

PUMATECH INC  
Form S-3  
November 03, 2003  
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As filed with the Securities and Exchange Commission on November 3, 2003

Registration No. 333-

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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

WASHINGTON, D.C. 20549

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**FORM S-3**  
**REGISTRATION STATEMENT**

*UNDER*  
*THE SECURITIES ACT OF 1933*

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**PUMATECH, INC.**

(Exact name of registrant as specified in its charter)

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Delaware  
(State or other jurisdiction of  
incorporation or organization)

77-0349154  
(I.R.S. Employer  
Identification No.)

2550 North First Street, San Jose, California 95131

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(408) 321-7650

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

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**Woodson Hobbs**

**President and Chief Executive Officer**

**Pumatech, Inc.**

**2550 North First Street, San Jose, California 95131 (408) 321-7650**

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

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***COPIES TO:***

Elias J. Blawie

Thomas Tobiason

Heller Ehrman White & McAuliffe LLP

2775 Sand Hill Road

Menlo Park, CA 94025

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**Approximate date of commencement of proposed sale to the public:**

**As soon as practicable after the effective date of this Registration Statement.**

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If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box. "

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If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

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

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

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. " \_\_\_\_\_

### Calculation of Registration Fee

Title of each class of securities to be registered	Amount to be registered (1)	Proposed maximum offering price per share (2)	Proposed	Amount of registration fee
			maximum aggregate offering price	
Common Stock, par value \$0.001 (3)	1,093,676	\$6.85	\$7,491,681	\$607

- (1) This registration statement shall cover any additional shares of our common stock which become issuable by reason of any stock dividend, stock split, recapitalization or any other similar transaction effected without the receipt of consideration that results in an increase in the number of shares of our outstanding common stock.
- (2) Estimated solely for the purpose of computing the amount of the registration fee pursuant to Rule 457(c) under the Securities Act of 1933 based upon the average of the high and low prices of the Common Stock as reported on the Nasdaq National Market on October 31, 2003.
- (3) This registration statement also relates to rights to purchase shares of the registrant's Series A Participating Preferred Stock (the Rights) which are attached to all shares of common stock. Until the occurrence of certain prescribed events, the Rights are not exercisable, are evidenced by the certificates for common stock and will be transferable along with and only with the common stock. The value attributable to the Rights, if any, is reflected in the value of the common stock.

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

### EXPLANATORY NOTE

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This registration statement contains a prospectus relating to a public offering of an aggregate of 1,093,676 shares of our common stock that are owned by Spontaneous Technology, Inc., a Nevada corporation ( Spontec ). We issued these shares in connection with our purchase of substantially all of the assets of Spontec which was completed on September 17, 2003. The complete prospectus for this offering follows immediately.

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The information in this prospectus is not complete and may be changed. The selling stockholders may not sell these securities until the registration statement filed with the Securities and Exchange Commission becomes effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

Subject to Completion, dated November 3, 2003

**PROSPECTUS**

**PUMATECH, INC.**

1,093,676 shares of Common Stock

- THE SELLING STOCKHOLDERS:** The selling stockholders identified on page 16 of this prospectus are selling 1,093,676 shares of our common stock. We are not selling any shares of our common stock under this prospectus and will not receive any of the proceeds from the sale of shares by the selling stockholders.
- OFFERING PRICE:** The selling stockholders may sell the shares of common stock described in this prospectus in a number of different ways and at varying prices. The selling stockholders may be deemed to be underwriters, as such term is defined in the Securities Act of 1933, as amended. We provide more information about how they may sell their shares in the section titled "Plan of Distribution" on page 17.
- TRADING MARKET:** Our common stock is listed on the Nasdaq National Market under the symbol PUMA. On October 31, 2003, the closing sale price of our common stock, as reported on the Nasdaq National Market, was \$6.99.
- RISKS:** INVESTING IN OUR COMMON STOCK INVOLVES A HIGH DEGREE OF RISK. SEE RISK FACTORS BEGINNING ON PAGE 1.

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

The date of this prospectus is \_\_\_\_\_, 2003.

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**WE HAVE NOT AUTHORIZED ANY DEALER, SALES PERSON OR OTHER PERSON TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATIONS OTHER THAN THOSE CONTAINED IN THIS PROSPECTUS OR ANY PROSPECTUS SUPPLEMENT. YOU MUST NOT RELY ON ANY UNAUTHORIZED INFORMATION. THIS PROSPECTUS IS NOT AN OFFER OF THESE SECURITIES IN ANY STATE WHERE AN OFFER IS NOT PERMITTED. THE INFORMATION IN THIS PROSPECTUS IS CURRENT AS OF NOVEMBER [\_\_], 2003. YOU SHOULD NOT ASSUME THAT THIS PROSPECTUS IS ACCURATE AS OF ANY OTHER DATE.**

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**PROSPECTUS SUMMARY**

The following is a summary of our business. You should carefully read the section entitled "Risk Factors" in this prospectus and our Annual Report on Form 10-K for the year ended July 31, 2003 for more information on our business and the risks involved in investing in our stock.

In addition to the historical information contained in this prospectus, this prospectus contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Exchange Act of 1934. These statements may be identified by the use of words such as "expects," "anticipates," "intends," "plans" and similar expressions. The outcome of the events described in these forward-looking statements is subject to risks and actual results could differ materially. The sections entitled "Risk Factors" beginning on page 1 of this prospectus, and "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Business" in our Annual Report and Quarterly Reports contain a discussion of some of the factors that could contribute to those differences.

**PUMATECH, INC.**

**Overview**

Pumatech, Inc. develops, markets and supports synchronization, mobile-application development, and mobile-application management/device management software that enables consumers, business professionals and information technology (IT) officers to extend the capabilities of enterprise groupware and vertical applications, handheld organizers/computers, Web-enabled cellular phones, pagers and other wireless or wireline personal communications platforms.

We are a Delaware corporation. Our principal executive offices are located at 2550 North First Street, Suite 500, San Jose, California 95131. Our telephone number at that location is (408) 321-7650 and our website is located at [www.pumatech.com](http://www.pumatech.com). Information contained in our website does not constitute part of this prospectus. References in the prospectus to "we," "our," "us," "the Company" and "Pumatech" refer to Pumatech, Inc., a Delaware corporation.

**Acquisition of Assets from Spontaneous Technology.**

On September 17, 2003, we acquired substantially all of the assets of Spontaneous Technology, Inc. ("Spontec"). Spontec was incorporated in Nevada in October 1998 and is engaged in the business of developing software for the secure enablement of enterprise applications to wireless devices.

**RISK FACTORS**

*An investment in our common stock involves significant risks. You should carefully consider the risks and uncertainties described below and the other information in or incorporated by reference into this prospectus including our financial statements before deciding whether to buy shares of our common stock. The risks and uncertainties described below are intended to be the ones that are specific to our company or industry and that we deem to be material, but are not the only ones that we face. The trading price of our common stock could decline due to any of these and other risks and uncertainties, and you could lose part or all of your investment.*

***We have historically incurred losses and these losses may continue in the future. We may not be able to sustain consistent future revenue growth on a quarterly or annual basis, or achieve or maintain profitability.***

We have not been profitable since fiscal 1998. Although we have reported sequential revenue growth over the last four quarters, we cannot be certain that this growth will continue at the same rate, or that our revenues will not decline in the future. We have experienced losses of \$7.7 million, \$34.5 million and \$41.8 million for fiscal 2003, 2002 and 2001, respectively. At July 31, 2003, we had an accumulated deficit of \$121.7 million. To become



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profitable and sustain profitability, we will need to generate additional revenues to offset our expenses. We may not achieve or sustain our revenue or profit goals and our losses may continue in the future. Because the synchronization market is new and evolving, we cannot accurately predict either the future growth rate, if any, or the ultimate size of the market for our products and services. For example, while the market for smartphones and other wireless mobile devices has experienced growth recently, the market for traditional personal data assistants (PDA) has declined. This decline in traditional PDA sales had a direct impact on sales of our Intellisync products through the retail and online channels, where sales of our synchronization software typically occur at the same time a PDA is purchased, or shortly thereafter. This decline has had a negative impact on our revenues and we expect that the decline in this market may continue. The increase in demand for smartphones and other such devices may not offset the decline in traditional PDA sales. If we cannot achieve profitability or positive cash flows from operating activities, we may be unable to meet our working capital and other payment obligations, which would have a material adverse effect on our business, financial condition and results of operations and the price of our common stock.

*Our quarterly revenues and operating results are subject to significant fluctuations, and our stock price may decline if we do not meet the expectations of investors and analysts.*

Our quarterly revenues and operating results are difficult to predict and have and may in the future fluctuate significantly from quarter to quarter due to a number of factors, many of which are outside our control. These factors include, but are not limited to:

- a decline in the market for traditional personal data assistants;
- our need to realize our goals with respect to recent and potential future acquisitions;
- our need and ability to generate and manage growth;
- rapid evolution of technology;
- our evolving business model;
- our reliance on international sales and growth
- our ability to penetrate the European market;
- a decline in gross margins;
- the seasonal nature of the market;
- changes in the market for synchronization;
- introduction of new products and services by us or our competitors;

changes in our mix of sources of revenues;

the long-term effect of our reduction in operating expenses;

entrenched and substantial competition; and

continued difficult political and economic conditions.

Additionally, we generally derive our technology licensing revenues from multi-year contracts with customers that frequently include license fees, professional services fees, royalty payments and maintenance. We typically earn both the license fees and the professional services in the initial one or two quarters subsequent to the signing of a

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contract. We periodically have large professional services implementations that individually contribute as much as 5% or more to quarterly revenue. Combined with related license revenues, total revenue from individual customers in the initial quarters of a contract may exceed the revenues we earn during subsequent periods covered by the contract. To the extent that we do not secure additional contracts with the same customer or secure comparably sized commitments from other customers, we may not be able to achieve our revenue forecasts for future quarters.

There can be no assurance that we will generate sufficient revenue to meet expenses or to operate profitably in the future. Our losses today and the risk of future losses present significant risks to our stockholders. If we cannot achieve profitability or positive cash flows from operating activities, we may be unable to meet our working capital and other payment obligations, which would have a material adverse effect on our business, financial condition and results of operations and the price of our common stock.

***Our market changes rapidly due to evolution in technology and industry standards. If we do not adapt to meet the sophisticated needs of our customers, our business and prospects will suffer.***

The market for our products and services is characterized by rapidly changing technology, evolving industry standards and frequent new product and service introductions. The traditional personal data assistant market, appears to be declining and may continue to do so, just as sales in competing markets, such as smartphones and other multi-function mobile phones may be increasing. Our future success will depend to a substantial degree on our ability to offer products and services that adapt to these changing markets, incorporate leading technology, address the increasingly sophisticated and varied needs of our current and prospective customers and respond to technological advances and emerging industry standards and practices on a timely and cost-effective basis. Our rapidly evolving market makes it more likely that:

our technology or products may become obsolete upon the introduction of alternative technologies;

we may not have sufficient resources to develop or acquire new technologies or to introduce new products or services capable of competing with future technologies or service offerings; and

we may not be able to respond effectively to the technological requirements of the changing market.

To the extent we determine that new technologies and equipment are required to remain competitive, the development, acquisition and implementation of these technologies and equipment are likely to continue to require significant capital investment by us. Moreover, there can be no assurances that we can develop, market and deliver new products and technology on a timely basis. Sufficient capital may not be available for this purpose in the future, and even if it is available, investments in new technologies may not result in commercially viable technological processes and there may not be commercial applications for such technologies. If we do not develop, acquire and introduce new products and services and achieve market acceptance in a timely manner, our business and prospects may suffer.

***Our recent and planned future acquisitions could require significant management attention and prove difficult to integrate with our business, which could distract our management, disrupt our business, dilute stockholder value and adversely affect our operating results.***

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As part of our strategy, we intend to continue to make investments in complementary companies, products or technologies. We recently acquired Starfish Software, Inc. (in March 2003) and substantially all of the assets of Loudfire, Inc. (in July 2003) and Spontaneous Technology, Inc. (in September 2003). We have also recently announced our intention to acquire Synchronologic, Inc. We may not realize benefits from any of these acquisitions, or from any acquisition we may have in the future. If we fail to integrate successfully our past and future acquisitions, or the technologies associated with such acquisitions, into our company, the revenue and operating results of the combined company could decline. Any integration process will require significant time and resources, and we may not be able to manage the process successfully. If our customers are uncertain about our ability to operate on a combined basis, they could delay or cancel orders for our products. We may not successfully be able to evaluate or utilize the acquired technology and accurately forecast the financial impact of an acquisition transaction, including

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accounting charges. Acquisitions involve a number of difficulties and risks to our business, including, but not limited to, the following:

potential adverse effects on our operating results;

failure to integrate acquired technologies with our existing products and technologies;

failure to integrate management information systems, personnel, research and development and marketing, sales and support operations;

potential loss of key employees from the acquired company;

diversion of management's attention from other business concerns;

disruption of our ongoing business;

potential loss of the acquired company's customers;

failure to realize the potential financial or strategic benefits of the acquisition;

failure to develop further the acquired company's technology successfully, resulting in the impairment of amounts capitalized as intangible assets;

unanticipated costs and liabilities;

incur amortization expenses related to intangible assets (other than goodwill); and

incur impairment charges under Statement of Financial Accounting Standards (SFAS) No. 142, Goodwill and Other Intangible Assets and SFAS No. 144, Accounting for the Impairment or Disposal of Long-Lived Assets.

Further, we have issued common stock and paid cash for recent acquisitions and may have to pay cash, incur debt or issue equity securities to pay for any future acquisition, each of which could affect the market price of our common stock. The sale of additional equity or convertible debt could result in dilution to our stockholders. The incurrence of indebtedness would result in increased fixed obligations and could also include covenants or other restrictions that would impede our ability to manage our operations.

*If we are unable to consummate the acquisition of Synchrologic or to make additional future acquisitions of mobile computing-related technology companies, we may be unable to compete successfully in the enterprise synchronization market.*

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Our business strategy is dependent upon making additional acquisitions of mobile computing-related technology companies. For example, our planned acquisition of Synchrologic is intended to be an important addition to our technological ability to serve enterprise customers. Future acquisition candidates may be few in number and may attract offers from companies with greater financial resources than us. We can provide no assurance that we will be able to locate other suitable acquisition targets or that we will be able to complete additional acquisitions. If we are unable to acquire Synchrologic and make additional future acquisitions of mobile computing-related technology companies or build similar technologies in-house, we may be unable to implement our business plan and our ability to compete in the enterprise synchronization market may be adversely affected.

*Our investment in goodwill and other intangibles resulting from our acquisitions could become impaired.*

As of July 31, 2003, our goodwill and other intangibles amounted to \$5,500,000, net of accumulated amortization and reflective of newly acquired intangibles from Starfish and Loudfire. We ceased to amortize our existing goodwill upon our adoption of SFAS No. 142 in the beginning of fiscal 2003. We will amortize approximately \$781,000, \$739,000, \$666,000 and \$548,000 of other intangibles in fiscal 2004, 2005, 2006 and 2007, respectively, based on the acquisitions completed as of July 31, 2003. We expect, however, that amortization expense will increase significantly as a result of the acquisition of various intangibles from Spontaneous Technology

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and the pending acquisition of Synchrologic in fiscal 2004. To the extent we do not generate sufficient cash flows to recover the net amount of any investment in goodwill and other intangibles recorded, the investment could be considered impaired and subject to earlier write-off. These impairments of goodwill or other intangible assets could have a negative impact on our results of operations in any given period.

***Our business was harmed by the recent slowdown in the economy generally and in the information technology sector in particular. As a result, we have reduced our total operating expenses to a lower level in fiscal 2003 compared with those in fiscal 2002. Continued or worsened conditions may directly harm our business and could result in additional actions to reduce operating expenses, which could harm our business and future prospects further.***

Our revenue declined sequentially in the six quarters before the first quarter of fiscal 2003, largely as a result of recent unfavorable economic conditions that caused our customers to delay, decrease or cancel corporate information technology spending. The sales of our products and services is largely dependent on the state of the general economy and upon the condition of the mobile computing-synchronization markets. We may be unable to offset the harm caused by continued or increasing weakness in demand with additional reductions in operating expenses without significantly harming our business.

***Our success and ability to compete depends upon our ability to secure and protect patents, trademarks and other proprietary rights.***

Our success depends on our ability to protect our proprietary rights to the technologies used in our products and services. In the event that a third party breaches the confidentiality provisions or other obligations in one or more of our agreements or misappropriates or infringes on our intellectual property or the intellectual property licensed to us by third parties, our business would be seriously harmed. To protect our proprietary rights, we rely on a combination of trade secrets, confidentiality and other contractual provisions and agreements, and patent, copyright and trademark laws, which afford us only limited protection. Third parties may independently discover or invent competing technologies or reverse engineer our trade secrets, software or other technology. Furthermore, laws in some countries may not protect our proprietary rights to the same extent as the laws of the United States. Therefore, the measures we take to protect our proprietary rights may not be adequate.

