MYERS INDUSTRIES INC
Form DEFR14A
June 21, 2007

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

**SCHEDULE 14A**
**(Rule 14a-101)**

**INFORMATION REQUIRED IN PROXY STATEMENT**
**SCHEDULE 14A INFORMATION**

**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:

o Preliminary Proxy Statement
o Confidential, For Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
þ Definitive Proxy Statement
o Definitive Additional Materials
o Soliciting Material Pursuant to §240.14a-12

**MYERS INDUSTRIES, INC.**
**(NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)**

**(NAME OF PERSON(S) FILING PROXY STATEMENT, IF OTHER THAN THE REGISTRANT)**

Payment of Filing Fee (Check the appropriate box):

o No fee required.

o 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:
Common Stock, no par value, of Myers Industries, Inc.

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

(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):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

þ 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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1293 South Main Street  Akron, Ohio 44301

June 20, 2007

To Our Shareholders:

On behalf of our board of directors and management, you are cordially invited to attend the special meeting of our shareholders to be held on Monday, July 23, 2007, at 10:00 a.m., local time, at the Louis S. Myers Training Center, 1554 South Main Street, Akron, Ohio 44301.

At the special meeting, you will be asked to consider and vote for a proposal to adopt and approve an agreement and plan of merger providing for the acquisition of Myers Industries, Inc. by Myers Holdings Corporation, an entity controlled by a group of private equity funds affiliated with Goldman Sachs & Co.

If the merger is completed, you will have the right to receive $22.50 per share in cash, without interest and less any applicable withholding taxes, for each share of our common stock that you own (unless you have properly exercised your dissenter s rights with respect to the merger).

The accompanying proxy statement provides you with 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 annexes thereto.

The independent members of our board of directors acting on the unanimous recommendation of the special committee of the board of directors have unanimously determined that the merger and the merger agreement are advisable, fair to and in the best interests of the company and our shareholders, and unanimously adopted and approved the merger agreement. Accordingly, the independent members of our board of directors unanimously recommend that shareholders vote **FOR** the adoption and approval of the merger agreement and the transactions contemplated by the merger agreement and **FOR** the proposal to adjourn or postpone the special meeting to permit further solicitation of proxies in the event there are not sufficient votes at the time of the special meeting to adopt and approve the merger agreement.

Your vote is important. We cannot complete the merger unless holders of a majority of all outstanding shares of our common stock entitled to vote adopt and approve the merger agreement.

***Whether or not you expect to attend the Special Meeting in person, I urge you to complete and return the enclosed proxy card as soon as possible. If you do not vote, it will have the same effect as voting against the merger.***

Sincerely,

John C. Orr
*President and Chief Executive Officer*

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THIS PROXY STATEMENT IS DATED JUNE 20, 2007
AND IS FIRST BEING MAILED TO SHAREHOLDERS ON OR ABOUT JUNE 25, 2007

If you have any questions, please contact:

**Morrow & Co., Inc.**
**470 West Avenue, 3rd Floor**
**Stamford, Connecticut 06902**
**1-800-414-4313**

**or**

**Investor Relations**
**Myers Industries, Inc.**
**1293 South Main Street**
**Akron, Ohio 44301**
**(330) 253-5592**

*Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the merger, passed upon the merits or fairness of the merger or determined if the proxy statement is accurate or complete. Any representation to the contrary is a criminal offense.*

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1293 South Main Street Akron, Ohio 44301

**NOTICE OF SPECIAL MEETING OF SHAREHOLDERS**
**To Be Held Monday, July 23, 2007**

The special meeting of shareholders of Myers Industries, Inc., an Ohio corporation ( Myers or the Company ), will be held at the Louis S. Myers Training Center, 1554 South Main Street, Akron, Ohio 44301, on Monday, July 23, 2007 at 10:00 a.m. (local time), for the following purposes:

1. To consider and vote upon a proposal to adopt and approve the Agreement and Plan of Merger (the Merger Agreement ), dated as of April 24, 2007, by and among Myers, Myers Acquisition Corporation ( Merger Sub ), an Ohio corporation and wholly-owned subsidiary of Myers Holdings Corporation ( Buyer ), a Delaware corporation, and Buyer. Pursuant to the Merger Agreement, and upon the terms and conditions thereof, Merger Sub will merge with and into Myers, with Myers becoming a wholly-owned subsidiary of Buyer (the Merger );

