of the merger agreement or another date shall be true and correct as of such date); and
- the Company must have received a certificate signed by an executive officer of Parent to the foregoing effect.

Restrictions on Solicitations of Other Offers (Page [ ])

Commencing on the date of the merger agreement, we have agreed not to:

- solicit, initiate or knowingly take any action to facilitate or encourage the submission of any offer, proposal or inquiry from any third party relating to the acquisition of securities or assets of the Company;
- enter into or participate in any discussions or negotiations with, furnish any information relating to the Company or any of our subsidiaries or afford access to the business, properties, assets, books or records of the Company or any of our subsidiaries to, otherwise cooperate in any way with, or knowingly assist, participate in, facilitate or encourage any effort by, any third party that is seeking to make a proposal relating to the acquisition of securities or assets of the Company;
- fail to make and include in the proxy statement, or withdraw or modify in a manner adverse to Parent, the board of directors recommendation that stockholders approve and adopt the merger agreement; or
- enter into any agreement in principle, letter of intent, term sheet or other similar instrument relating to any proposal by a third party relating to the acquisition of securities or assets of the Company.

Notwithstanding these restrictions, at any time prior to the approval of the merger agreement by our stockholders, we are permitted to engage in discussions or negotiations with, or provide information with respect to the Company to, any third party to the extent that:

- we receive a written acquisition proposal from a third party that our board of directors (acting through the transaction committee if such committee still exists) believes in good faith to be bona fide;
- our board of directors (acting through the transaction committee if such committee still exists) determines in good faith, after consultation with its independent financial advisors and outside counsel, that such acquisition proposal constitutes or could reasonably be expected to result in a superior proposal; and
- after consultation with its outside counsel, the Company s board of directors (acting through the transaction committee if such committee still exists) determines in good faith that the failure to take such action would be inconsistent with its fiduciary duties under applicable law.

In addition, we may terminate the merger agreement and enter into a definitive agreement with respect to a superior proposal if we receive a bona fide written acquisition proposal that our board of directors (acting through the transaction committee if such committee still exists) concludes in good faith, after consultation with its independent financial advisor and outside counsel, constitutes a superior proposal, after giving effect to any adjustments to the terms of the merger agreement offered by Parent, and determines in good faith, after consultation with outside counsel, that the failure to take such action would be inconsistent with its fiduciary duties under applicable law. The Company is not entitled to enter into any agreement with respect to a superior proposal unless the merger agreement has been or is concurrently terminated in accordance with its

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terms and in certain circumstances the Company has concurrently paid to Parent the $900 million termination fee as described in further detail in The Merger Agreement Termination Fees beginning on page [ ].

Termination of the Merger Agreement (Page [ ])

The merger agreement may be terminated at any time prior to the completion of the merger, whether before or after stockholder approval has been obtained:

by mutual written consent of the Company and Parent; or

by either the Company or Parent, if:

the merger is not completed on or before February 15, 2008, so long as the failure of the merger to be completed by such date is not the result of, or caused by, the failure of the terminating party to comply with the terms of the merger agreement;

there shall be any applicable law that makes completion of the merger illegal or otherwise prohibits or enjoins the Company or Parent from consummating the merger and such enjoinment is final and nonappealable; or

our stockholders, at the special meeting or at any adjournment or postponement thereof at which the merger agreement is voted on, fail to approve and adopt the merger agreement; or

by Parent, if:

our board of directors fails to make (and include in the proxy statement), or withdraws or modifies in a manner adverse to Parent its recommendation that the stockholders of the Company approve and adopt the merger agreement (or recommends an acquisition proposal or takes any action or makes any statement inconsistent with its recommendation that the stockholders of the Company approve and adopt the merger agreement);

the Company breaches its obligations to call the special meeting for the purpose of voting on the approval and adoption of the merger agreement or to not solicit, initiate or knowingly take any action to facilitate or encourage the submission of any acquisition proposals; or

the Company breaches any of its representations, warranties, covenants or agreements under the merger agreement in a manner that would give rise to the failure of certain conditions to closing and the breach is not, or is not capable of being, cured within sixty days of receipt of written notice by Parent to the Company (but not later than February 15, 2008); *provided* that neither Parent nor Merger Sub is then in breach of the merger agreement so as to cause specified conditions to closing to not be satisfied; or

by the Company, if:

such termination is effected prior to obtaining stockholder approval in order to enter into an agreement with respect to a superior proposal, but only to the extent the Company, concurrently with such termination, pays to Parent the termination fee required under the merger agreement;