Despite our efforts to protect our proprietary rights and technologies, unauthorized parties may attempt to copy aspects of our products or to obtain and use trade secrets or other information that we regard as proprietary. Policing unauthorized use of our products is difficult, and while we are unable to determine the extent to which piracy of our software products exists, software piracy can be expected to be a persistent problem. Embedded software products, like those we offer, can be especially susceptible to software piracy.

***We are and may in the future be subject to litigation that could result in significant costs to us.***

Litigation has been and may in the future be necessary to enforce our proprietary rights or to protect our trade secrets or trademarks. These legal proceedings may also divert our management's attention from growing our business. Failure to enforce and protect our intellectual property successfully would substantially harm our business.

For instance, on April 19, 2002, we filed a patent infringement suit against Extended Systems, Inc. in the United States District Court for the Northern District of California. In this suit, we allege that Extended System's server and desktop products infringe on eight of our synchronization-related patents. We are seeking an injunction against future sales of infringing server and desktop products, as well as monetary damages for past sales of the infringing products, of Extended Systems. Extended Systems has denied our charges, raised a number of affirmative defenses to our claims, and requested a declaration from the Court that our eight patents are invalid and not infringed. Litigation is inherently uncertain, and we may not prevail in our claims or defenses. In addition, our litigation against Extended Systems is expensive and time-consuming, and management has been and may in the future be required to spend significant time in the defense of the suit. We incurred approximately \$1,200,000 of legal costs relating to all litigation including against Extended Systems during fiscal 2003 and believe that we will continue to incur significant amount of legal costs during fiscal 2004 as a result of any on-going litigation. Extended Systems has no claims or counterclaims against us in this case. However, if we do not prevail in our claims, we might



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be forced to accept an unfavorable settlement or judgment which could require us to pay a substantial amount of Extended Systems' legal fees in settlement or upon the determination of these claims. An unfavorable settlement or judgment could also materially harm our ability to use existing intellectual property and severely harm our business as a result.

On December 5, 2002, we filed a patent infringement suit against Synchrologic, Inc. in the United States District Court for the Northern District of California, alleging that Synchrologic's server and desktop products infringe six of our synchronization-related patents. On September 14, 2003, we entered into a definitive agreement to acquire Synchrologic. Upon the execution of the definitive agreement, we and Synchrologic agreed to dismiss the litigation with prejudice as of September 17, 2003, thereby permanently ending this specific suit.

In order to protect our proprietary rights in the future, we may decide to sue additional parties. Any litigation, whether brought by or against us, could cause us to incur significant expenses and could divert a large amount of management time and effort. A claim by us against a third party could, in turn, cause a counterclaim by the third party against us, which could impair our intellectual property rights and harm our business.

If we are forced to defend against third-party infringement claims, whether they are with or without merit or are determined in our favor, we could face expensive and time-consuming litigation, which could distract technical and management personnel, or result in product shipment delays. If an infringement claim is determined against us, we may be required to pay monetary damages or ongoing royalties. Further, as a result of infringement claims either against us or against those who license technology to or from us, we may be required to develop non-infringing intellectual property or enter into costly royalty or licensing agreements. Such royalty or licensing agreements, if required, may be unavailable on terms that are acceptable to us, or at all. If a third party successfully asserts an infringement claim against us and we are required to pay monetary damages or royalties or we are unable to develop suitable non-infringing alternatives or license the infringed or similar intellectual property on reasonable terms on a timely basis, it could significantly harm our business.

*If our intellectual property were to be found to be infringing or otherwise invalid, our business would be harmed.*

Our business is heavily dependent on our intellectual property. Our patents are an especially important part of our intellectual property and our business. Third parties may assert infringement or unfair competition claims against us. In the past, we have received notices from third parties alleging that our product offerings infringe proprietary rights held by them. We have also received a notice from a customer to which we may have indemnification obligations under some circumstances, informing us that it had received a notice from a third party alleging that the customer's product infringes the third party's proprietary rights. We or our customers may receive other similar notices from third parties in the future. We cannot predict whether third parties will assert claims of infringement against us, or whether any past, present or future claims will prevent us from offering products or operating our business as planned.

Due to the inherently uncertain nature of intellectual property protection and the extremely competitive area in which we operate our business, it is possible that some or all of our intellectual property could be found to be infringing on the intellectual property of others or that our patents could be determined to be invalid in the future, despite our efforts to ensure otherwise. Should some or all of our intellectual property be found to be infringing on the intellectual property of others, our business would be severely harmed because we would not be able to sell our products and we may incur fees, expenses or be forced to pay damage awards. In addition, our business would be harmed if our patents were determined to be invalid.

*We face fierce competition in the market for mobile computing synchronization products and services, which could reduce our market share and revenues.*

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Our market contains few substantial barriers to entry. We believe we will face additional competition from existing competitors and new market entrants in the future. We currently face direct competition with respect to our Intellisync, Enterprise Intellisync, Synchronologic Mobile Suite, Intellisync goAnywhere, Satellite Forms, Intellisync: Phone Edition, TrueSync and Spontaneous Technology's secure Virtual Private Network (sVPN) products. Intellisync retail and enterprise products face competition from Sybase Inc.'s iAnywhere, Chapura, Inc.'s Pocket

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Mirror, Common Time s Cadenza mNotes, Extended Systems, Inc. s OneBridge Mobile Groupware, IBM Corporation s Lotus Software EasySync Pro, Microsoft, Inc s ActiveSync, Palm Desktop from Palm and others. Satellite Forms faces competition from Adobe Systems, Inc., Aligo, Inc., AppForge, Inc., Covigo, Inc., iConverse, Inc., Metrowerks Code Warrior, mPortal, Inc., Pencil Corporation, Pendragon Software Corporation, Penright Corporation s MobileBuilder and others. Our server-based Mobile Suite software faces competition from Aether Systems, CommonTime, Extended Systems, FusionOne, Inc., InfoSpace, Inc., Infowave Software, JP Mobile, Inc., Microsoft, Openwave, Inc., Sybase, Inc., Synchronologic, Inc. (up until the closing date of the planned acquisition), Wireless Knowledge, Inc., XcelleNet, Inc. and others. Intellisync goAnywhere technology competes with offerings from Symantec Corporation (pcAnywhere) and Expertcity, Inc. (GoToMyPC) and others. Our Intellisync: Phone Edition faces competition from FutureDial, Inc. s SnapSync and Susteen, Inc. s DataPilot and others. In addition to direct competitors like these, we face indirect competition from existing and potential customers that may provide internally developed solutions to each of our technology licensing components. TrueSync and sVPN face competition from Visto Corporation, Seven Networks, Inc. and others.

In addition to direct competition noted above, we face indirect competition from existing and potential customers that may provide internally developed solutions for each of our technology licensing components. As a result, we must educate prospective customers as to the advantage of our products compared to internally developed solutions. We currently face limited direct competition from major applications and operating systems software vendors who may in the future choose to incorporate data synchronization functionality into their operating systems software, thereby potentially reducing the need for original equipment manufacturers to include our products in their notebook and desktop personal computers. For example, Microsoft s inclusion of certain features permitting data synchronization between computers utilizing the Windows 98, Windows 2000, Windows Me, Windows NT or Windows XP operating system may have the effect of reducing revenue from our software if users of these operating systems perceive that their data synchronization needs are adequately met by Microsoft.

Many of our competitors have substantially greater financial, technical and marketing resources, larger customer bases, longer operating histories, greater name recognition and more established relationships in the industry than we do. Our larger competitors may be able to provide customers with additional benefits in connection with their products and costs, including reduced communications costs. As a result, these companies may be able to price their products and services more competitively than we can and respond more quickly to new or emerging technologies and changes in customer requirements. If we are unable to compete successfully against our current or future competitors, we may lose market share, and our business and prospects would suffer.

***Our business and prospects depend on, to a significant degree, demand for wireless and other mobile computing devices.***

The use of wireless and other mobile computing devices for retrieving, sharing and transferring information among businesses, consumers, suppliers and partners has begun to develop only in recent years. Our success will depend in large part on continued growth in the use of wireless and other mobile computing devices including personal data assistants, handheld computers, smart phones, pagers and other mobile devices. In addition, our markets face critical unresolved issues concerning the commercial use of wireless and other mobile computing devices, including security, reliability, cost, ease of access and use, quality of service, regulatory initiatives and necessary increases in bandwidth availability. Demand for, and market acceptance of, wireless and other mobile computing devices which require our products and services are subject to a high level of uncertainty and are dependent on a number of factors, including:

the growth in access to, and market acceptance of, new interactive technologies;

growth in sales of handheld devices, smart phones and other mobile computing devices, supported by our software and growth in wireless network capabilities to match end-user demand and requirements;

emergence of a viable and sustainable market for wireless and mobile computing services;

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our product and service differentiation and quality;

the development of technologies that facilitate interactive communication between organizations;

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increases in bandwidth for data transmission;

our distribution and pricing strategies as compared with those of our competitors;

the effectiveness of our marketing strategy and efforts;

our industry reputation; and

general industry and economic conditions such as slowdowns in the computer or software markets or the economy in general.

If the market for wireless and other mobile computing devices as a commercial or business medium does not develop, or develops more slowly than expected, our business, results of operations and financial condition will be seriously harmed.

Even if the wireless and mobile computing services market does develop, our products and services may not achieve widespread market acceptance. If our target customers do not adopt, purchase and successfully deploy our other current and planned products and services, our revenue will not grow significantly and our business, results of operations and financial condition will be seriously harmed.

***If we fail to maintain our existing relationships or enter into new relationships with original equipment manufacturers, business development organizations and sales distribution channels, our brand awareness, the sales of our products and use of our services would suffer.***

Our product and service offerings depend, in large part, on our ability to develop and maintain relationships with original equipment manufacturers and business development organizations that help distribute our products and promote our services. We depend on these relationships to:

distribute our products to purchasers of mobile devices;

increase the use of our technology licensing components;

build brand awareness through product marketing; and

market our products and services cooperatively.

If the products that these equipment manufacturers or business development organizations sell, or the operating systems upon which these products are based, were to lose popularity, or if any of these companies cease to use our product and service offerings in significant volumes, our product sales would decline and our business would suffer.

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We have developed with sales distribution channels and other resellers that allow us to offer our products and services to a much larger customer base than we would otherwise be able to reach through our own direct sales and marketing efforts. Ingram Micro US is our largest distributor and accounted for 10%, 17% and 14% of our total revenue during fiscal 2003, 2002 and 2001, respectively. There are also a significant number of our customers that purchase our products and services through other resellers, and we anticipate they will continue to do so as we expand our product offerings. Because we often sell indirectly through these sales distribution channels and resellers, we cannot control our relationships with end customers. This may diminish our ability to sell our products and services directly to our customers. Our sales, therefore, could also be negatively affected by disruptions in our relationships with resellers or disruptions in the relationships between our resellers and customers. Resellers may also choose not to emphasize our products to their customers. Any of these occurrences could diminish the effectiveness of our distribution channel and lead to decreased sales.

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*We are dependent on our international operations for a significant portion of our revenues.*

International revenue, primarily from customers based in Japan and Europe, accounted for 36%, 31% and 26% of our revenue in fiscal 2003, 2002 and 2001, respectively. The increase in our international annual revenues from fiscal 2002 to fiscal 2003 accounted for 92% of our total annual revenue increase for fiscal 2003. In the future, we may further expand our international presence. As we continue to expand internationally, we are increasingly subject to risks of doing business internationally, including:

longer payment cycles and problems in collecting accounts receivable;

seasonal reductions in business activity during the summer months in Europe and certain other parts of the world;

unexpected changes in regulatory requirements and tariffs;

export controls relating to encryption technology and other export restrictions;

reduced protection for intellectual property rights in some countries;

political and economic instability, including continuing military conflicts in the Middle East and potential health epidemics;

difficulties in staffing and managing international operations;

fluctuations in currency exchange rates, which we do not hedge against;

potentially adverse tax consequences;

nonrefundable withholding taxes on royalty income from customers in certain countries, such as Japan and Taiwan; an adverse effect on our provision for income taxes based on the amount and mix of income from international customers; and

exposure to risk of non-payment by customers in other countries with highly inflationary economies.

Our international sales growth will be limited if we, in the future, are unable to expand international sales channel management and support, customize products for local markets, and develop relationships with international service providers, distributors and device manufacturers. Even if we are able to expand international operations successfully, we cannot be certain that we will succeed in maintaining or expanding international market demand for our products.

*Geographical expansion and growth, including the establishment of new sales or engineering operations, may negatively affect our engineering operations and cause us to incur significant additional costs and expenses.*

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We recently established an engineering facility in Sofia, Bulgaria and in the future we may further expand our engineering or sales operations to other geographical areas within the United States and internationally. Our expansion may cause us to incur various costs and expenses, and may place a significant strain upon our operating and financial systems and resources that could materially adversely affect our financial results following such an expansion. We also face significant business risks related to the difficulty in assimilating new operations and the diversion of management's attention from other business. Additionally, if we fail to align employee skills and populations with revenue and market requirements, it may have a material adverse impact on our business and operating results. Moreover, these newly established operations may not contribute significantly to our sales or earnings.

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***We may become dependent upon engineers and other development partners located in other countries.***

We established a global software development program to assist us in the implementation of custom software and other technology applications. We have shifted the composition of our engineering team to include several international software development partners, the largest of which is Romania-based SoftVision, Inc. Our future engineering development efforts may depend on our ability to maintain strategic relationships with these international partners. Our business relationships often consist of cooperative engineering programs, joint business seminars and cooperation in product development. Many of these relationships may not be contractual and may depend on the continued voluntary cooperation. Divergence in strategy or change in focus by any of our partners may interfere with our ability to develop and support our products, which in turn could harm our business. Further, if our partners enter into strategic alliances with other companies, they could reduce their support of our products. We may jeopardize our existing relationships if we enter into alliances with competitors of our strategic partners. One or more of our partners may use the information they gain from their relationship with us to develop competing products. In addition, our operations could be adversely affected if any of these international partners is affected by volatile economic, political or military conditions in its country or by various restrictions imposed by its country regarding the transfer of technology, the mobile computing industry and business in general.

***We are exposed to the risk of product returns and rotations from our distributors and value-added resellers, which are estimated and recorded by us as a reduction in sales.***

Although we attempt to monitor and manage the volume of our sales to distributors and resellers, overstocking by our distributors and resellers or changes in their inventory level policies or practices may require us to accept returns above historical levels. In addition, the risk of product returns may increase if the demand for new products we introduce is lower than what we anticipate at the time of introduction. Although we believe that we provide an adequate allowance for sales returns, actual sales returns could exceed our estimated recorded allowance. Any product returns in excess of recorded allowances could result in a material adverse effect on net revenues and operating results. As we introduce more products, timing of sales to end users and returns to us of unsold products by distributors and resellers become more difficult to predict and could result in material fluctuations in quarterly operating results.

***If we are unable to provide satisfactory and high quality services through our professional services group, customer satisfaction and demand for our products will suffer.***

Many of our customers have been successful in implementing our various technology initiatives without further provision of technical service. However, we believe that building strong relationships with our customers, as well as future growth in our product sales, depends on our ability to provide our customers with professional services, including customer support, training, consulting and initial implementation and deployment of our products when necessary. We have an in-house professional services group and use international software development partners with a workforce that can perform these tasks and that also educates third-party systems integrators in the use of our products so that these systems integrators can provide these services to our customers. If we are unable to develop sufficient relationships with third-party systems integrators and other customers, unable to complete product implementations in a timely manner, or unable to provide customers with satisfactory and quality support, consulting, maintenance and other services, we could face customer dissatisfaction, damage to our reputation, decreased overall demand for our products and loss of revenue.

***Future sales of our common stock, including the shares we intend to offer in connection with our proposed acquisition of Synchrologic, may depress our stock price.***

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If our current stockholders sell substantial amounts of common stock in the public market, the market price of our common stock could fall. In addition, these sales of common stock could impede our ability to raise funds at an advantageous price, or at all, through the sale of securities. We have recently issued shares of our common stock in connection with our acquisitions of the assets of Loudfire and Spontaneous Technology, and we intend to issue additional shares of our common stock in our proposed merger with Synchronologic.

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As of September 30, 2003, we had approximately 49,648,504 shares of common stock outstanding. Assuming that that the maximum number of shares and options are issued and registered by us in connection with all of our recent acquisitions and our planned acquisition of Synchronologic, and assuming that all options to purchase common stock issuable under our stock plans are issued, an aggregate of approximately 28,432,000 additional shares of our common stock will become issued or issuable and freely tradeable within approximately 9 months following the closing of the proposed acquisition of Synchronologic, and an aggregate of 1,227,000 additional shares of our common stock will become issued or issuable and freely tradeable by the end of the 18 month period following such closing. Based on these assumptions, the following is an approximate list of the shares that could become freely tradeable and sold in the public market as a result of option exercises or stock issuances in connection with acquisitions during the first 9 months following the proposed acquisition:

3,643,000 shares immediately upon exercise of outstanding option grants;

1,121,000 additional shares on or about the effective date of the registration statements for the shares issuable in connection with the Spontaneous Technology and Loudfire transactions;

3,786,000 additional shares on or about the closing of the proposed Synchronologic acquisition;

2,000,000 additional shares in each of the first 8 months following the closing of the proposed acquisition, such that an aggregate of approximately 16 million additional shares would become freely tradeable in the 8 month period following such acquisition; and

3,882,000 additional shares at the end of the 9th month following the proposed acquisition.