2. To consider and vote upon a proposal to adjourn or postpone the special meeting, if necessary, to permit further solicitation of proxies in the event there are not sufficient votes at the time of the special meeting to adopt and approve the Merger Agreement; and

3. To consider such other business that may properly come before the special meeting or any adjournments thereof.

The board of directors has fixed the close of business on June 11, 2007 as the record date for the determination of shareholders entitled to notice of and to vote at the special meeting. Under Ohio law and our Articles of Incorporation, the affirmative vote of a majority of all outstanding shares of our common stock entitled to vote is required to adopt and approve the Merger Agreement. All shareholders are cordially invited to attend the meeting in person. ***To be sure that your shares are properly represented at the meeting, whether or not you intend to attend the meeting in person, please complete and return the enclosed proxy card as soon as possible.***

We urge you to read the accompanying proxy statement and referenced annexes carefully as they set forth details of the Merger and other important information related to the Merger.

Please note that space limitations make it necessary to limit attendance at the special meeting to shareholders. Registration will begin at 9:00 a.m. local time. If you attend, please note that you may be asked to present valid picture identification. Street name holders will need to bring a copy of a brokerage statement reflecting share ownership as of the record date. Cameras, recording devices and other electronic devices will not be permitted at the special meeting.

Your vote is important, regardless of the number of shares of our common stock you own. The adoption and approval of the Merger Agreement requires the affirmative approval of the holders of a majority of the outstanding shares of our common stock entitled to vote thereon.

Shareholders who do not vote in favor of the adoption and approval of the Merger Agreement will have the right to seek the fair cash value of their shares of our common stock if they deliver a written demand for payment of the fair cash value to us within ten (10) days of the vote taken on the Merger Agreement and otherwise comply with all requirements of the Ohio Revised Code (the ORC ), which are summarized in the accompanying proxy statement.

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YOUR VOTE IS VERY IMPORTANT. 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.

By Order of the Board of Directors,

Donald A. Merril
*Chief Financial Officer, Vice President and Corporate Secretary*

Akron, Ohio
June 20, 2007

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**PROXY STATEMENT FOR THE SPECIAL MEETING
OF SHAREHOLDERS OF MYERS INDUSTRIES, INC.
TO BE HELD JULY 23, 2007**

*Except as otherwise specifically noted in this proxy statement, we, our, us, Myers, the Company and similar words in this proxy statement refer to Myers Industries, Inc. In addition, we refer to Myers Holdings Corporation (f/k/a MYEH Corporation) as Buyer, Myers Acquisition Corporation (f/k/a MYEH Acquisition Corporation) as Merger Sub, and Buyer and Merger Sub collectively as the Buyer Parties. Furthermore GS Capital Partners VI Fund, L.P., GS Capital Partners VI Parallel L.P., GS Capital Partners VI Offshore Fund, L.P. and GS Capital Partners VI GmbH & Co. KG are collectively referred to herein as the Equity Sponsors.*

## SUMMARY TERM SHEET

*This Summary Term Sheet, together with the Questions and Answers About the Special Meeting and the Merger, summarizes the material information contained elsewhere in this proxy statement and the attached annexes. This summary does not purport to contain a complete statement of all material information relating to the Merger Agreement, the Merger, and the other matters discussed herein, and is subject to, and is qualified in its entirety by, the more detailed information contained in or attached to this proxy statement. Where appropriate, items in this summary contain a cross reference directing you to a more complete description included elsewhere in this proxy statement. Our shareholders should carefully read this proxy statement in its entirety, its annexes and the documents referred to or incorporated by reference in this proxy statement.*

### The Parties to the Merger

**Myers Industries, Inc.**
**1293 South Main Street**
**Akron, Ohio 44301**
**(330) 253-5592**

We are an international manufacturer of polymer products for industrial, agricultural, automotive, commercial, and consumer markets. We are also the largest wholesale distributor of tools, equipment, and supplies for the tire, wheel, and under vehicle service industry in the United States.

**Myers Holdings Corporation**
**Myers Acquisition Corporation**
**c/o GS Capital Partners**
**85 Broad Street**
**New York, New York 10004**
**(212) 902-1000**

Buyer is a newly formed Delaware corporation and Merger Sub is a newly formed Ohio corporation and wholly-owned subsidiary of Buyer. Buyer is an entity owned by the Equity Sponsors. The Buyer Parties were organized for the purpose of entering into the Merger Agreement and consummating the transactions contemplated by the Merger Agreement and have not engaged in any business except activities incidental to their formation and in connection with the transactions contemplated by the Merger Agreement.