Parent or Merger Sub has breached any of its representations, warranties, covenants or agreements under the merger agreement in a manner that would give rise to the failure of certain conditions to closing and the

breach is not, or is not capable of being, cured within sixty days of receipt of written notice by the Company to Parent (but not later than February 15, 2008); *provided* that the Company is not in material breach of the merger agreement so as to cause the closing conditions relating to Parent and Merger Sub s obligations to complete the merger not to be satisfied; or

the merger is not completed on or prior to the second business day after the final day of the marketing period and all conditions to the obligations of Parent and Merger Sub (which include the Company having performed its obligations, other than delivery of any officer s certificate) have been satisfied and such conditions continue to be satisfied (as further discussed below under The Merger Agreement Effective Time; Marketing Period beginning on page [ ]).

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Termination Fees (Page [ ])

The merger agreement provides that the Company will be required to pay Parent a termination fee equal to $900 million upon termination of the merger agreement in the following circumstances:

Parent terminates the merger agreement because our board of directors fails to make (and include in the proxy statement), or withdraws or modifies in a manner adverse to Parent, its recommendation that the stockholders of the Company approve and adopt the merger agreement (or recommends an acquisition proposal or takes any action or makes any statement inconsistent with its recommendation that the stockholders of the Company approve and adopt the merger agreement);

Parent terminates the merger agreement because the Company breaches its obligations to call the special meeting for the purpose of voting on the approval and adoption of the merger agreement or to not solicit, initiate or knowingly take any action to facilitate or encourage the submission of any acquisition proposals from third parties; or

the Company terminates the merger agreement prior to the special meeting in order to enter into a definitive agreement with respect to a superior proposal.

The Company will also be required to pay Parent a fee equal to $900 million in the following circumstances:

the Company or Parent terminates the merger agreement because the merger is not completed by February 15, 2008, and (i) prior to February 15, 2008 a bona fide acquisition proposal has been made by a third party and (ii) within twelve months after such termination, the Company enters into a definitive agreement with respect to, or completes, any acquisition proposal; or

the Company or Parent terminates the merger agreement because our stockholders, at the special meeting or at any adjournment or postponement thereof at which the merger agreement is voted on, fail to approve and adopt the merger agreement, and (i) prior to the special meeting a bona fide acquisition proposal has been made by a third party and (ii) within twelve months after such termination, the Company enters into a definitive agreement with respect to, or completes, any acquisition proposal.

The merger agreement provides that Parent will be required to pay the Company a termination fee equal to $900 million upon termination of the merger agreement in the following circumstances:

the Company terminates the merger agreement because Parent or Merger Sub has breached any of its representations, warranties, covenants or agreements under the merger agreement in a manner that would give rise to the failure of certain conditions to closing and the breach is not, or is not capable of being, cured within sixty days of receipt of written notice by the Company to Parent (but not later than February 15, 2008); *provided* that the Company is not in breach of the merger agreement so as to cause the closing conditions relating to Parent and Merger Sub s obligations to complete the merger not to be satisfied, and at the time of such termination there is no state of facts or circumstances that would reasonably be expected to cause the conditions to the obligations of Parent and Merger Sub (other than delivery of an officer s certificate) not to be satisfied by February 15, 2008;

the Company terminates the merger agreement in the situation where the merger is not completed on or prior to the second business day after the final day of the marketing period and all conditions to the obligations of Parent and Merger Sub (which include the Company having performed its obligations, other than delivery of

any officer s certificate) have been satisfied and such conditions continue to be satisfied; or

the Company or Parent terminates the merger agreement because the merger is not completed by February 15, 2008 as a result of Parent or its affiliates failing to satisfy the HSR Act condition to closing.

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Limitation on Liability (Page [ ])

The Company s sole and exclusive remedy with respect to any breach of the merger agreement will be the termination of the merger agreement in accordance with its terms and payment by Parent to the Company of the $900 million termination fee, if applicable.

Specific Performance (Page [ ])

The Company is not entitled to seek an injunction or injunctions to prevent breaches of the merger agreement by Parent or Merger Sub or any remedy to enforce specifically the terms and provisions of the merger agreement.

Parent and Merger Sub are entitled to seek an injunction or injunctions to prevent breaches of the merger agreement by the Company or to enforce specifically the performance of the terms and provisions of the merger agreement by the Company in any federal court located in the State of Delaware or any Delaware state court, in addition to any other remedy to which they are entitled at law or in equity.

Limited Guarantees (Page [ ])

In connection with the merger agreement, each of the Investors