***We may incur significant stock-based compensation charges related to certain stock options and restricted stock in future periods.***

Based on certain accounting standards involving stock compensation, we have incurred and will continue to incur noncash accounting charges related to stock options, including those associated with our cancellation/regrant programs and certain unvested, restricted shares exercised with a full recourse note. Those standards require us to remeasure compensation costs for such options each reporting period based on changes in the market value of the underlying common stock. Depending upon movements in the market value of our common stock, the variable accounting treatment of those stock options may result in significant additional non-cash compensation costs in future periods.

In addition, there has been increasing public debate about the proper accounting treatment for employee stock options. Although we are not currently required to record any compensation expense in connection with option grants that have an exercise price at or above fair market value, it is likely that future laws or regulations will require us to treat stock options as a compensation expense. Any such change in accounting treatment could result in our reporting increased operating expenses, which would decrease any reported net income or increase any reported net loss.

***Geopolitical, economic and military conditions, including terrorist attacks and other acts of war, may materially and adversely affect the markets on which our common stock trades, the markets in which we operate, our operations and our profitability.***

Terrorist attacks and other acts of war, and any response to them, may lead to armed hostilities and such developments would likely cause instability in financial markets. Armed hostilities and terrorism may directly impact our facilities, personnel and operations which are located in the United States and other countries, as well as those of our clients. Furthermore, severe terrorist attacks or acts of war may result in temporary

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halts of commercial activity in the affected regions, may harm our reseller relationships and may result in reduced demand for our products. These developments could have a material adverse effect on our business and the trading price of our common stock.

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*There are risks associated with our long-term investments that may adversely affect our results of operations.*

Historically, we have made direct and indirect investments in privately held companies. We may continue to make strategic investments in the future. There can be no assurance that our investments will bring us a return on investment. In addition, because the strategic investments tend to be in small, start-up technology companies that are at risk for financial failure especially during an economic slowdown, there is a greater risk that the investments might be impaired. In fiscal 2003, for instance, we sold our limited partnership interest in a venture capital fund company at a loss. The sale of the interest allowed us to avoid commitments for further investments in equity instruments of various privately-held companies made through the venture capital fund, many of which had not generated adequate returns.

*Our stock price has historically been and may continue to be volatile, which may cause you to lose money and could lead to costly litigation against us that could divert our resources.*

Stock markets have recently experienced dramatic price and volume fluctuations, particularly for shares of technology companies. These fluctuations can be unrelated to the operating performance of these companies. Broad market fluctuations may reduce the market price of our common stock and cause you to lose some or all of your investment. These fluctuations may be exaggerated if the trading volume of our common stock is low. In addition, due to the technology-intensive nature and growth rate of our business and the mobile computing synchronization market, the market price of our common stock has in the past and may in the future rise and fall in response to:

quarterly variations in operating results;

seasonal fluctuations on product sales;

announcements of technological innovations;

announcements of new software or services by us or our competitors;

acquisitions or strategic alliances by us or by our competitors;

changes in financial estimates by securities analysts; and

other events beyond our control, including general market conditions.

The stock market has experienced significant price and volume fluctuations that have particularly affected the trading prices of equity securities of many high technology companies. These fluctuations have often been unrelated or disproportionate to the operating performance of these companies. Furthermore, our operating results and prospects from time to time may be below the expectations of public market analysts and investors. Any negative change in the public's perception of companies in the wireless communications market could depress our stock price regardless of our operating results.

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Recently, companies experiencing high volatility or significant drops in their stock prices have faced securities class action lawsuits when the market price of a stock has been volatile. Holders of that stock have often instituted securities class action litigation against the company that issued the stock when such stock declines. If any of our stockholders brought such a lawsuit against us, we could incur substantial costs defending the lawsuit. The lawsuit could also divert the time and attention of our management. Further, any settlement of such a lawsuit could adversely affect us.

*We depend on key employees in a competitive market for skilled personnel.*

The success of our business will continue to depend upon certain key technical and senior management personnel, including our president and chief executive officer, Woodson Hobbs; senior vice president of sales and marketing, Clyde Foster; chief technology officer, John Stossel; vice president of finance and administration and chief accounting officer, J. Keith Kitchen; and senior vice president of products and services, Mehdi Maghsoodnia, many of whom would be extremely difficult to replace. Following our proposed acquisition of Synchrologic, we

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expect that Said Mohammadioun will become a key employee of Pumatech. Competition for such personnel is intense, and there can be no assurance that we will be able to retain our existing key managerial, technical, or sales and marketing personnel. The loss of these officers and other or key employees in the future might adversely affect our business and impede the achievement of our business objectives.

We believe our ability to achieve increased revenues and to develop successful new products and product enhancements will depend in part upon our ability to attract and retain highly skilled sales and marketing and qualified product development personnel. In addition, competition for employees in our industry and geographic location could be intense. We may not be able to continue to attract and retain skilled and experienced personnel on acceptable terms. Our ability to hire and retain such personnel will depend upon our ability to raise capital or achieve increased revenue levels to fund the costs associated with such personnel. Failure to attract and retain key personnel will adversely affect our business.

***Increasing government regulation could cause demand for our products and services to grow more slowly or to decline.***

We are subject not only to regulations applicable to businesses generally, but also to laws and regulations directly applicable to wireless and other mobile computing devices. One or more states or the federal government could enact regulations aimed at companies like us, which provide software that facilitates e-commerce and wireless communications. The likelihood of the enactment of regulation in these areas will increase as wireless and other mobile devices become more pervasive. Any legislation, regulation or taxation of electronic commerce could dampen the growth of wireless and other mobile computing devices. If a reduction in growth occurs as a result of these events, demand for our services, technologies and other products could decline significantly. The adoption of new laws or the application of existing laws may expose us to significant liabilities and additional operational requirements, which could decrease the demand for our services and increase our cost of doing business.

***We are dependent on non-exclusive licenses for certain technology included in our products. We may be unable to license such technology or it may be subject to infringement claims by third parties.***

We depend on development tools provided by a limited number of third-party vendors. Together with application developers, we rely primarily upon software development tools provided by companies in the PC and mobile computing device industries. If any of these companies fails to support or maintain these development tools, we will have to support the tools ourselves or transition to another vendor. Such maintenance or support of the tools or transition could be time consuming, could delay the product release and upgrade schedule and could delay the development and availability of third-party applications used in our products. If we fail to procure the needed software development tools or there is any delay in availability of third-party applications our ability to release, support and promote adoption of our products would be harmed.

Our commercial success will also depend in part on not infringing upon the proprietary rights of others and not breaching technology licenses that cover technology used in our products. It is uncertain whether any third-party patents will require us to develop alternative technologies or to alter our products or processes, obtain licenses or cease activities that infringe on a third-party's intellectual property rights. If any such licenses are required, we may not be able to obtain such licenses on commercially favorable terms, if at all. Our failure to obtain a license to any technology that we may require to commercialize our products and services could cause our business and prospects to suffer. Litigation may also be necessary to enforce any patents issued or licensed to us or to determine the scope and validity of third-party proprietary rights.

***Our restructurings could result in customer and employee uncertainty and management distractions.***

We have undergone a number of restructurings in fiscal 2003, 2002, and 2001 involving, among other things, a substantial reduction in our worldwide workforce. Such reductions could result in customers or prospective customers deciding to delay or cancel their purchases of our products and services due to perceived uncertainty caused by the restructurings. There can be no assurance that we will not reduce or otherwise adjust our workforce again in the future or that the related transition issues associated with such reductions will not adversely affect our operations or customer perceptions in the future. This uncertainty could result in a lack of focus and reduced



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productivity by our remaining employees, including those directly responsible for revenue generation, which in turn may affect our revenue in the future. In addition, employees directly affected by the reductions may seek future employment with our business partners, customers, or even our competitors. Although all employees are required to sign a confidentiality agreement with us at the time of hire, there can be no assurances that the confidential nature of our proprietary information will be maintained in the course of such future employment.

### ***Our products may contain product errors that could subject us to product liability claims.***

Our products may contain undetected errors or failures when first introduced or as new versions are released, which can result in loss of or delay in market acceptance and could adversely impact future operating results. We do not currently maintain product liability insurance. Although our license agreements contain provisions limiting our liability in the case of damages resulting from use of the software, in the event of such damages, we may be found liable, and in such event, such damages could materially affect our business, operating results and financial condition.

### ***We may need to raise additional capital in the future resulting in dilution to our stockholders.***

We may need to raise additional funds for our business operations and to execute our business strategy. We may seek to sell additional equity or debt securities or to obtain an additional credit facility. The sale of additional equity or convertible debt securities could result in additional dilution to our stockholders. If additional funds are raised through the issuance of debt securities, these securities could have rights that are senior to holders of common stock and could contain covenants that would restrict our operations. Any additional financing may not be available in amounts or on terms acceptable to us, if at all.

### ***Foreign exchange fluctuations could decrease our revenues or cause us to lose money, especially since we do not hedge against currency fluctuations.***

To date, the majority of our customers have paid for our products and services in United States dollars. For fiscal years 2003, 2002 and 2001, costs denominated in foreign currencies were nominal and we had minimal foreign currency losses during those periods. However, we believe that in the future an increasing portion of our costs will be denominated in foreign currencies as we increase operations in Europe and open offices in other countries. We currently do not engage in foreign exchange hedging activities and, although we have not yet experienced any material losses due to foreign currency fluctuation, a small portion of our international revenues are currently subject to the risks of foreign currency fluctuations, and these risks will increase as our international revenues increase.

### ***System failures or accidental or intentional security breaches could disrupt our operations, cause us to incur significant expenses, expose us to liability and harm our reputation.***

Our operations depend upon our ability to maintain and protect our computer systems and core business applications, which are located at our offices, as well as hosted by third-party vendors. Although we are taking various precautions to maintain and protect our systems, they could still be vulnerable to damage from break-ins, unauthorized access, vandalism, fire, floods, earthquakes, power loss, telecommunications failures and similar events. We also maintain insurance against break-in, unauthorized access, vandalism, fires, floods, earthquakes and general business interruptions. The amount of coverage, however, may not be adequate in any particular case, and will not likely compensate us for all the damages caused by these or similar events. In addition, while we put various security measures in place to detect any unauthorized access to our

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computers and computer networks, we may be unable to prevent computer programmers or hackers from penetrating our network security or creating viruses to sabotage or otherwise attack our computer networks from time to time. A breach of our security could seriously damage our reputation, which would harm our business. In addition, because a hacker who penetrates our network security could misappropriate proprietary information or cause interruptions in our services, we might be required to expend significant resources to protect against, or to alleviate, problems caused by hackers. We might also face liability to persons harmed by misappropriation of secure information if it is determined that we did not exercise sufficient care to protect our systems.

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*Future changes in accounting standards or our interpretation of current standards, particularly changes affecting revenue recognition, could cause unexpected revenue fluctuations.*

Future changes in accounting standards or our interpretation of current standards, particularly those affecting revenue recognition, could require us to change our accounting policies. These changes could cause deferral of revenue recognized in current periods to subsequent periods or accelerate recognition of deferred revenue to current periods.

*Corporate governance scandals and new legislation could increase the cost of our operations.*

As a result of recent corporate governance scandals and the legislative and litigation environment resulting from those scandals, the costs of being a public company in general are expected to increase in the near future. New legislation, such as the recently enacted Sarbanes-Oxley Act of 2002, will have the effect of increasing the burdens and potential liabilities of being a public reporting company. This and other proposed legislation may increase the fees of our professional advisors and our insurance premiums.

*Our certificate of incorporation, our bylaws, Delaware law and our stockholder rights plan contain provisions that could discourage a takeover.*

Provisions of our certificate of incorporation, our bylaws, Delaware law and our stockholder rights plan contain provisions that may discourage, delay or prevent a merger or acquisition or other change of control that a stockholder may consider favorable.

**Table of Contents****USE OF PROCEEDS**

The proceeds from the sale of the shares of common stock offered pursuant to this prospectus are solely for the account of the selling stockholders. We will not receive any of the proceeds from the sale of these shares. See Selling Stockholders.

**SELLING STOCKHOLDERS**

Under the terms of the agreement entered into in connection with our acquisition of substantially all of the assets of Spontec, which we completed on September 17, 2003, we issued to Spontec 1,093,676 shares of our common stock, and we agreed to register all of these shares for resale. We also agreed to use reasonable best efforts to keep the registration statement effective until the earliest of the date all of the shares of common stock offered under this prospectus have been or may be sold to the public and the date one year from the closing date of the acquisition (subject to adjustment in certain cases for delays in filing). Our registration of the shares of common stock does not necessarily mean that the selling stockholders will sell all or any of the shares.

The following table sets forth certain information regarding the beneficial ownership of the common stock, as of October 31, 2003, by each of the selling stockholders.

The information provided in the table below with respect to each selling stockholder has been obtained from that selling stockholder. Except as otherwise disclosed below, none of the selling stockholders has, or within the past three years has had, any position, office or other material relationship with us. Because the selling stockholders may sell all or some portion of the shares of common stock beneficially owned by them, we cannot estimate the number of shares of common stock that will be beneficially owned by the selling stockholders after this offering. In addition, the selling stockholders may have sold or transferred, or may sell or transfer, after the date on which they provided the information regarding the shares of common stock beneficially owned by them, all or a portion of the shares of common stock beneficially owned by them in transactions exempt from the registration requirements of the Securities Act of 1933.

Beneficial ownership is determined in accordance with Rule 13d-3(d) promulgated by the SEC under the Securities Exchange Act of 1934. Unless otherwise noted, each person or group identified possesses sole voting and investment power with respect to shares, subject to community property laws where applicable. We have based our calculation of the percentage of beneficial ownership on 49,708,459 shares of common stock outstanding on October 31, 2003.

<u>Selling Stockholder</u>	<u>Shares Beneficially Owned Prior to the Offering</u>		<u>Shares Offered by this Prospectus</u>	<u>Shares Beneficially Owned After the Offering (1)</u>	
	<u>Number</u>	<u>Percent</u>		<u>Number</u>	<u>Percent</u>
Spontaneous Technology, Inc.	1,093,676	2.2%	1,093,676	0	0%

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(1) Assumes each selling stockholder will sell all shares offered by such selling stockholder in this prospectus.

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**PLAN OF DISTRIBUTION**

We will not receive any proceeds from the sale of the securities covered by this prospectus. We are registering shares on behalf of the selling stockholders. As used in this prospectus, "selling stockholders" includes donees and pledgees selling shares received from a named selling stockholder after the date of this prospectus. All costs, expenses and fees in connection with the registration of the shares offered by this prospectus will be borne by us. Brokerage commissions and similar selling expenses, if any, attributable to the sale of shares will be borne by the selling stockholders. Sales of shares may be effected by selling stockholders from time to time in one or more types of transactions (which may include block transactions) on one or more exchanges, in the over-the-counter market, in negotiated transactions, through put or call options transactions relating to the shares, through short sales of shares, or a combination of such methods of sale, at market prices prevailing at the time of sale, or at negotiated prices. Such transactions may or may not involve brokers or dealers. The selling stockholders have advised us that they have not entered into any agreements, understandings or arrangements with any underwriters or broker-dealers regarding the sale of their securities, nor is there an underwriter or coordinating broker acting in connection with the proposed sale of shares by the selling stockholders.

The selling stockholders may effect such transactions by selling shares directly to purchasers or to or through broker-dealers, which may act as agents or principals. Such broker-dealers may receive compensation in the form of discounts, concessions, or commissions from the selling stockholders and/or the purchasers of shares for whom such broker-dealers may act as agents or to whom they sell as principal, or both (which compensation as to a particular broker-dealer might be in excess of customary commissions).

The selling stockholders and any broker-dealers that act in connection with the sale of shares might be deemed to be "underwriters" within the meaning of Section 2(11) of the Securities Act, and any commissions received by such broker-dealers and any profit on the resale of the shares sold by them while acting as principals might be deemed to be underwriting discounts or commissions under the Securities Act. We have agreed to indemnify each selling stockholder against certain liabilities, including liabilities arising under the Securities Act. The selling stockholders may agree to indemnify any agent, dealer or broker-dealer that participates in transactions involving sales of the shares against certain liabilities, including liabilities arising under the Securities Act.

Because selling stockholders may be deemed to be "underwriters" within the meaning of Section 2(11) of the Securities Act, the selling stockholders will be subject to the prospectus delivery requirements of the Securities Act. We have informed the selling stockholders that the anti-manipulative provisions of Regulation M promulgated under the Exchange Act may apply to their sales in the market. Selling stockholders also may resell all or a portion of the Shares in open market transactions in reliance upon Rule 144 under the Securities Act, provided they meet the criteria and conform to the requirements of such Rule.