### The Merger

You are being asked to vote for the adoption and approval of the Merger Agreement that we entered into with the Buyer Parties on April 24, 2007. As a result of the Merger, we will cease to be an independent, publicly-traded company, and will instead continue as a wholly-owned subsidiary of Buyer.

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**Effective Time of the Merger; Marketing Period**

The Merger will become effective at the time we, Buyer and Merger Sub file the certificate of merger with the Secretary of State of the State of Ohio (or at a later time, if agreed upon by the parties and specified in the certificate of merger). In order to consummate the Merger, we must obtain shareholder approval and the other closing conditions described under Conditions to the Merger, beginning on page 54 must be satisfied or waived; except that the Buyer Parties will not be required to effect the closing until the earlier to occur of a date during the marketing period (as defined under The Merger Agreement Marketing Period, beginning on page 55) specified by Buyer on not less than three business days notice to us and the final day of the marketing period. The marketing period under the Merger Agreement commences after we have obtained shareholder approval and the required regulatory approvals, satisfied the other closing conditions under the Merger Agreement and provided Buyer with certain current financial information. The Merger Agreement provides that the marketing period will last 30 consecutive days, but may be extended or terminated under certain circumstances. The Buyer may, in its sole discretion, close the Merger prior to the expiration of the marketing period if all of the closing conditions under the Merger Agreement are otherwise satisfied or waived. The Merger Agreement does not contain a financing condition. However, in order to allow Buyer the opportunity to offer to sell high yield notes to finance a portion of the transaction, Buyer is entitled to delay the closing of the Merger until the end of the marketing period to complete the high yield notes offering on terms acceptable to it. If, however, Buyer is unable to complete the high yield notes offering on terms acceptable to it, then Buyer must consummate the transaction at the end of the marketing period by drawing on a bridge facility that is part of its financing commitment.

**Payment for Shares**

If the Merger is completed, at the effective time of the Merger, each share of our common stock (other than shares owned by us, the Buyer Parties, any of our direct or indirect wholly-owned subsidiaries, or any direct or indirect wholly-owned subsidiary of the Buyer Parties, and other than shares of common stock held by shareholders who have properly demanded and perfected their dissenters rights in accordance with the ORC) will be converted into the right to receive $22.50 in cash, without interest and less any applicable withholding taxes.

**Stock Options; Restricted Stock Awards**

Upon consummation of the Merger, all outstanding options to acquire our common stock will be accelerated and fully vested, if not previously vested, and then cancelled and converted into the right to receive a cash payment equal to the number of shares of our common stock underlying the options multiplied by the amount (if any) by which $22.50 exceeds the option exercise price, without interest and less any applicable withholding taxes. Additionally, all restricted stock awards will become free of forfeiture restrictions and then cancelled and converted into the right to receive a cash payment equal to $22.50 per share without interest and less any applicable withholding taxes. See The Merger Agreement Treatment of Options and Other Awards on page 50.

**Restrictions on Solicitation of Other Offers**

We have been granted a 45-day period following the execution of the Merger Agreement (the Go Shop Period ) during which we are permitted to solicit superior proposals. In order to be considered a Superior Proposal , a proposal must be for the acquisition or purchase of a business division (or more than one) that in the aggregate constitutes (i) 50% or more of net revenues, net income or assets of us and our subsidiaries taken as a whole, (ii) 50% or more of the equity interest in us and our subsidiaries taken as a whole (by vote or value), (iii) any tender offer or exchange offer that would result in a third party beneficially owning 50% or more of the equity interests of us and our subsidiaries taken

as a whole (by vote or value), or (iv) any merger, reorganization, recapitalization or similar transaction involving us or any of our subsidiaries whose business constitutes 50% or more of net revenue, net income or assets of us and our subsidiaries taken as a whole. Additionally, a Superior Proposal must be a proposal that is determined by

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our board, after consultation with a financial advisor, to be reasonably likely to be consummated and more favorable than the Merger proposal.

Our board of directors may withdraw, modify or amend its recommendation in favor of adoption and approval of the Merger Agreement if (i) it promptly discloses such a decision of the board of directors to Buyer, along with the terms of the Superior Proposal, (ii) it gives Buyer five business days to make a counter-offer, and (iii) it determines that withdrawal, modification or amendment to its recommendation is necessary in order for the board of directors to satisfy its fiduciary duties to our shareholders.