If we are notified by a selling stockholder that any material arrangement has been entered into with a broker-dealer for the sale of shares through a block trade, special offering, exchange distribution or secondary distribution or a purchase by a broker or dealer, a supplement to this prospectus will be filed, if required, pursuant to Rule 424(b) under the Act, disclosing (i) the name of each such selling stockholder and of the participating broker-dealer(s), (ii) the number of shares involved, (iii) the price at which such shares were sold, (iv) the commissions paid or discounts or concessions allowed to such broker-dealer(s), where applicable, (v) that such broker-dealer(s) did not conduct any investigation to verify the information set out or incorporated by reference in this prospectus and (vi) other facts material to the transaction.

**LEGAL MATTERS**

The validity of the common stock offered hereby will be passed upon for Pumatech by Heller Ehrman White & McAuliffe LLP, 2775 Sand Hill Road, Menlo Park, California 94025.



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**WHERE YOU CAN FIND ADDITIONAL INFORMATION**

This prospectus is part of a Registration Statement on Form S-3 that we filed with the Securities and Exchange Commission. Certain information in the registration statement has been omitted from this prospectus in accordance with the rules of the SEC. We file our annual, quarterly and special reports, proxy statements and other information with the SEC. You can inspect and copy the registration statement as well as reports, proxy statements and other information we have filed with the SEC at the public reference room maintained by the SEC at 450 Fifth Street, NW, Washington, D.C. 20549. You can obtain copies from the public reference room of the SEC at 450 Fifth Street, NW, Washington, D.C. 20549 upon payment of certain fees. You can call the SEC at 1-800-732-0330 for further information about the public reference room. We are also required to file electronic versions of these documents with the SEC, which may be accessed through the SEC's Internet site at <http://www.sec.gov>.

Our website is [www.pumatech.com](http://www.pumatech.com). We make our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports available free of charge as soon as reasonably practicable as we file these reports with the Securities and Exchange Commission.

Our common stock is quoted on the Nasdaq National Market. Reports, proxy and information statements and other information concerning Pumatech may be inspected at the Nasdaq Stock Market at 1735 K Street, NW, Washington, D.C. 20006.

**INCORPORATION OF DOCUMENTS BY REFERENCE**

The SEC allows us to incorporate by reference certain of our publicly-filed documents into this prospectus, which means that information included in these documents is considered part of this prospectus. Information that we file with the SEC after the date of the initial filing of this registration statement will automatically update and supersede this information. We incorporate by reference the documents listed below and any future filings made with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, until the selling stockholders have sold all the shares.

The following documents filed with the SEC are incorporated by reference in this prospectus:

1. Our Annual Report on Form 10-K for the fiscal year ended July 31, 2003 filed October 21, 2003 (File No. 000-21709);
2. Our Current Reports on Form 8-K filed April, 11, 2003, August 6, 2003 and October 2, 2003 and our Current Reports on Form 8-K/A filed June 10, 2003, September 9, 2003 and October 28, 2003 (File No. 000-21709);
3. Our 425 reports filed September 15, 2003 pursuant to Rule 14a-12;



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4. The description of our common stock set forth in our Registration Statement on Form 8-A filed November 8, 1996, including any amendments or reports filed for the purpose of updating such description (File No. 000-21709); and

5. The description of our Preferred Stock Purchase Rights set forth in our Registration Statement on Form 8-A filed January 15, 2003, including any amendments or reports filed for the purpose of updating such description (File No. 000-21709).

All documents subsequently filed by us pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, after the date of this registration statement and prior to the termination of the offering of the common stock offered by this registration statement, shall be deemed to be incorporated by reference into this prospectus.

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We will furnish without charge to you, on written or oral request, a copy of any or all of the documents incorporated by reference, including exhibits to such documents. You should direct any requests for documents to Richard Mosher, General Counsel of the Company, 2550 North First Street, Suite 500, San Jose, California 95131 (408) 321-7650. This prospectus is part of a Registration Statement we filed with the SEC. You should rely only on the information incorporated by reference or provided in this prospectus and the Registration Statement. We have authorized no one to provide you with different information. You should not assume that the information in this prospectus is accurate as of any date other than the date on the front of the document.

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**UNAUDITED PRO FORMA COMBINED CONDENSED FINANCIAL STATEMENTS**

The following unaudited pro forma combined condensed financial statements have been prepared to give effect to the proposed merger of Pumatech and Synchronologic using the purchase method of accounting and the assumptions and adjustments described in the accompanying notes to the unaudited pro forma combined condensed financial statements. These pro forma statements were prepared as if the merger had been completed as of August 1, 2002 for statement of operations purposes and as of July 31, 2003 for balance sheet purposes.

In addition, these unaudited pro forma combined condensed financial statements have been prepared to reflect Pumatech's acquisition of substantially all of the assets of Spontaneous Technology, Inc. on September 17, 2003 using the purchase method of accounting and the assumptions and adjustments described in the accompanying notes to the unaudited pro forma combined condensed financial statements. These pro forma statements were prepared as if the Spontaneous Technology acquisition had been completed as of August 1, 2002 for statement of operations purposes and as of July 31, 2003 for balance sheet purposes. Pumatech's acquisition of Starfish Software, Inc. on March 27, 2003 is also treated as having occurred on August 1, 2002.

Pumatech's fiscal year end is July 31, whereas Synchronologic's and Spontaneous Technology's fiscal year ends are December 31. The following pro forma combined condensed statement of operations data for the year ended July 31, 2003 combines the results of operations of Pumatech for the twelve months ended July 31, 2003 and Synchronologic's and Spontaneous Technology's results of operations for the twelve months ended June 30, 2003. Synchronologic's and Spontaneous Technology's results of operations for the twelve months ended June 30, 2003 were calculated by adding the results of operations for the twelve months ended December 31, 2002 to the results of operations for the six months ended June 30, 2003, and deducting the results of operations for the six months ended June 30, 2002. In addition, the following pro forma combined condensed statement of operations data for the year ended July 31, 2003 includes the results of operations of Starfish Software for the eight months ended February 28, 2003. Since the acquisition of Starfish Software took place on March 27, 2003, four months of Starfish Software results are included in the consolidated Pumatech results for the year ended July 31, 2003. Starfish Software's results of operations for the eight months ended February 28, 2003 were calculated by deducting the results of operations for the six months ended June 30, 2002 from the results of operations for the twelve months ended December 31, 2002, and adding the results of operations for the two months ended February 28, 2003.

The unaudited pro forma combined condensed financial statements are presented for illustrative purposes only and are not necessarily indicative of the financial position or results of operations that would have actually been reported had the merger and the acquisition noted above occurred on August 1, 2002 for statement of operations purposes and as of July 31, 2003 for balance sheet purposes, nor are they necessarily indicative of the future financial position or results of operations.

The unaudited pro forma combined condensed financial statements include adjustments, which are based upon preliminary estimates, to reflect the allocation of the purchase price to the acquired assets and assumed liabilities of Synchronologic. The final allocation of the purchase price will be determined after the completion of the merger and will be based upon actual net tangible and intangible assets acquired as well as liabilities assumed. The preliminary purchase price allocation for Synchronologic is subject to revision as more detailed analysis is completed and additional information on the fair values of Synchronologic's assets and liabilities becomes available. Any change in the fair value of the net assets of Synchronologic will change the amount of the purchase price allocable to goodwill. Additionally, changes in Synchronologic's purchase consideration through the date the merger is completed will change the amount of goodwill recorded. The final purchase price is dependent on the actual number of shares of Pumatech common stock exchanged and actual direct merger costs incurred. The following factors will impact the actual number of shares issued at closing: (a) the average closing price of Pumatech's stock during the 30-day trading period ending on the last trading day immediately preceding the acquisition closing date, and (b) the total amount of transaction costs incurred by Synchronologic. Final purchase accounting adjustments may differ materially from the pro forma adjustments presented here (See Note 6).

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The unaudited pro forma combined condensed financial statements also include adjustments, which are based upon preliminary estimates, to reflect the allocation of the purchase price to the acquired assets and assumed liabilities of Spontaneous Technology. The final allocation of the purchase price will be determined as more detailed analysis is completed and additional information on the fair values of Spontaneous Technology's assets and liabilities becomes available and any contingent consideration associated with the acquisition is resolved. Any change in the fair value of the net assets of Spontaneous Technology, as well as any changes to the total purchase price paid by Pumatech, will change the amount of the purchase price allocable to goodwill. Due to the uncertainty associated with the final purchase consideration, final purchase accounting adjustments may differ materially from the pro forma adjustments presented here.

In addition, the unaudited pro forma combined condensed statement of operations also includes the results of Starfish Software, a business that Pumatech acquired in March 2003, for the eight months ended February 28, 2003.

These unaudited pro forma combined condensed financial statements are based upon the respective historical consolidated financial statements of Pumatech, Synchrologic, Spontaneous Technology and Starfish Software and should be read in conjunction with the historical consolidated financial statements of Pumatech, Synchrologic, Spontaneous Technology and Starfish Software and related notes and Management's Discussion and Analysis of Financial Condition and Results of Operations included in Pumatech's annual reports, quarterly reports and other information on file with the SEC or contained elsewhere in this joint proxy statement/prospectus.

**Table of Contents****UNAUDITED PRO FORMA COMBINED CONDENSED BALANCE SHEETS**

(In thousands)

	Historical		Pro Forma		Historical		Pro Forma	
	Pumatech Year ended July 31, 2003	Spontec Year ended June 30, 2003	Adjustments	Combined	Synchrologic Year ended June 30, 2003	Adjustments	Combined	
<b>ASSETS</b>								
Current assets:								
Cash and cash equivalents	\$ 7,842	\$ 341	\$	\$ 8,183	\$ 2,632	\$	\$ 10,815	
Short-term investments in marketable securities	19,317			19,317			19,317	
Accounts receivable, net	5,469	8		5,477	2,145		7,622	
Inventories	113			113			113	
Prepaid expenses and other current assets	882	5		887	212		1,099	
<b>Total current assets</b>	<b>33,623</b>	<b>354</b>		<b>33,977</b>	<b>4,989</b>		<b>38,966</b>	
Restricted investments	296			296			296	
Property and equipment, net	1,153	18		1,171	338		1,509	
Goodwill	2,731	1,830	1,121(b)	5,682		52,242(a)	57,924	
Intangible assets, net	2,734		1,556(b)	4,290		15,300(a)	19,590	
Other assets	630	252	(252)(b)	630			630	
<b>Total assets</b>	<b>\$ 41,167</b>	<b>\$ 2,454</b>	<b>\$ 2,425</b>	<b>\$ 46,046</b>	<b>\$ 5,327</b>	<b>\$ 67,542</b>	<b>\$ 118,915</b>	
<b>LIABILITIES, MANDATORILY REDEEMABLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY</b>								
Current liabilities:								
Borrowings	\$ 2,619	\$ 2,250	\$ (2,250)(d)	\$ 3,237	\$ 1,686	\$	\$ 1,686	
Accounts payable	2,619	618		3,237	233		3,470	
Accrued expenses and other current liabilities	3,816	377	300(c)	4,493	1,356	1,295(c)	7,144	
Deferred revenue	2,015	1,802	(1,300)(f)	2,517	1,394	(146)(e)	3,765	
<b>Total current liabilities</b>	<b>8,450</b>	<b>5,047</b>	<b>(3,250)</b>	<b>10,247</b>	<b>4,669</b>	<b>1,149</b>	<b>16,065</b>	
Long-term debt					506		506	
Other long-term liabilities	921			921			921	
Mandatorily redeemable convertible preferred stock:		38,643	(38,643)(g)(d)		30,957	(30,957)(g)		
Stockholders' equity:								
Common stock	48	28	(27)(g)	49	4,705	(4,690)(g)	64	
Additional paid-in capital	153,986	14,283	(10,733)(g)	157,536	151	68,801(g)	226,488	
Treasury stock					(2,293)	2,293(g)		
Receivable from stockholder	(112)			(112)			(112)	
Accumulated deficit	(121,661)	(55,547)	55,078(g)	(122,130)	(33,368)	30,946(g)	(124,552)	
Deferred compensation, net	(459)			(459)			(459)	

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Accumulated other comprehensive income	(6)			(6)			(6)
Total stockholders equity	31,796	(41,236)	44,318	34,878	(30,805)	97,350	101,423
Total liabilities, mandatorily redeemable preferred stock and stockholders equity	\$ 41,167	\$ 2,454	\$ 2,425	\$ 46,046	\$ 5,327	\$ 67,542	\$ 118,915

The accompanying notes are an integral part of these unaudited pro forma combined condensed financial statements.

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**Table of Contents****UNAUDITED PRO FORMA COMBINED CONDENSED****STATEMENT OF OPERATIONS**

(In thousands, except per share amounts)

	Historical		Pro Forma		Historical	Pro Forma		
	Starfish Eight	Spontec			Synchrologic			
	Months	Year			Year-ended			
Pumatech	Ended	ended			Year-ended			
Year ended	February 28,	June 30,			June 30,			
July 31, 2003	2003(1)	2003(2)	Adjustments	Combined	2003(2)	Adjustments	Combined	
<b>Revenues</b>								
License revenue	\$ 19,169	\$ 662	\$ 149	\$	\$ 19,980	\$ 5,881	\$	\$ 25,861
License revenue - related party		1,019			1,019			1,019
Service revenue	5,691	836	387		6,914	5,951		12,865
Service revenue - related party		350			350			350
<b>Total revenues</b>	<b>24,860</b>	<b>2,867</b>	<b>536</b>		<b>28,263</b>	<b>11,832</b>		<b>40,095</b>
<b>Costs and expenses:</b>								
Cost of revenue	4,094	849	399		5,342	2,795		8,137
Cost of revenue - related party		960			960			960
Sales and marketing	11,468	1,450	495		13,413	3,943		17,356
General and administrative	5,793	2,802	3,565		12,160	2,252		14,412
Research and development	7,389	1,694	1,258		10,341	4,758		15,099
In-process research and development	406			(406)(k)				
Amortization of intangibles	709			681(i)(j)	1,390		3,400(h)	4,790
Restructuring and other charges	795	2,506			3,301			3,301
<b>Total operating expenses</b>	<b>30,654</b>	<b>10,261</b>	<b>5,717</b>	<b>275</b>	<b>46,907</b>	<b>13,748</b>	<b>3,400</b>	<b>64,055</b>
<b>Loss from operations</b>	<b>(5,794)</b>	<b>(7,394)</b>	<b>(5,181)</b>	<b>(275)</b>	<b>(18,644)</b>	<b>(1,916)</b>	<b>(3,400)</b>	<b>(23,960)</b>
Interest income, net	803		(618)	(42)(l)	143	(215)		(72)
Impairment of investments	(2,394)				(2,394)			(2,394)
Other income, net	(65)		274		209			209
	(1,656)		(344)	(42)	(2,042)	(215)		(2,257)
<b>Loss before taxes</b>	<b>(7,450)</b>	<b>(7,394)</b>	<b>(5,525)</b>	<b>(317)</b>	<b>20,686</b>	<b>(2,131)</b>	<b>(3,400)</b>	<b>(26,217)</b>
Provision for taxes	286				286			286
<b>Net Loss</b>	<b>\$ (7,736)</b>	<b>\$ (7,394)</b>	<b>\$ (5,525)</b>	<b>\$ (317)</b>	<b>\$ (20,972)</b>	<b>\$ (2,131)</b>	<b>\$ (3,400)</b>	<b>\$ (26,503)</b>
<b>Net loss per share - Basic and Diluted</b>	<b>46,622</b>			<b>1,094(m)</b>	<b>47,716</b>		<b>16,200(m)</b>	<b>63,916</b>
Shares used in per share calculation - Basic and Diluted	\$ (0.17)			\$ (0.29)	\$ (0.44)		\$ (0.21)	\$ (0.41)



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- (1) Starfish Software's results of operations for the eight months ended February 28, 2003 were calculated by deducting the results of operations for the six months ended June 30, 2002 from the results of operations for the twelve months ended December 31, 2002, and adding the results of operations for the two months ended February 28, 2003.
  - (2) Synchrologic's and Spontaneous Technology's results of operations for the twelve months ended June 30, 2003 were calculated by adding the results of operations for the twelve months ended December 31, 2002 to the results of operations for the six months ended June 30, 2003 and deducting the six months ended June 30, 2002.

The accompanying notes are an integral part of these unaudited pro forma combined condensed financial statements.

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**NOTES TO UNAUDITED PRO FORMA COMBINED CONDENSED**

**FINANCIAL STATEMENTS (Continued)**

The unaudited pro forma combined condensed financial statements included herein have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission. Certain information and certain footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America have been condensed or omitted pursuant to such rules and regulations; however, management believes that the disclosures are adequate to make the information presented not misleading.