**Conditions to the Merger**

The consummation of the Merger depends on the satisfaction or waiver of the following conditions:

- the Merger Agreement and the Merger must have been adopted and approved by the affirmative vote of the holders of a majority of the outstanding shares of our common stock;
- no temporary restraining order, injunction, or other legal restraint or prohibition that prevents the Merger, or any statute, rule, regulation or order that makes the consummation of the Merger illegal, shall be in effect;
- the waiting period (and any extension thereof) under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ( HSR Act ), or any other foreign antitrust or combination law and all material filings, consents, approvals and authorizations legally required to be made or obtained with or from a governmental authority to consummate the Merger shall have expired, been terminated, made or obtained, as applicable;
- the representations and warranties made by the Buyer Parties and by us in the Merger Agreement must be true and correct, subject to certain materiality qualifications, as described under The Merger Agreement Conditions to the Merger, beginning on page 55; and
- we and the Buyer Parties must have performed in all material respects all obligations that each of us is required to perform under the Merger Agreement.

**Termination of the Merger Agreement**

The Merger Agreement may be terminated at any time prior to the consummation of the Merger, whether before or after shareholder approval has been obtained:

- by mutual written consent of us, on the one hand, and Buyer, on the other hand;
- by either us, on the one hand, or Buyer or Merger Sub, on the other hand, if:
  - the Merger is not consummated on or before December 15, 2007 (such termination right is not available to a party whose breach of the Merger Agreement has resulted in or was a principle cause of the failure of the Merger to be completed by the end date);
  - any court of competent jurisdiction or governmental, regulatory or administrative agency or commission has issued a non-appealable final order, decree or ruling that effectively permanently restrains, enjoins or otherwise prohibits the Merger or any law is enacted that prohibits consummation of the Merger; or

our shareholders, at the special meeting or at any adjournment or postponement thereof, fail to adopt and approve the Merger Agreement.

by Buyer if:

we have breached any of our representations, warranties, covenants or agreements under the Merger Agreement which would give rise to the failure to satisfy the related closing conditions and such breach has not been cured within 20 business days after receipt of notice;

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our board of directors amends, modifies or withdraws its recommendation in favor of the Merger in a manner adverse to Buyer, or publicly announces an intention to do so; or

our board of directors adopts a formal resolution approving, endorsing or recommending to our shareholders an alternative transaction, or publicly announces an intention to do so.

by us if:

Buyer or Merger Sub has breached any of its representations, warranties, covenants or agreements under the Merger Agreement which would give rise to the failure to satisfy the related closing conditions and such breach has not been cured within 20 business days after receipt of notice; or

prior to obtaining shareholder approval of the Merger, we terminate the Merger Agreement in order to enter into an agreement with respect to a Superior Proposal in accordance with the terms of the Merger Agreement, and prior to or concurrently with such termination, we pay the termination fee to Buyer.

**Termination Fee and Expense Reimbursement**

We have agreed to reimburse Buyer s actual out-of-pocket fees and expenses, up to a limit of $10 million, which amount will be offset against any termination fee, if a proposal meeting the requirements of a Takeover Proposal (as defined in the Merger Agreement) was made known or proposed to us or otherwise publicly announced prior to termination of the Merger Agreement and:

Buyer or we terminate because our shareholders, at the special meeting or at any adjournment thereof, fail to adopt and approve the Merger Agreement;

Buyer terminates because (i) our board of directors withdraws, amends or modifies its recommendation in any manner adverse to Buyer or (ii) our board of directors approves or recommends to our shareholders an acquisition proposal other than the Merger, or resolves or announces its intention to do any of the foregoing; or

Buyer terminates because we breached our representations, warranties, covenants or agreements under the Merger Agreement which would give rise to the failure to satisfy the related closing conditions and such breach is not cured within 20 business days after receipt of notice.

We must pay a termination fee of $25 million if the Merger Agreement is terminated under the conditions described in further detail below:

Buyer terminates because (i) our board of directors withdraws, amends or modifies its recommendation in any manner adverse to Buyer or (ii) our board of directors approves or recommends to our shareholders an acquisition proposal other than the Merger, or resolves or announces its intention to do any of the foregoing, and in either case a Takeover Proposal (or the intention of a person to make one) was not made known or proposed to us or otherwise publicly announced prior to such termination, in which event payment will be made within two business days after such termination;

Buyer or we terminate because our shareholders, at the special meeting or at any adjournment thereof, fail to adopt and approve the Merger Agreement; a Takeover Proposal (or the intention of a person to make one) was made known or proposed to us or otherwise publicly announced prior to termination; and, within twelve months from the date of termination, we enter into a contract for the consummation of an alternative transaction (and

such alternative transaction is ultimately consummated) or an alternative transaction is consummated, in which event payment will be made on the date we consummate such alternative transaction;

Buyer terminates because (i) our board of directors effects an adverse change in recommendation in accordance with the terms of the Merger Agreement or (ii) our board of directors approves or recommends to our shareholders an acquisition proposal other than the Merger, or resolves or announces its intention to do any of the foregoing; a Takeover Proposal (or the intention of a person to make one) was made known or proposed to us or otherwise publicly announced prior to termination;

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and, within twelve months from the date of termination, we enter into a contract for the consummation of an alternative transaction (and such alternative transaction is ultimately consummated) or an alternative transaction is consummated, in which event payment will be made on the date we consummate such alternative transaction;

Buyer terminates because we breached our representations, warranties, covenants or agreements under the Merger Agreement which would give rise to the failure to satisfy the related closing conditions and such breach is not cured within 20 business days after receipt of notice; a Takeover Proposal (or the intention of a person to make one) was made known or proposed to us or otherwise publicly announced prior to termination; and, within twelve months from the date of termination, we enter into a contract for the consummation of an alternative transaction (and such alternative transaction is ultimately consummated) or an alternative transaction is consummated, in which event payment will be made on the date we consummate such alternative transaction; or

We terminate because we have entered into a definitive agreement with respect to a Superior Proposal, in which event payment will be made prior to or concurrently with the time of termination.

The Merger Agreement provides that Buyer will pay us a termination fee of $25 million ($35 million if the marketing period has been extended by Buyer) if we terminate because Buyer or Merger Sub breach their obligations to effect the closing pursuant to the Merger Agreement and such breach is not cured within 20 business days after receipt of notice, in which event payment will be made within two business days following such termination.

**Recommendation of Our Board of Directors**

The independent members of our board of directors acting on the unanimous recommendation of the special committee of the board of directors have unanimously approved the Merger, the Merger Agreement and the other transactions contemplated by the Merger Agreement, and has declared that the Merger, the Merger Agreement and the other transactions contemplated by the Merger Agreement are advisable, fair to and in the best interests of the Company and our shareholders. Mr. Orr and Mr. Myers abstained from voting. Accordingly, the independent members of our board of directors unanimously recommend that you vote **FOR** the adoption and approval of the Merger Agreement. The independent members of our board of directors also unanimously recommend that you vote **FOR** the proposal to adjourn or postpone the special meeting, if necessary, to permit further solicitation of proxies in the event there are not sufficient votes at the time of the special meeting to adopt and approve the Merger Agreement.

**Opinion of KeyBanc Capital Markets, Inc.**

In connection with the proposed Merger, on April 23, 2007, the special committee s financial advisor, KeyBanc Capital Markets, Inc. ( KeyBanc ), delivered an opinion to the special committee that as of the date of the opinion, and based upon and subject to the matters described therein, the consideration to be received pursuant to the Merger Agreement is fair, from a financial point of view, to the holders of our common stock (other than Buyer, Merger Sub or their respective affiliates).

The full text of the opinion of KeyBanc, which sets forth the procedures followed, assumptions made, matters considered and limitations on review undertaken by KeyBanc in connection with its opinion, is attached as Annex B to this proxy statement. **KeyBanc provided its opinion for the information and assistance of the special committee in connection with its consideration of the merger, and the opinion of KeyBanc is not a recommendation as to how a shareholder should vote or act with respect to any matter relating to the Merger. We urge you to read the opinion carefully in its entirety.**

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**Opinion of William Blair & Company**

In connection with the proposed Merger, William Blair & Company ( William Blair ) delivered its opinion on April 23, 2007 to the special committee that, as of that date and based upon and subject to the assumptions and qualifications stated therein, the consideration to be paid pursuant to the Merger Agreement was fair, from a financial point of view, to the holders of our common stock (other than Buyer, Merger Sub or their respective affiliates).