**1. BASIS OF PRO FORMA PRESENTATION**

On September 14, 2003, Pumatech entered into a merger agreement to purchase all of the issued and outstanding stock of Synchrologic whereby each share of Synchrologic capital stock will be converted into the right to receive the number of shares of Pumatech common stock corresponding to the exchange ratio applicable to the class and series of Synchrologic capital stock being converted. The total number of shares of Pumatech common stock to be issued in the merger will be determined by dividing \$60,000,000 by the average closing price of the shares of Pumatech common stock for the thirty consecutive trading days ending on the last complete trading day immediately preceding the closing date of the merger (which amount is subject to adjustment based on the transaction expenses incurred by Synchrologic in connection with the merger), provided that the number of shares of Pumatech common stock issued in the merger shall not exceed 19,800,000 or be fewer than 16,200,000 (in each case subject to adjustment based on the transaction expenses incurred by Synchrologic in connection with the merger).

Pumatech anticipates completing the proposed merger with Synchrologic by the end of 2003. The actual number of shares of Pumatech common stock to be issued will be determined on the effective date of the merger based on the conditions above. The merger has not been consummated as of the date of the preparation of these pro forma financial statements and there can be no assurances that the merger will be consummated in the future.

On September 17, 2003, Pumatech consummated the acquisition of substantially all of the assets of Spontaneous Technology. Under the terms of the parties' asset purchase agreement, Pumatech issued a total of 1,094,000 shares of Pumatech common stock. Additionally, depending upon Pumatech's revenues associated with sales of Pumatech's products, including certain technology of Spontaneous Technology, during the period ending September 30, 2004, Pumatech may be required to issue to Spontaneous Technology additional shares of Pumatech common stock having a value of up to \$7,000,000.

On March 27, 2003, Pumatech acquired Starfish Software for a purchase price of approximately \$1,800,000 for the Starfish Software common stock outstanding upon the effective date of the acquisition.

The unaudited pro forma combined condensed balance sheet as of July 31, 2003 was prepared by combining the historical audited consolidated condensed balance sheet data as of July 31, 2003 for Pumatech and the historical unaudited condensed balance sheet data as of June 30, 2003 for Synchrologic and Spontaneous Technology as if the merger and acquisition had been consummated on that date.

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The unaudited pro forma combined condensed statement of operations for the year ended July 31, 2003 combines the results of operations of Pumatech for the year ended July 31, 2003 and the results of operations of Synchrologic and Spontaneous Technology for the 12 months ended June 30, 2003, to give effect to the merger and acquisition as if the merger and acquisition had occurred on August 1, 2002. Additionally, the unaudited pro forma combined condensed statement of operations for the year ended July 31, 2003 reflects the March 27, 2003 acquisition of Starfish Software as if it had occurred on August 1, 2002. The unaudited pro forma combined condensed statement of operations for the year ended July 31, 2003 combines the results of operations of Pumatech for the year ended July 31, 2003 and Starfish Software's results of operations for the eight months

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**NOTES TO UNAUDITED PRO FORMA COMBINED CONDENSED**

**FINANCIAL STATEMENTS (Continued)**

ended February 28, 2003. Since the acquisition of Starfish Software took place on March 27, 2003, four months of Starfish Software results are included in the consolidated Pumatech results for the year ended July 31, 2003.

Synchrologic's and Spontaneous Technology's results of operations for the twelve months ended June 30, 2003 were calculated by adding the results of operations for the twelve months ended December 31, 2002 to the results of operations for the six months ended June 30, 2003, and deducting the results of operations for the six months ended June 30, 2002.

Certain reclassifications have been made to conform Synchrologic's, Spontaneous Technology's and Starfish Software's historical amounts to Pumatech's financial statement presentation.

**2. PURCHASE PRICE SYNCHROLOGIC, INC.**

The following represents the preliminary allocation of the purchase price over the historical net book values of the acquired assets and assumed liabilities of Synchrologic as of June 30, 2003, and is for illustrative purposes only. Actual fair values will be based on financial information as of the acquisition date.

On September 14, 2003, Pumatech entered into a merger agreement to purchase all of the issued and outstanding stock of Synchrologic whereby each share of Synchrologic capital stock will be converted into the right to receive the number of shares of Pumatech common stock corresponding to the exchange ratio applicable to the class and series of Synchrologic capital stock being converted. The total number of shares of Pumatech common stock to be issued in the merger will be determined by dividing \$60,000,000 by the average closing price of the shares of Pumatech common stock for the thirty consecutive trading days ending on the last complete trading day immediately preceding the closing date of the merger (which amount is subject to adjustment based on the transaction expenses incurred by Synchrologic in connection with the merger), provided that the number of shares of Pumatech common stock shares issued in the merger shall not exceed 19,800,000 or be fewer than 16,200,000 which includes the assumed common stock options (in each case subject to adjustment based on the transaction expenses incurred by Synchrologic in connection with the merger). Pumatech expects to issue approximately 15,170,000 shares of Pumatech common stock and options to purchase approximately 1,030,000 shares of Pumatech common stock in the merger. The actual number of shares of Pumatech common stock and options to be issued will be determined on the effective date of the merger. Pumatech will account for the merger as a purchase.

The unaudited pro forma combined condensed financial statements reflect an estimated purchase price of approximately \$69,617,000. The preliminary fair market value of Pumatech's common stock to be issued in the merger was determined using the five-trading-day average price surrounding the date the acquisition was announced of \$4.26 per share, less estimated registration costs. The expected number of shares to be issued was then determined in accordance with the minimum number of shares to be issued in accordance with the terms of the merger agreement without assuming an adjustment for transaction costs.

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The preliminary fair market value of Pumatech stock options to be issued in the merger was determined using the Black-Scholes option pricing model. The following assumptions were used to perform the calculations: fair value of Pumatech's common stock of \$4.26, expected life of 3.9 years, risk-free interest rate of 3.4%, expected volatility of 132% and no expected dividend yield. The final purchase price is dependent on the actual number of shares of Pumatech common stock issued and actual direct merger costs incurred. The following factors will impact the actual number of shares of Pumatech common stock issued at closing: (a) the average closing price of Pumatech's common stock during the 30-day trading period ending on the last trading day immediately preceding the merger closing date, and (b) the total amount of transaction costs incurred (See

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**Table of Contents****NOTES TO UNAUDITED PRO FORMA COMBINED CONDENSED****FINANCIAL STATEMENTS (Continued)**

Note 6). The final purchase price will be determined upon completion of the merger. The estimated total purchase price of the proposed Synchrologic merger is as follows (in thousands):

Value of Pumatech common stock to be issued	\$ 64,684
Value of Pumatech options to be issued	4,283
Estimated direct merger costs	650
	<hr/>
Total estimated purchase price	\$ 69,617
	<hr/>

Under the purchase method of accounting, the total estimated purchase price is allocated to Synchrologic's net tangible and intangible assets based upon their estimated fair value as of the date of completion of the merger. Based upon the estimated purchase price and the preliminary valuation, the preliminary purchase price allocation, which is subject to change based on Pumatech's final analysis, is as follows (in thousands):

Tangible assets acquired	\$ 5,328
Liabilities assumed	(5,030)
Accrued restructuring charge	(645)
In-process research and development	2,422
Developed technology	10,493
Patents	1,320
Customer base	3,487
Goodwill	52,242
	<hr/>
	\$ 69,617
	<hr/>

The restructuring charges of \$645,000 relate primarily to severance related to a reduction in workforce, including two executives of Synchrologic and additional employees.

The allocation of purchase price was based on a preliminary valuation of assets to be acquired and liabilities to be assumed determined with the assistance of an independent appraiser. This allocation was generally based on the fair value of these assets determined using the income approach.

A preliminary estimate of \$1,320,000 has been allocated to patents, an intangible asset with an estimated useful life of 54 months, and a preliminary estimate of \$10,493,000 has been allocated to developed technology, an intangible asset with an estimated useful life of 54 months. In addition, a preliminary estimate of \$3,487,000 has been allocated to customer base, an intangible asset with an estimated useful life of 54 months, and was valued using the relief from royalty method.

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As of the expected closing date of the merger, technological feasibility of the in-process technology had not been established and the technology had no alternative future use. Accordingly, Pumatech expects to expense the in-process research and development at the date of the merger.

The amount of the purchase price allocated to in-process research and technology was based on established valuation techniques used in the high-technology software industry. The fair value assigned to the acquired in-process research and development was determined using the income approach, which discounts expected future cash flows to present value. The key assumptions used in the valuation include, among others, expected completion date of the in-process projects identified as of the acquisition date, estimated costs to complete the projects, revenue contributions and expense projections assuming the resulting product has entered the market, and discount rate based on the risks associated with the development life cycle of the in-process technology acquired. The discount rate used in the present value calculations are normally obtained from a weighted-average

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**NOTES TO UNAUDITED PRO FORMA COMBINED CONDENSED**

**FINANCIAL STATEMENTS (Continued)**

cost of capital analysis, adjusted upward to account for the inherent uncertainties surrounding the successful development of the in-process research and development, the expected profitability levels of such technology, and the uncertainty of technological advances that could potentially impact the estimates. Pumatech assumes the pricing model for the resulting product of the acquired in process research and technology to be standard within its industry. Pumatech, however, did not take into consideration any consequential amount of expense reductions from integrating the acquired in-process technology with other existing in-process or completed technology. Therefore, the valuation assumptions do not include significant anticipated cost savings.

The key assumptions underlying the valuation of acquired in-process research and development from Synchrologic are as follows:

Project names: Version upgrade of Data Sync, File Sync, E-mail accelerator and Systems Management products

Percent completed as of acquisition date: 60%-70%

Estimated costs to complete technology at acquisition date: \$3,000,000

Risk-adjusted discount rate: 22%

First period expected revenue: calendar year 2004

The in-process research and development of \$2,422,000 is charged to operations on the acquisition date. The in-process research and development charge has not been included in the accompanying unaudited pro forma combined condensed statement of operations as it represents a non-recurring charge directly related to the acquisition.

A preliminary estimate of \$52,242,000 has been allocated to goodwill. Goodwill represents the excess of the purchase price over the fair value of the net tangible and intangible assets acquired. In accordance with Statement of Financial Accounting Standards No. 142, *Goodwill and Other Intangible Assets*, goodwill will not be amortized but will be tested for impairment at least annually. The preliminary purchase price allocation for Synchrologic is subject to revision as more detailed analysis is completed and additional information on the fair values of Synchrologic's assets and liabilities becomes available. Any change in the fair value of the net assets of Synchrologic will change the amount of the purchase price allocable to goodwill. Additionally, changes in the total purchase consideration will also change the amount of goodwill recorded. Final purchase accounting adjustments may therefore differ materially from the pro forma adjustments presented here.



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Other than the distribution agreement entered into by Pumatech and Synchrologic concurrently with their execution of the merger agreement, there were no historical transactions between Pumatech and Synchrologic.

The pro forma adjustments do not reflect any integration adjustments such as restructuring costs to be incurred in connection with the merger or operating efficiencies and cost savings that may be achieved with respect to the combined entity as these costs are not directly attributable to the merger agreement.

### **3. PURCHASE PRICE SPONTANEOUS TECHNOLOGY, INC.**

On September 17, 2003, Pumatech consummated the acquisition of substantially all of the assets of Spontaneous Technology, Inc. of Salt Lake City, Utah, a provider of enterprise secure Virtual Private Network (sVPN) software designed to extend existing corporate applications to most wireless devices. The following represents the preliminary allocation of the purchase price over the historical net book values of the acquired assets and assumed liabilities of Spontaneous Technology as of June 30, 2003, and is for illustrative purposes

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**NOTES TO UNAUDITED PRO FORMA COMBINED CONDENSED**

**FINANCIAL STATEMENTS (Continued)**

only. Actual fair values will be determined as more detailed analysis is completed and additional information on the fair values of Spontaneous Technology's assets and liabilities becomes available.

The unaudited pro forma combined condensed financial statements reflect an estimated purchase price of approximately \$3,851,000, consisting of (a) a total of 1,094,000 shares of Pumatech common stock valued at \$3,551,000 (using a fair value per share of \$3.25) and (b) estimated direct transaction costs of \$300,000. The preliminary fair market value of Pumatech's common stock issued in the acquisition was determined using the five-trading-day average price surrounding the date the acquisition was announced of \$3.25 per share, less estimated registration costs. The number of shares of Pumatech common stock issued was determined using the average price of Pumatech's common stock for ten consecutive trading days ended three business days prior to the date of acquisition. Additionally, depending upon Pumatech's revenues associated with sales of Pumatech's products, including certain technology of Spontaneous Technology, during the period ending September 30, 2004, Pumatech may be required to issue additional shares of Pumatech common stock to Spontaneous Technology having a value of up to \$7,000,000. The unaudited pro forma combined condensed financial statements do not reflect any of this contingent consideration. The final purchase price will be determined at the end of the period ending September 30, 2004 based on the following terms included in the acquisition agreement:

The number of shares to be issued, or the adjusted earnout amount, is the lesser of:

- (a) incremental earnout revenue minus incremental seller royalties, and
- (b) \$7,000,000 minus incremental seller royalties.

The incremental earnout revenue is the greater of:

- (a) four times the sum of the following revenue during the six months ending September 30, 2004:
  - (1) 100% of the revenue derived from licensing or selling Spontaneous Technology's products;
  - (2) 100% of the revenue derived from licensing or selling Spontaneous Technology's product features based exclusively upon its intellectual property that are offered as optional add-on functionality for Pumatech's products and for which a stated additional fee is charged;
  - (3) 20% of the total revenue derived from licensing or selling of products that incorporate both Pumatech's and Spontaneous Technology's intellectual property but for which no separate customer pricing exists for the portion of the product based on Spontaneous Technology's intellectual property;

and,

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(b) eight times the sum of revenue (1), (2) and (3), as described above, during the three months ending September 30, 2004.

The incremental seller royalties is the aggregate amount of royalties paid or payable by Pumatech to third parties for third-party technology included in Spontaneous Technology's products during the one-year period following the date of the acquisition.

Pumatech did not acquire certain assets nor assume certain liabilities pursuant to the acquisition agreement.

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**Table of Contents****NOTES TO UNAUDITED PRO FORMA COMBINED CONDENSED****FINANCIAL STATEMENTS (Continued)**

Under the purchase method of accounting, the total estimated purchase price was allocated to Spontaneous Technology's net tangible and intangible assets based upon their estimated fair value as of the acquisition date. Based upon the estimated purchase price of the acquisition and review of the net assets acquired and net liabilities assumed, the preliminary purchase price allocation, is as follows (in thousands):

Tangible assets acquired	\$ 372
Liabilities assumed	(1,497)
In-process research and development	469
Developed technology	889
Patents	168
Customer base	499
Goodwill	2,951
	<u>          </u>
	<u>\$ 3,851</u>

The allocation of purchase price was based on a preliminary valuation of assets to be acquired and liabilities to be assumed determined with the assistance of an independent appraiser. This allocation was generally based on the fair value of these assets determined using the income approach.

A preliminary estimate of \$168,000 has been allocated to patents, an intangible asset with an estimated useful life of 48 months, and a preliminary estimate of \$889,000 has been allocated to developed technology, an intangible asset with an estimated useful life of 48 months. In addition, a preliminary estimate of \$499,000 has been allocated to customer base, an intangible asset with an estimated useful life of 48 months, and was valued using the relief from royalty method.

As of the acquisition date, technological feasibility of the in-process technology had not been established and the technology had no alternative future use. Accordingly, Pumatech expensed the in-process research and development at the date of the acquisition.

The amount of the purchase price allocated to in-process research and technology was based on established valuation techniques used in the high-technology software industry. The fair value assigned to the acquired in-process research and development was determined using the income approach, which discounts expected future cash flows to present value. The key assumptions used in the valuation include, among others, expected completion date of the in-process projects identified as of the acquisition date, estimated costs to complete the projects, revenue contributions and expense projections assuming the resulting product has entered the market, and discount rate based on the risks associated with the development life cycle of the in-process technology acquired. The discount rate used in the present value calculations are normally obtained from a weighted-average cost of capital analysis, adjusted upward to account for the inherent uncertainties surrounding the successful development of the in-process research and development, the expected profitability levels of such technology, and the uncertainty of technological advances that could potentially impact the estimates. Pumatech assumes the pricing model for the resulting product of the acquired in process research and technology to be standard within its industry. Pumatech, however, did not take into consideration any consequential amount of expense reductions from integrating the acquired in-process technology with other existing in-process or completed technology. Therefore, the valuation assumptions do not include significant anticipated cost savings.

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The key assumptions underlying the valuation of acquired in-process research and development from Spontaneous Technology are as follows (in thousands):

Project names: Version upgrade of Spontaneous Technology's secure Virtual Private Network (sVPN)

Percent completed as of acquisition date: 60%

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**Table of Contents**

**NOTES TO UNAUDITED PRO FORMA COMBINED CONDENSED**

**FINANCIAL STATEMENTS (Continued)**

Estimated costs to complete technology at acquisition date: \$125,000

Risk-adjusted discount rate: 22%

First period expected revenue: calendar year 2004

The in-process research and development of \$469,000 is charged to operations on the acquisition date. The in-process research and development charge has not been included in the accompanying unaudited pro forma condensed combined statement of operations as it represents a non-recurring charge directly related to the acquisition.