The full text of the opinion of William Blair, which sets forth the procedures followed, assumptions made, matters considered and limitations on review undertaken by William Blair in connection with its opinion, is attached as Annex C to this proxy statement. **William Blair provided its opinion for the information and assistance of the special committee in connection with its consideration of the Merger, and the opinion of William Blair is not a recommendation as to how a shareholder should vote or act with respect to any matter relating to the Merger. We encourage you to read the opinion carefully in its entirety.**

**Financing for the Merger**

The Merger Agreement does not contain any condition relating to the receipt of financing by Buyer. We and the Buyer Parties estimate that the total amount of funds necessary to consummate the Merger and related transactions, the repayment or refinancing of certain existing indebtedness and the payment of customary transaction fees and expenses will be approximately $1.07 billion, which is expected to be funded by new credit facilities, private and/or public offerings of debt securities and equity financing. Funding of the equity and debt financing is subject to the satisfaction of the conditions set forth in the commitment letters pursuant to which the financing will be provided. See The Merger Financing for the Merger, beginning on page 61.

The following arrangements are in place for the financing of the Merger, including the payment of a portion of the merger consideration and related expenses pursuant to and in accordance with the Merger Agreement:

*Equity Financing.* Buyer has received equity commitment letters from the Equity Sponsors, pursuant to which, subject to the conditions contained therein, the Equity Sponsors have collectively agreed to make or cause to be made cash capital contributions to Buyer of up to $285 million.

*Debt Financing.* Buyer has received a debt commitment letter from Goldman Sachs Credit Partners, L.P. (the Lender ) to provide up to $950 million of debt financing to Buyer subject to satisfaction of the conditions contained therein. The Lender has completed all diligence investigations and no further review is required as a condition to consummating the debt financing.

**Limited Guarantee**

In connection with the Merger Agreement, the Equity Sponsors entered into a limited guarantee with us pursuant to which, among other things, each of the Equity Sponsors has agreed to, jointly and severally, guarantee the payment, if and when due under the Merger Agreement of the Buyer Parties obligation to pay us a termination fee of $25 million or $35 million, as applicable, if the Merger Agreement is terminated under certain circumstances. Except in the event of fraud, willful misconduct, any action that renders the guarantors insolvent or unable to pay their debts as they come due or a breach of any representations under the guaranty agreement, the limited guarantee is our sole and exclusive recourse against the Equity Sponsors arising from or related to the Merger Agreement and transactions contemplated thereby. A copy of the limited guarantee entered into with the Equity Sponsors is attached as Annex D to this proxy statement.

**Voting Agreement**

In connection with the execution of the Merger Agreement, Stephen E. Myers (one of our directors and a significant shareholder) and Mary Myers (a significant shareholder) and certain of their affiliates (the

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Myers Parties ) entered into a voting agreement with Buyer (the Voting Agreement ). Pursuant to the terms of the Voting Agreement, the Myers Parties agreed to vote their shares in favor of adoption and approval of the Merger Agreement. As of June 11, 2007 the Myers Parties own approximately 18.66% of our common stock. A copy of the Voting Agreement is attached to this proxy statement as Annex E.

**Interests of Our Directors and Executive Officers in the Merger**

In considering our board s recommendation of the Merger, 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 shareholder, and that may present actual or potential conflicts of interest. See The Interests of Our Directors and Executive Officers, beginning on page 41.

**Dissenters Rights**

Holders of our common stock who do not vote in favor of adopting and approving the Merger Agreement will have the right to seek the fair cash value of their shares as a dissenting shareholder under Section 1701.85 of the ORC if the Merger is completed, but only if they comply with all requirements under the ORC, which are summarized in this proxy statement. The amount a dissenting shareholder may receive for his or her shares under the ORC could be more than, the same as or less than the amount he or she would be entitled to receive under the terms of the Merger Agreement. Any holder of our common stock intending to exercise such holder s dissenter s rights, among other things, must submit a written demand for payment of the fair cash value of his or her shares to us within ten (10) days after the vote on the adoption and approval of the Merger Agreement and must not vote or otherwise submit a proxy in favor of adoption and approval of the Merger Agreement. We will not notify you of the expiration of this 10-day period. Your failure to follow exactly the procedures specified under the ORC will result in the loss of your dissenter s rights. See The Merger Dissenters Rights, beginning on page 47, and the text of Section 1701.85 of the ORC reproduced in its entirety as Annex F.

**Regulatory Approvals**

Under the HSR Act and the rules promulgated thereunder by the Federal Trade Commission, both Buyer and we have filed notification and report forms with the Federal Trade Commission and the Antitrust Division of the Department of Justice. The Merger may not be completed until the applicable waiting period under the HSR Act has expired or been terminated. On May 14, 2007, the parties obtained the required approval under the HSR Act to complete the Merger. The Merger is not subject to any regulatory notifications to, or approvals of, the Commissioner of Competition of Canada.

**Material U.S. Federal Income Tax Consequences**