A preliminary estimate of \$2,951,000 has been allocated to goodwill. Goodwill represents the excess of the purchase price over the fair value of the net tangible and intangible assets acquired. In accordance with Statement of Financial Accounting Standards No. 142, *Goodwill and Other Intangible Assets*, goodwill will not be amortized but will be tested for impairment at least annually. The preliminary purchase price allocation for Spontaneous Technology is subject to revision as more detailed analysis is completed and additional information on the fair values of Spontaneous Technology's assets and liabilities becomes available. Any change in the fair value of the net assets of Spontaneous Technology will change the amount of the purchase price allocable to goodwill. Final purchase accounting adjustments may therefore differ materially from the pro forma adjustments presented here.

There were no historical transactions between Pumatech and Spontaneous Technology.

**4. PURCHASE PRICE STARFISH SOFTWARE, INC.**

On March 27, 2003, Pumatech acquired Starfish Software, Inc. for a purchase price of approximately \$1.8 million for the Starfish common stock outstanding upon the effective date of the acquisition.

The unaudited pro forma combined condensed statement of operations for the year ended July 31, 2003 is presented as if the transaction had been consummated on August 1, 2002. The unaudited pro forma combined statement of operations for the year ended July 31, 2003 combines the results of operations of Pumatech for the year ended July 31, 2003 and Starfish Software's results of operations for the eight months ended February 28, 2003. Since the acquisition took place on March 27, 2003, four months of Starfish Software results are included in the consolidated Pumatech results for the year ended July 31, 2003.

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The unaudited pro forma combined condensed financial statements reflect an estimated purchase price of approximately \$1.8 million. Under the terms of the stock purchase agreement, Pumatech initially paid a total of \$1,501,000 in cash, subject to further adjustment based on actual working capital as of the closing date. Pumatech further paid \$178,000 based on subsequent adjustments made to Starfish Software's working capital.

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**Table of Contents****NOTES TO UNAUDITED PRO FORMA COMBINED CONDENSED****FINANCIAL STATEMENTS (Continued)**

The Starfish Software acquisition has been accounted for as a purchase business combination. The purchase price of \$1,831,000 (including acquisition costs of \$152,000) was assigned to the fair value of the assets acquired, including the following (in thousands):

Tangible assets acquired	\$ 1,133
Liabilities assumed	(986)
In-process research and development	406
Developed technology	675
Patents	202
Trademarks	52
Customer base	278
Existing contracts	71
	<hr/>
	\$ 1,831
	<hr/>

The allocation of purchase price was based on the valuation of assets acquired and liabilities assumed determined with the assistance of an independent appraiser. This allocation was generally based on the fair value of these assets determined using the income approach.

Of the total purchase price, \$1,278,000 was allocated to amortizable intangibles included in the above list. The amortizable intangible assets are being amortized using the straight-line method over the estimated useful life of the respective assets of nine months to four years.

As of the acquisition date, technological feasibility of the in-process technology had not been established and the technology had no alternative future use. Accordingly, Pumatech expensed the in-process research and development at the date of the acquisition.

The amount of the purchase price allocated to in-process research and technology was based on established valuation techniques used in the high-technology software industry. The fair value assigned to the acquired in-process research and development was determined using the income approach, which discounts expected future cash flows to present value. The key assumptions used in the valuation include, among others, expected completion date of the in-process projects identified as of the acquisition date, estimated costs to complete the projects, revenue contributions and expense projections assuming the resulting product have entered the market, and discount rate based on the risks associated with the development life cycle of the in-process technology acquired. The discount rate used in the present value calculations are normally obtained from a weighted-average cost of capital analysis, adjusted upward to account for the inherent uncertainties surrounding the successful development of the in-process research and development, the expected profitability levels of such technology, and the uncertainty of technological advances that could potentially impact the estimates. Pumatech assumes the pricing model for the resulting product of the acquired in-process research and technology to be standard within its industry. Pumatech, however, did not take into consideration any consequential amount of expense reductions from integrating the acquired in-process technology with other existing in-process or completed technology. Therefore, the valuation assumptions do not include significant anticipated cost savings.

The key assumptions underlying the valuation of acquired in-process research and development from Starfish Software are as follows:



Project name: Mercury platform technology

Percent completed as of acquisition date: 70%

Estimated costs to complete technology at acquisition date: \$375,000

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**Table of Contents**

**NOTES TO UNAUDITED PRO FORMA COMBINED CONDENSED**

**FINANCIAL STATEMENTS (Continued)**

Risk-adjusted discount rate: 30%

First period expected revenue: calendar year 2004

Subsequent to the acquisition of Starfish Software, there have been no significant developments related to the current status of the acquired in-process research and development project that would result in material changes to the assumptions.

The in-process research and development of \$406,000 is charged to operations on the acquisition date. The in-process research and development charge has not been included in the accompanying unaudited pro forma condensed combined statement of operations as it represents a non-recurring charge directly related to the acquisition.

There were no historical transactions between Pumatech and Starfish Software.

**5. PRO FORMA ADJUSTMENTS**

The accompanying unaudited pro forma combined condensed financial statements have been prepared assuming the transactions described above were completed on July 31, 2003 for balance sheet purposes and as of August 1, 2002 for statement of operations purposes.

The unaudited pro forma combined condensed balance sheet gives effect to the following pro forma adjustments:

- (a) Represents the recognition of the customer contract intangible asset of \$3,487,000, the patent intangible asset of \$1,320,000, developed technology intangible asset of \$10,493,000 and goodwill of \$52,242,000 created in the acquisition of Synchrologic.
- (b) Represents the elimination of existing goodwill (\$1,830,000) and other assets (\$252,000) and recognition of the customer contract intangible asset of \$499,000, the patent intangible asset of \$168,000, the developed technology asset of \$889,000 and goodwill of \$2,951,000 created in the acquisition of Spontaneous Technology.
- (c) Represents the following adjustments to accounts payable and accrued expenses (in thousands):

Accrual for Pumatech's Synchrologic transaction costs	\$ 650
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Accrual for Pumatech's Spontaneous Technology transaction costs	\$ 300
Accrual for Pumatech's restructuring costs	\$ 645
	<hr/>
Net change in accounts payable and accrued expenses	\$ 1,595
	<hr/>

- (d) Represents an adjustment to convert the historical convertible debt of Spontaneous Technology to preferred stock upon acquisition (\$2,250,000).
- (e) Represents the adjustment of Synchrologic's deferred revenue to estimated fair value.
- (f) Represents the adjustment of Spontaneous Technology's deferred revenue to estimated fair value and a write off of deferred revenue where no legal performance obligations exist post-closing, including amounts deferred under SOP 97-2.

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**Table of Contents****NOTES TO UNAUDITED PRO FORMA COMBINED CONDENSED****FINANCIAL STATEMENTS (Continued)**

(g) Represents the following adjustments to stockholders' equity (in thousands):

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	Total
Mandatorily redeemable convertible preferred stock	\$ (30,957)	\$ 2,250	\$ (40,893)	\$	\$	\$	\$	\$ (69,600)
Common stock	(4,705)		(28)	15	1			(4,717)
Additional paid-in capital	(151)		(14,283)	68,952	3,550			58,068
Treasury stock	2,293							2,293
Accumulated comprehensive income								
Accumulated deficit	33,368		55,547			(2,422)	(469)	86,024
<b>Total stockholders' equity</b>	<b>\$ (152)</b>	<b>\$ 2,250</b>	<b>\$ 343</b>	<b>\$ 68,967</b>	<b>\$ 3,551</b>	<b>\$ (2,422)</b>	<b>\$ (469)</b>	<b>\$ 72,068</b>

(1) To eliminate the historical stockholders' equity of Synchrologic.

(2) To convert the historical debt of Spontaneous Technology to preferred stock upon acquisition.

(3) To eliminate the historical shareholders' equity of Spontaneous Technology.

(4) Represents the estimated value of Pumatech's common stock and common stock options to be issued in the acquisition of Synchrologic, less expected registration costs.

(5) Represents the estimated value of Pumatech's common stock to be issued in the acquisition of Spontaneous Technology, less expected registration costs.

(6) Represents the elimination of in-process research and development on the acquisition of Synchrologic of \$2,422,000.

(7) Represents the elimination of in-process research and development on the acquisition of Spontaneous Technology of \$469,000.

The unaudited pro forma combined condensed statement of operations give effect to the following pro forma adjustments:

(h) Represents (i) the amortization of the Synchrologic customer contract intangible resulting from the proposed acquisition, over an estimated useful life of 54 months, (ii) the amortization of the Synchrologic patent intangible resulting from the proposed acquisition, over an estimated useful life of 54 months, and (iii) the amortization of the Synchrologic developed technology intangible resulting from the proposed acquisition, over an estimated useful life of 54 months.

(i) Represents (i) the amortization of the Spontaneous Technology customer contract intangible resulting from the proposed acquisition, over an estimated useful life of 48 months, (ii) the amortization of the Spontaneous Technology patent intangible resulting from the proposed acquisition, over an estimated useful life of 48 months, and (iii) the amortization of the Synchrologic developed technology intangible resulting from the proposed acquisition, over an estimated useful life of 48 months.

(j) Represents the amortization of the Starfish Software customer contract, trademark, developed technology and patent intangible assets resulting from the acquisition. The weighted average life of amortizable intangible assets approximates 4 years.

(k) To reflect the elimination of in-process research and development arising on the acquisition of Starfish Software.

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- (l) To reflect the decrease in interest income related to the cash payment for the acquisition of Starfish Software of \$1.7 million.

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**Table of Contents****NOTES TO UNAUDITED PRO FORMA COMBINED CONDENSED CONSOLIDATED****FINANCIAL STATEMENTS (Continued)**

- (m) Represents the shares of Pumatech common stock associated with the Synchrologic merger and the acquisition of Spontaneous Technology as described above as if they were outstanding as of August 1, 2002 as follows (in thousands):

Common stock issued in connection with Synchrologic merger	16,200
Common stock issued in connection with Spontaneous Technology acquisition	1,094
	<u>17,094</u>

**6. SENSITIVITY ANALYSIS**

The transactions presented above are based on assumptions that are reasonable as of the date of this joint proxy statement/prospectus, namely Pumatech will issue 15,170,000 shares of common stock, at a fair value of \$4.26 per share, as equity consideration to be paid by Pumatech in connection with the Synchrologic merger in addition to options to purchase approximately 1,030,000 shares of Pumatech's common stock. The actual number of shares of Pumatech common stock to be issued in the merger will be determined by dividing \$60,000,000 by the average closing price of the shares of Pumatech common stock for the thirty consecutive trading days ending on the last complete trading day immediately preceding the closing date of the merger (which amount is subject to adjustment based on the transaction expenses incurred by Synchrologic in connection with the merger), provided that the number of shares of Pumatech common stock shares shall not exceed 19,800,000 or be fewer than 16,200,000 (in each case subject to adjustment based on the transaction expenses incurred by Synchrologic in connection with the merger).

To assist in evaluating the effects of the transaction described above and its effect on Pumatech's on-going statements of operations, the following information is presented.

Pumatech has assumed in the accompanying unaudited pro forma combined condensed financial statements that 15,170,000 shares of the Pumatech common stock (or approximately 24% of Pumatech's fully-diluted capital stock as of closing) are issued in connection with the Synchrologic merger based on providing \$60,000,000 of equity consideration.

The following represents how changes in the fair value of Pumatech common stock at the time of the closing of the merger would impact intangible assets created in the merger and pro forma net loss per share for the year ended July 31, 2003 given the minimum and maximum limits on the number of shares to be issued:

<u>Number of shares of Pumatech common stock issued (1)</u>	<u>Synchrologic</u>	<u>Impact on</u>	<u>Pro forma net loss per</u>
	<u>post- merger share</u>	<u>intangible assets</u>	<u>share for the</u>
	<u>ownership</u>	<u>created in the</u>	<u>year ended July</u>
		<u>merger(2)</u>	<u>31,</u>
			<u>2003</u>

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		(in thousands)	
15,200,000	24.14%	\$	\$ (0.41)
15,700,000	24.74%	\$ 2,260	\$ (0.41)
16,200,000	25.33%	\$ 4,392	\$ (0.41)
16,700,000	25.91%	\$ 6,524	\$ (0.40)
17,200,000	26.48%	\$ 8,656	\$ (0.40)
17,700,000	27.04%	\$ 10,788	\$ (0.40)
18,200,000	27.60%	\$ 12,920	\$ (0.39)
18,700,000	28.14%	\$ 15,052	\$ (0.39)

(1) excludes shares issued in exchange for options

(2) based on the 5 day average of the share price at the time the acquisition was announced, \$4.26 per share

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**Independent Auditors Report**

The Board of Directors and Stockholders

Synchrologic, Inc.:

We have audited the accompanying consolidated balance sheets of Synchrologic, Inc. and subsidiaries as of December 31, 2002 and 2001, and the related consolidated statements of operations, stockholders' deficit and comprehensive loss, and cash flows for each of the years in the three-year period ended December 31, 2002. These consolidated financial statements are the responsibility of the company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Synchrologic, Inc. and subsidiaries at December 31, 2002 and 2001, and the results of their operations and their cash flows for each of the years in the three-year period ended December 31, 2002, in conformity with accounting principles generally accepted in the United States of America.

KPMG LLP

/s/ KPMG LLP

Atlanta, Georgia

February 21, 2003, except as to the first

and second paragraphs of note 11,

which are as of February 28, 2003

and April 1, 2003, respectively

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**Table of Contents****SYNCHROLOGIC, INC. AND SUBSIDIARIES****Consolidated Balance Sheets****December 31, 2002 and 2001**

	<u>2002</u>	<u>2001</u>
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 3,204,263	\$ 5,992,876
Accounts receivable, net of allowance for doubtful accounts of \$498,188 and \$358,602 in 2002 and 2001, respectively	2,157,350	2,124,267
Prepaid expenses	108,319	114,188
Other current assets	54,486	62,772
Total current assets	<u>5,524,418</u>	<u>8,294,103</u>
Property and equipment, net	449,762	1,013,617
Total assets	<u>\$ 5,974,180</u>	<u>\$ 9,307,720</u>
<b>Liabilities, Mandatorily Redeemable Securities and Stockholders Deficit</b>		
Current liabilities:		
Note payable to bank	\$ 817,000	\$
Current portion of term loan payable to bank	767,536	
Accounts payable	116,759	648,684
Accrued salaries and wages	552,526	296,108
Other accrued expenses	577,469	383,841
Deferred revenue	1,400,820	1,189,543
Total current liabilities	<u>4,232,110</u>	<u>2,518,176</u>
Term loan payable to bank, excluding current portion	934,040	
Total liabilities	<u>5,166,150</u>	<u>2,518,176</u>
Mandatorily redeemable securities, no par value; authorized 14,000,000 shares:		
Series A convertible preferred stock, redeemable; authorized 1,000,000 shares; issued and outstanding 797,872 shares; aggregate liquidation preference of \$750,000	743,508	741,073
Series B convertible preferred stock, redeemable; authorized 3,000,000 shares; issued and outstanding 2,058,333 shares; aggregate liquidation preference of \$2,470,000	2,465,700	2,464,088
Series C convertible preferred stock, redeemable; authorized 3,000,000 shares; issued and outstanding 2,793,296 shares; aggregate liquidation preference of \$6,500,000	6,488,707	6,484,473
Series D convertible preferred stock, redeemable; authorized 4,000,000 shares; issued and outstanding 3,308,271 shares; aggregate liquidation preference of \$27,133,000	21,082,887	20,738,979
Total mandatorily redeemable securities	<u>30,780,802</u>	<u>30,428,613</u>
Stockholders deficit:		
Common stock, no par value; authorized 20,000,000 shares; 4,858,124 shares issued; 4,093,722 and 4,858,124 shares outstanding at December 31, 2002 and 2001, respectively	4,690,619	4,690,619

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Additional paid-in capital	326,898	567,444
Accumulated deficit, including accumulated other comprehensive loss of \$118,652 and \$57,753 in 2002 and 2001, respectively	(32,697,083)	(26,361,327)
Treasury stock, at cost; 764,402 shares	(2,293,206)	
Stock subscription receivable		(2,535,805)
	<hr/>	<hr/>
Total stockholders' deficit	(29,972,772)	(23,639,069)
Commitments and contingencies (notes 7 and 8)		
	<hr/>	<hr/>
Total liabilities, mandatorily redeemable securities and stockholders' deficit	\$ 5,974,180	\$ 9,307,720
	<hr/>	<hr/>

See accompanying notes to consolidated financial statements.

**Table of Contents****SYNCHROLOGIC, INC. AND SUBSIDIARIES****Consolidated Statements of Operations****Years ended December 31, 2002, 2001, and 2000**

	<u>2002</u>	<u>2001</u>	<u>2000</u>
<b>Revenues:</b>			
Software license fees	\$ 5,516,856	\$ 5,366,123	\$ 3,936,823
Services fees	4,493,882	1,893,529	1,423,536
	<u>10,010,738</u>	<u>7,259,652</u>	<u>5,360,359</u>
<b>Costs of revenues:</b>			
Software license fees	49,583	51,366	49,797
Services fees	3,370,438	2,802,323	1,864,389
	<u>3,420,021</u>	<u>2,853,689</u>	<u>1,914,186</u>
<b>Gross profit</b>	<u>6,590,717</u>	<u>4,405,963</u>	<u>3,446,173</u>
<b>Operating expenses:</b>			
Research and development	5,448,085	6,427,854	4,680,920
Sales and marketing	5,070,326	7,115,106	5,016,647
General and administrative	2,213,376	1,709,015	1,474,556
	<u>12,731,787</u>	<u>15,251,975</u>	<u>11,172,123</u>
<b>Loss from operations</b>	<u>(6,141,070)</u>	<u>(10,846,012)</u>	<u>(7,725,950)</u>
Interest expense	(179,454)	(637)	(245,131)
Interest income	45,667	458,489	466,451
	<u>(6,274,857)</u>	<u>(10,388,160)</u>	<u>(7,504,630)</u>
Deemed dividends on preferred stock	(352,189)	(352,189)	(122,916)
<b>Net loss attributable to common stockholders</b>	<u>\$ (6,627,046)</u>	<u>\$ (10,740,349)</u>	<u>\$ (7,627,546)</u>
<b>Basic and diluted net loss per share attributable to common stockholders</b>	<u>\$ (1.52)</u>	<u>\$ (2.22)</u>	<u>\$ (1.81)</u>
<b>Weighted average outstanding common shares used in computing basic and diluted net loss per share attributable to common stockholders</b>	<u>4,372,258</u>	<u>4,838,227</u>	<u>4,208,817</u>

See accompanying notes to consolidated financial statements.



**Table of Contents****SYNCHROLOGIC, INC. AND SUBSIDIARIES****Consolidated Statements of Stockholders Deficit and Comprehensive Loss****Years ended December 31, 2002, 2001, and 2000**

	<u>Common stock</u>		<u>Additional paid-in capital</u>	<u>Accumulated deficit</u>	<u>Treasury stock</u>	<u>Stock subscription receivable</u>	<u>Stockholders</u>
	<u>Shares</u>	<u>Amount</u>					<u>deficit and</u>
							<u>comprehensive loss</u>
Balance at December 31, 1999	3,149,376	\$ 337,484	\$ 8,282	\$ (8,410,784)	\$	\$	\$ (8,065,018)
Net loss				(7,504,630)			(7,504,630)
Currency translation adjustment				1,187			1,187
Comprehensive loss							(7,503,443)
Common stock issued from sale and exercise of stock options	569,865	985,066					985,066
Common stock issued to officer for stock subscription receivable	1,117,203	3,351,609				(3,351,609)	
Payments on stock subscription receivable						1,080,085	1,080,085
Interest on stock subscription receivable			111,751			(111,751)	
Warrants issued to acquire 45,112 common shares in connection with the issuance of 11% debentures			204,141				204,141
Warrants to acquire 153,383 common shares issued to placement agent in connection with Series D preferred stock financing			565,845				565,845
Accretion of preferred stock issue costs			(122,916)				(122,916)
Balance at December 31, 2000	4,836,444	4,674,159	767,103	(15,914,227)		(2,383,275)	(12,856,240)
Net loss				(10,388,160)			(10,388,160)
Currency translation adjustment				(58,940)			(58,940)
Comprehensive loss							(10,447,100)
Common stock issued from exercise of stock options	21,680	16,460					16,460
Accretion of preferred stock issue costs			(352,189)				(352,189)
Interest on stock subscription receivable			152,530			(152,530)	

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Balance at December 31, 2001	4,858,124	4,690,619	567,444	(26,361,327)		(2,535,805)	(23,639,069)
Net loss				(6,274,857)			(6,274,857)
Currency translation adjustment				(60,899)			(60,899)
Comprehensive loss							(6,335,756)
Accretion of preferred stock issue costs			(352,189)				(352,189)
Interest on stock subscription receivable			56,901			(56,901)	
Common stock repurchased from officer and forgiveness of accrued interest on stock subscription receivable					(2,293,206)	2,592,706	299,500
Warrants to acquire 21,000 Series D preferred shares issued to bank under Credit Agreement			54,742				54,742
Balance at December 31, 2002	4,858,124	\$ 4,690,619	\$ 326,898	\$ (32,697,083)	\$ (2,293,206)	\$	\$ (29,972,772)

See accompanying notes to consolidated financial statements.

**Table of Contents****SYNCHROLOGIC, INC. AND SUBSIDIARIES****Consolidated Statements of Cash Flows****Years ended December 31, 2002, 2001, and 2000**

	<u>2002</u>	<u>2001</u>	<u>2000</u>
<b>Cash flows from operating activities:</b>			
Net loss	\$ (6,274,857)	\$ (10,388,160)	\$ (7,504,630)
<b>Adjustments to reconcile net loss to net cash used in operating activities:</b>			
Depreciation and amortization	632,090	577,156	326,422
Accretion of original issue discount to interest expense	54,334		204,141
Noncash interest expense on convertible debentures converted to Series D preferred stock			40,986
Provision for losses on accounts receivable	280,699	73,602	107,120
Interest forgiven on stock subscription receivable from officer	299,500		
Loss on disposal of property and equipment	24,600		
<b>Changes in operating assets and liabilities:</b>			
Accounts receivable	(313,782)	(830,138)	368,558
Prepaid expenses and other current assets	14,155	355,342	(342,381)
Accounts payable, accrued salaries and wages, and other accrued expenses	(81,879)	350,945	594,358
Deferred revenue	211,277	247,238	(619,845)
<b>Net cash used in operating activities</b>	<u>(5,153,863)</u>	<u>(9,614,015)</u>	<u>(6,825,271)</u>
<b>Cash flows from investing activities:</b>			
Purchase of property and equipment	(92,835)	(651,047)	(906,238)
<b>Net cash used in investing activities</b>	<u>(92,835)</u>	<u>(651,047)</u>	<u>(906,238)</u>
<b>Cash flows from financing activities:</b>			
Proceeds from term loan payable to bank, net of issue costs	1,647,242		
Increase in note payable to bank	817,000		
Proceeds from warrants issued	54,742		204,141
Proceeds from exercise of options and sale of common stock		16,460	985,066
Proceeds from issuance of convertible debentures			1,795,859
Payments on stock subscription receivable			1,080,085
Proceeds from issuance of Series D convertible preferred stock, net			18,805,296
<b>Net cash provided by financing activities</b>	<u>2,518,984</u>	<u>16,460</u>	<u>22,870,447</u>
<b>Effect of exchange rate changes on cash</b>	<u>(60,899)</u>	<u>(58,940)</u>	<u>1,187</u>
<b>Net increase (decrease) in cash and cash equivalents</b>	<u>(2,788,613)</u>	<u>(10,307,542)</u>	<u>15,140,125</u>
Cash and cash equivalents at beginning of year	5,992,876	16,300,418	1,160,293
<b>Cash and cash equivalents at end of year</b>	<u>\$ 3,204,263</u>	<u>\$ 5,992,876</u>	<u>\$ 16,300,418</u>

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Cash paid for interest expense	\$ 110,944	\$ 637	\$
Supplemental disclosures of noncash transactions:			
Accretion of preferred stock issue costs	\$ 352,189	\$ 352,189	\$ 122,916
Conversion of 11% convertible debentures and accrued interest into Series D convertible preferred stock			2,040,986
Warrants issued to placement agent for services rendered in Series D convertible preferred stock issuance			565,845
Common stock issued to officer for stock subscription receivable			3,351,609
Repurchase of common stock from officer in exchange for stock subscription receivable	2,293,206		

See accompanying notes to consolidated financial statements.

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**SYNCHROLOGIC, INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements**

**December 31, 2002, 2001 and 2000**

**(1) Summary of Significant Accounting Policies**

*(a) Business*

Synchrologic, Inc. and subsidiaries (the Company) develop, market, and support comprehensive mobile and wireless infrastructure software products that mobilize enterprise software applications, automate the delivery of documents and web sites and provide mobile systems management tools for laptop and handheld computing devices. The Company's products are designed to increase the productivity of mobile workers by giving them access to critical information wherever and whenever they need it and to lower costs of ownership of mobile computing devices by providing more efficient administration of the devices. The Company markets its products directly to business and governmental organizations, value-added resellers, and to software application vendors who integrate the Company's software into their products for license to end users on an original equipment manufacturer (OEM) basis.

*(b) Liquidity*

The financial statements have been prepared on a going-concern basis, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. During 2002, the Company incurred a net loss attributable to common stockholders of approximately \$6.6 million. Despite historical operating losses, the Company believes it is appropriate to prepare the financial statements on a going concern basis for the following reasons:

The Company achieved improved operating results during the latter part of 2002 and early 2003.

The Company had a cash balance of \$3,204,263 at December 31, 2002 and had availability on the revolving line of credit of approximately \$831,000 which management believes provide sufficient liquidity to fund cash needs in 2003, including operating losses, capital expenditures, and debt service requirements.

The Company was in compliance with its financial debt covenants, as amended (see note 3), as of December 31, 2002, and based on its forecasts, expects to be in compliance with its financial debt covenants during 2003. Additionally, based on its forecasts, the Company expects to have sufficient liquidity to meet all debt and capital expenditure requirements as they become due and payable.

Historically, the Company has funded its operating losses through the sale of redeemable convertible preferred stock (see note 4). The holders of such stock, if not converted, can require the Company to redeem the outstanding redeemable convertible preferred stock in August 2005. Management believes the Company has sufficient liquidity to meet its obligations through December 2003.

(c) *Principles of Consolidation*

The consolidated financial statements include the accounts of Synchrologic, Inc. and its wholly owned subsidiaries: Synchrologic Europe Limited, a United Kingdom limited corporation, Synchrologic Deutschland GmbH, and Synchrologic Italia Srl. All significant intercompany balances and transactions have been eliminated in consolidation.

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**SYNCHROLOGIC, INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements (Continued)**

**December 31, 2002, 2001 and 2000**

***(d) Use of Estimates***

The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent liabilities at the date of the consolidated financial statements and the reported amounts of revenue and expenses during the reporting periods. Actual results could differ from those estimates.

***(e) Revenue Recognition***

Software license fees consist of revenue derived from the licensing of software to business and governmental organizations and royalty fees from OEM s. The Company recognizes revenue in accordance with the American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 97-2, *Software Revenue Recognition*. For arrangements with multiple elements, and for which vendor specific objective evidence (VSOE) of fair value exists for the undelivered elements, revenue is recognized for the delivered elements based upon the residual method in accordance with SOP No. 98-9, *Modifications of SOP 97-2 with Respect to Certain Transactions*. License fees are recognized as revenue when the license agreement is signed, the license fees are fixed and determinable, delivery of the software has occurred, and collectibility of fees is considered probable. Revenue is deferred when an arrangement calls for future delivery of products or services for which the Company has not established VSOE to allocate a portion of the fee to the undelivered element. In such cases, revenue is recognized when the undelivered elements or services are delivered or performed. When undelivered elements consist of development services for features or functionality that are essential to the operation of the Company s software, associated fees are recognized using the percentage-of-completion method of accounting. Royalty revenue from OEM s is recognized when reported to the Company by the OEM s and all applicable revenue recognition criteria have been met. The Company often requires payment of a nonrefundable royalty fee in arrangements with OEM s. In such cases, revenue is recognized when the license agreement is signed, the license fees are fixed and determinable, delivery of the software has occurred, and collectibility of the fees is considered probable. Arrangements with OEM s which involve significant future obligations of the Company are generally recognized as such obligations are fulfilled and associated fees are earned and payable.

Services revenue consists of fees from professional services associated with the Company s software including maintenance, customer support, consulting, and training. Maintenance, which includes updates and upgrades of the Company s software, and customer support fees are recognized as revenue ratably over the period of the service agreement, which is generally one year in length. Revenue from consulting and training services are recognized as the services are performed. When arrangements with customers involve a combination of software and service elements, the associated elements are unbundled and fees are allocated to individual elements based upon VSOE of fair value and recognized as revenue in accordance with the practices set forth above.

Deferred revenue in the accompanying consolidated balance sheets represents payments received from customers or billings invoiced to customers in advance of revenue recognition.

*(f) Cash and Cash Equivalents*

The Company considers all highly liquid investment instruments with original maturities of three months or less when purchased to be cash equivalents.

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**SYNCHROLOGIC, INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements (Continued)**

**December 31, 2002, 2001 and 2000**

**(g) *Accounts Receivable***

Accounts receivable are presented net of the allowance for doubtful accounts. The Company makes judgments as to its ability to collect outstanding receivables and provides allowance for the receivables when collection becomes doubtful. Management considers the following when evaluating the adequacy of the allowance for doubtful accounts in any accounting period: historical bad debts, the age of the accounts receivable, customer creditworthiness, and current economic trends. Should any of these factors change, the estimates made by management will also change, which could impact the Company's future provision for doubtful accounts.

**(h) *Property and Equipment***

Property and equipment are stated at cost less accumulated depreciation and amortization. Depreciation and amortization is computed using the straight-line method over the estimated useful lives (two years for computer hardware and software, two to five years for furniture and fixtures and office equipment) of the related assets. Leasehold improvements are amortized over the shorter of the lease term or the estimated useful life of the asset.

**(i) *Research and Development and Software Development Costs***

Under the criteria set forth in Statement of Financial Accounting Standards (SFAS) No. 86, *Accounting for the Costs of Computer Software to be Sold, Leased, or Otherwise Marketed*, capitalization of software development costs begins upon the establishment of technological feasibility of the product. Establishing technological feasibility, and the ongoing assessment of the recoverability of these costs, requires considerable judgment by management with respect to certain external factors, including, but not limited to, anticipated future gross product revenue, estimated economic life, and changes in software and hardware technology. To date, research and development costs incurred subsequent to establishing technological feasibility of the Company's software products have not been material. Accordingly, the Company has expensed all research and development costs as incurred.

**(j) *Income Taxes***

Income taxes are accounted for under the asset and liability method. Deferred income tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred income tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred income tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date.

*(k) Stock-Based Compensation*

The Company applies the intrinsic value-based method of accounting prescribed by Accounting Principles Board (APB) Opinion No. 25, *Accounting for Stock Issued to Employees*, and related interpretations including Financial Accounting Standards Board (FASB) Interpretation No. 44, *Accounting for Certain Transactions Involving Stock-Based Compensation an Interpretation of APB Opinion No. 25*, to account for its fixed-plan stock options. Under this method, compensation expense

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**Table of Contents****SYNCHROLOGIC, INC. AND SUBSIDIARIES****Notes to Consolidated Financial Statements (Continued)****December 31, 2002, 2001 and 2000**

is recorded on the date of grant only if the current market price of the underlying stock exceeds the exercise price. SFAS No. 123, *Accounting for Stock-Based Compensation*, established accounting and disclosure requirements using a fair value-based method of accounting for stock-based employee compensation plans. As allowed by SFAS No. 123, the Company has elected to continue to apply the intrinsic value-based method of accounting described above, and has adopted the disclosure requirements of SFAS No. 123.

In December 2002, the FASB issued SFAS No. 148, *Accounting for Stock-Based Compensation - Transition and Disclosure, an amendment of FASB Statement No. 123*. This statement amends SFAS No. 123, *Accounting for Stock-Based Compensation*, to provide alternative methods of transition for a voluntary change to the fair value method of accounting for stock-based employee compensation. In addition, this statement amends the disclosure requirements of SFAS No. 123 to require prominent disclosures in both annual and interim financial statements. Certain disclosure modifications are required for fiscal years ending after December 15, 2002 and are included in these notes to consolidated financial statements.

As permitted by SFAS No. 123, the Company applies the provisions of APB Opinion No. 25 in accounting for its stock option plans and, accordingly, no additional compensation cost has been recognized for its stock options in the accompanying consolidated financial statements. Had the Company determined compensation cost based on the fair value of the stock options at the grant date, the Company's pro forma net loss and pro forma net loss per share attributable to common stockholders for the years ended December 31, 2002, 2001, and 2000 would have been as follows:

	<u>2002</u>	<u>2001</u>	<u>2000</u>
Historical net loss attributable to common stockholders	\$ (6,627,046)	(10,740,349)	(7,627,546)
Deduct:			
Total stock-based compensation expense determined under fair value based method for all awards	(58,000)	(1,111,000)	(677,000)
Pro forma net loss attributable to common stockholders	<u>\$ (6,685,046)</u>	<u>(11,851,349)</u>	<u>(8,304,546)</u>
Reported basic and diluted net loss per share attributable to common stockholders	\$ (1.52)	(2.22)	(1.81)
Pro forma basic and diluted net loss per share attributable to common stockholders	\$ (1.53)	(2.45)	(1.97)

During 2002, the Company granted options to acquire 44,500 shares of common stock to employees and directors at exercise prices equal to the fair value of the shares at the date of grant. The per share weighted average fair value of options granted during 2002 was \$3.03 per option on the date of grant using the Black-Scholes option pricing model with the following weighted average assumptions: weighted average fair value of \$4.28 per common share, expected dividend yield 0%, expected volatility 100%, risk-free interest rate of 4.10%, and an expected option life of

four years.

During 2001, the Company granted options to acquire 690,000 shares of common stock to employees and directors at exercise prices equal to the fair value of the shares at the date of grant. The per share weighted average fair value of options granted during 2001 was \$3.57 per option on the date of grant using the Black-Scholes option pricing model with the following weighted average

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that holder previously gives to the trustee written notice of a continuing event of default with respect to debt securities of that series;

the holders of not less than 25% in aggregate principal amount or issue price of the outstanding debt securities of that series also shall have offered the trustee reasonable indemnity and made written request to the trustee to institute such proceeding as trustee;

the trustee shall not have received from the holders of a majority in principal amount or issue price of the outstanding debt securities of that series a direction inconsistent with such request; and

the trustee shall have failed to institute such proceeding within 60 days.

However, any holder of a debt security has the absolute right to institute suit for any defaulted payment after the due dates for payment under that debt security.

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We are required to furnish to the trustees annually a statement as to the performance of our obligations under the indentures and as to any default in such performance.

### **Modification and Waiver**

Each indenture may be modified and amended by us and the applicable trustee with the consent of holders of at least a majority in principal amount or issue price of each series of debt securities affected. However, without the consent of each holder of any debt security affected, we may not amend or modify any indenture to:

change the stated maturity date of the principal or any installment of principal or interest on, any debt security;

reduce the principal amount or the rate of interest on, or any premium payable upon the redemption of, any debt security;

reduce the amount of principal of an original issue discount security payable upon acceleration of its maturity;

change the place or currency of payment of principal of, or any premium or interest on, any debt security;

impair the right to institute suit for the enforcement of any payment or delivery on or with respect to any debt security;

in the case of the subordinated indenture, modify the subordination provisions in a manner adverse to the holders of the subordinated debt securities;

reduce the percentage in principal amount of debt securities of any series, the consent of whose holders is required to modify or amend the indenture or to waive compliance with certain provisions of the indenture; or

reduce the percentage in principal amount of debt securities of any series, the consent of whose holders is required to waive any past default.

From time to time we and the applicable trustee may, without the consent of the holders of the debt securities, waive or supplement each indenture for specified purposes, including, among other things:

evidencing the succession of another person to State Street;

adding to the covenants of State Street for the benefit of the holders of all or any series of debt securities or surrendering any right or power conferred on State Street in the indentures;

adding any additional events of default for the benefit of the holders of all or any series of debt securities and, under the subordinated indenture, adding additional defaults for the benefit of all or any series of subordinated debt securities;

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adding to, changing or eliminating any of the provisions of the indentures, provided that any such addition, change or elimination shall not apply to any outstanding debt securities nor modify the rights of any holder of any such outstanding debt securities, or shall become effective only when there is no debt security outstanding of any series created prior to the execution of the supplemental indenture that is entitled to the benefit of such provision;

curing ambiguities, defects or inconsistencies without materially and adversely affecting the holders of the debt securities; and

evidencing and providing for the acceptance of appointment under the indentures by a successor trustee with respect to the debt securities of one or more series and adding to or changing any of the provisions of the indentures as shall be necessary to provide for or facilitate the administration of the trusts under the indentures by more than one trustee.

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The holders of at least a majority in principal amount of the outstanding debt securities of any series may, with respect to that series, waive past defaults under the applicable indenture, except as described under Events of Default beginning on page 11.

### **Consolidation, Merger and Sale of Assets**

Unless otherwise indicated in the applicable prospectus supplement, we may consolidate or merge with or into any other corporation, and we may sell, lease or convey all or substantially all of our assets to any corporation, provided that:

the resulting corporation, if other than us, is a corporation organized and existing under the laws of the United States or any U.S. state and assumes all of our obligations on the debt securities under the indentures;

immediately after giving effect to such transaction, no default, and no event which, after notice or lapse of time or both, would become a default, shall have happened and be continuing under the subordinated indenture;

immediately after giving effect to such transaction, no event of default, and no event which, after notice or lapse of time or both, would become an event of default, shall have happened and be continuing under the senior indenture; and

specified other conditions are met.

### **Regarding the Trustees**

U.S. Bank National Association is the trustee under the senior indenture. Wells Fargo Bank, National Association is the trustee under the subordinated indenture. We and certain of our subsidiaries, including State Street Bank, maintain banking relations with the trustees in the ordinary course of business.

### **International Offering**

If specified in the applicable prospectus supplement, we may issue debt securities outside the United States. Such debt securities may be issued in bearer form and will be described in the applicable prospectus supplement. In connection with any offering outside the United States, we will designate paying agents, registrars or other agents with respect to the debt securities, as specified in the applicable prospectus supplement.

Debt securities issued outside the United States may be subject to certain selling restrictions that will be described in the applicable prospectus supplement. These debt securities may be listed on one or more foreign stock exchanges as described in the applicable prospectus supplement. Special United States tax and other considerations, if any, applicable to an offering outside the United States will be described in the applicable prospectus supplement.

### **Limitation Upon Disposition of Voting Stock or Assets of State Street Bank**

The senior indenture prohibits us and State Street Bank, so long as any of the senior debt securities are outstanding, from selling or otherwise disposing of, or granting a security interest in or permitting the issuance of, any voting stock or any security convertible or exercisable into voting stock of State Street Bank or any of our subsidiaries that owns voting stock, or any security convertible or exercisable into voting stock, of State Street Bank.

This restriction does not apply to dispositions made by us or any subsidiary:

if such disposition or issuance is for fair market value as determined by our board of directors; and

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if after giving effect to such disposition or issuance and any potential dilution, we and our wholly-owned subsidiaries will own directly not less than 80% of the voting stock of State Street Bank or any subsidiary that owns State Street Bank.

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The subordinated indenture does not contain a similar restriction on our ability to engage in or permit such transactions to occur.

### **Defeasance**

If the prospectus supplement relating to the debt securities of a series so specifies, we may, at our option and at any time, elect to have all of the obligations discharged with respect to the outstanding debt securities of a particular series, except for:

the rights of holders of debt securities to receive payments of principal and interest from the trust referred to below when those payments are due;

our obligations respecting the debt securities concerning issuing temporary debt securities, registration of transfers of debt securities, mutilated, destroyed, lost or stolen debt securities, the maintenance of an office or agency for payment and money for payments with respect to the debt securities being held in trust;

the rights, powers, trusts, duties and immunities of the trustee; and

the provisions of the indenture relating to such a discharge of obligations.

A discharge of this type is referred to as legal defeasance.

In addition, other than our covenant to pay the amounts due and owing with respect to the debt securities of a particular series, we may elect to have our obligations as the issuer of debt securities of any series released with respect to covenants relating to the debt securities of such series. Thereafter, any failure to comply with those obligations will not constitute a default or event of default with respect to the debt securities of such series. If such a release of our covenants occurs, our failure to perform or a breach of the covenants or warranties defeased will no longer constitute an event of default with respect to those debt securities. A discharge of this type is referred to as covenant defeasance.

To exercise either a legal defeasance or a covenant defeasance, certain conditions must be met, including, among other things:

we shall have deposited irrevocably with the trustee as trust funds in trust, in each case, in an amount, in U.S. dollars or U.S. government obligations, which through the payment of interest, principal or premium, if any, in respect thereof in accordance with their terms, will provide an amount sufficient to pay the entire amount of the debt securities;

an opinion of independent counsel shall have been delivered to the trustee to the effect that the holders of the debt securities of such series will have no federal income tax consequences as a result of such deposit and termination;

no event of default under the senior indenture or default under the subordinated indenture may exist or be caused by the defeasance; and

the defeasance shall not cause an event of default under any of our other agreements or instruments.

### **Subordinated Debt Securities**

The subordinated debt securities will be our direct, unsecured obligations. Unless otherwise specified in the applicable prospectus supplement, the subordinated debt securities will rank equally with all of our outstanding subordinated indebtedness that is not specifically stated to be junior to the subordinated debt securities.



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**Subordination**

The subordinated debt securities will be subordinated in right of payment to all senior indebtedness (as defined below). In certain events of insolvency, payments on the subordinated debt securities will also be effectively subordinated in right of payment to all other financial obligations (as defined below). In certain circumstances relating to our liquidation, dissolution, winding up, reorganization, insolvency or similar proceedings, the holders of all senior indebtedness will first be entitled to receive payment in full before the holders of the subordinated debt securities will be entitled to receive any payment on the subordinated debt securities. If, after all payments have been made to the holders of senior indebtedness, (A) there are amounts available for payment on the subordinated debt securities and (B) any person entitled to payment according to the terms of our other financial obligations has not received full payment, then amounts available for payments on the subordinated debt securities will first be used to pay in full such other financial obligations before any payment may be made on the subordinated debt securities.

In the event of the acceleration of the maturity of any debt securities, all senior indebtedness and other financial obligations will have to be repaid before any payment can be made on the subordinated debt securities.

In addition, no payment may be made on the subordinated debt securities in the event:

there is a default in any payment or delivery with respect to any senior indebtedness; or

there is an event of default with respect to any senior indebtedness, that permits the holders of such senior indebtedness to accelerate the maturity of the senior indebtedness.

By reason of this subordination in favor of the holders of senior indebtedness, in the event of an insolvency, our creditors who are not holders of senior indebtedness or the subordinated debt securities may recover proportionately less than holders of senior indebtedness and may recover proportionately more than holders of the subordinated debt securities.

Unless otherwise specified in the prospectus supplement relating to the particular series of subordinated debt securities, senior indebtedness is defined in the subordinated indenture as the principal of, premium, if any, and interest on:

all of our indebtedness (as defined below), except (A) subordinated debt securities issued under the subordinated indenture, (B) indebtedness that is expressly stated to be junior in right of payment to the subordinated debt securities and (C) indebtedness that is expressly stated to rank equal with the subordinated debt securities; and

any deferrals, renewals or extensions of any senior indebtedness.

The term indebtedness means indebtedness, whether secured or unsecured, for which we or any corporation that succeeds to our business as permitted under the subordinated indenture, is liable directly or indirectly by guarantee, letter of credit, obligation to purchase or otherwise:

for borrowed money; or

incurred in connection with the acquisition by us of assets other than in the ordinary course of business.

Unless otherwise specified in the prospectus supplement relating to the particular series of subordinated debt securities offered thereby, other financial obligations means:



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our obligations under direct credit substitutes;

our obligations, or any obligation directly or indirectly guaranteed by us, for purchased money or funds;

any of our deferred obligations, or any such obligations directly or indirectly guaranteed by us, incurred in connection with the acquisition by us of assets; and

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all of our obligations to make payment pursuant to the terms of financial instruments, such as: (A) securities contracts and foreign currency exchange contracts; (B) derivative instruments, such as swap agreements, including interest rate and foreign exchange rate swap agreements, cap agreements, floor agreements, collar agreements, interest rate agreements, foreign exchange rate agreements, options, commodity futures contracts, commodity options contracts; and (C) similar financial instruments, other than obligations on account of senior indebtedness and obligations on account of indebtedness for money borrowed ranking equal with or subordinate to the subordinated debt securities.

The subordinated indenture does not limit or prohibit the incurrence by us or any of our subsidiaries, including State Street Bank, of additional senior indebtedness or other financial obligations, which may include indebtedness that is senior to the subordinated debt securities, but subordinate to our other obligations. Any prospectus supplement relating to a particular series of subordinated debt securities will set forth the aggregate amount of our indebtedness senior to the subordinated debt securities as of a recent date.

The subordinated debt securities shall rank equal in right of payment with each other.

The prospectus supplement may further describe the provisions, if any, which may apply to the subordination of the subordinated debt securities of a particular series.

**Restrictive Covenants**

The subordinated indenture does not contain any significant restrictive covenants. The prospectus supplement relating to a series of subordinated debt securities may describe certain restrictive covenants, if any, to which we may be bound under the subordinated indenture.

**Governing Law**

Both indentures are, and the senior debt securities and subordinated debt securities will be, governed by and construed in accordance with the laws of the State of New York.

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**DESCRIPTION OF THE TRUSTS**

Each of the trusts is a statutory trust formed under Delaware law pursuant to a trust agreement, signed by State Street, as depositor of each trust, and the property trustee, the Delaware trustee and the administrative trustees (each as defined below), and the filing of a certificate of trust with the Delaware Secretary of State. The trust agreement of each trust will be amended and restated in its entirety (each as so amended and restated, a trust agreement) prior to the issuance of capital securities by the trust, substantially in the form filed as an exhibit to the registration statement of which this prospectus forms a part. Each trust agreement will be qualified as an indenture under the Trust Indenture Act of 1939, as amended.

Each trust exists for the exclusive purposes of:

issuing the capital securities and common securities representing undivided beneficial interests in the assets of the trust;

investing the gross proceeds of the capital securities and the common securities (together, the trust securities) in junior subordinated debentures; and

engaging in only those activities necessary, convenient or incidental thereto.

All of the common securities will be directly or indirectly owned by us. The common securities of each trust will rank equally, and payments will be made pro rata with the capital securities of that trust, except that upon an event of default under the junior subordinated indenture, with respect to payment, the rights of the holders of the common securities to payment in respect of distributions and payments upon liquidation, redemption and otherwise will be subordinated to the rights of the holders of the capital securities. An event of default under the junior subordinated indenture is referred to as a debenture event of default.

Each trust's business and affairs will be conducted by its trustees, each appointed by State Street as holder of the common securities. The trustees of each trust will be U.S. Bank National Association, as the property trustee, U.S. Bank Trust National Association, as the Delaware trustee and two individual trustees, the administrative trustees, who are employees or officers of or affiliated with State Street. U.S. Bank National Association, as property trustee, will act as sole trustee under each trust agreement for purposes of compliance with the Trust Indenture Act. U.S. Bank National Association will also act as trustee under the guarantees and the junior subordinated indenture. See Description of the Capital Securities Guarantees and Description of the Junior Subordinated Debentures.

Unless a debenture event of default shall have occurred and be continuing, any trustee may be removed at any time by us. If a debenture event of default has occurred and is continuing, the property trustee and the Delaware trustee may be removed by the holders of a majority in liquidation amount of the outstanding capital securities. In no event will the holders of the capital securities have the right to vote to appoint, remove or replace the administrative trustees, which voting rights are vested exclusively in us. No resignation or removal of a trustee and no appointment of a successor trustee shall be effective until the acceptance of appointment by the successor trustee in accordance with the provisions of the applicable trust agreement.

Unless otherwise specified in the applicable prospectus supplement, each trust has a term of approximately 55 years, but may be terminated earlier as provided in the applicable trust agreement.

State Street will pay all fees and expenses related to the trusts and the offering of trust securities.

The principal executive office of each trust is c/o State Street Bank and Trust Company, N.A., Two World Financial Center, 225 Liberty Street, New York, New York 10281, telephone number (917) 790-4000.

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**DESCRIPTION OF THE JUNIOR SUBORDINATED DEBENTURES**

We may issue junior subordinated debentures from time to time in one or more series under a junior subordinated indenture, dated as of December 15, 1996, as supplemented from time to time between us and U.S. Bank National Association, as successor trustee, who we refer to as the debenture trustee. The junior subordinated indenture is qualified under the Trust Indenture Act, and terms of the junior subordinated debentures will include those stated in the junior subordinated indenture and those made part of the junior subordinated indenture by reference to the Trust Indenture Act.

Set forth below is a description of the general terms of the junior subordinated debentures in which the trusts will invest the proceeds from the issuance and sale of the trust securities. The particular terms of the junior subordinated debentures will be described in the prospectus supplement relating to the particular capital securities being offered. The following description is not intended to be complete and is qualified by the junior subordinated indenture, which is incorporated by reference as an exhibit to the registration statement which contains this prospectus, and the Trust Indenture Act.

**General**

We will issue the junior subordinated debentures as unsecured debt. The junior subordinated debentures will be fully subordinated as set forth in the junior subordinated indenture. See Subordination below. Each series of junior subordinated debentures will rank equally with all other series of junior subordinated debentures. The junior subordinated indenture does not limit the aggregate principal amount of junior subordinated debentures which may be issued and provides that the junior subordinated debentures may be issued from time to time in one or more series. We are a holding company and conduct substantially all of our operations through subsidiaries. As a result, claims of holders of the debt securities, including the junior subordinated debentures, will generally have a junior position to claims of creditors of our subsidiaries, except to the extent that we may be recognized as a creditor of those subsidiaries. In addition, our right to participate as a shareholder in any distribution of assets of any subsidiary (and thus the ability of holders of the debt securities, including the junior subordinated debentures, to benefit as our creditors from such distribution) is junior to creditors of that subsidiary. In addition, dividends, loans and advances from certain of our banking subsidiaries, including State Street Bank, to us and our non-banking subsidiaries are restricted by federal and state statutes and regulations. Except as otherwise provided in the applicable prospectus supplement, the junior subordinated indenture does not limit the incurrence or issuance by us of other secured or unsecured debt.

The prospectus supplement relating to the particular junior subordinated debentures being offered will describe the terms of those securities, which may include:

the title of the junior subordinated debentures;

any limit upon the aggregate principal amount of junior subordinated debentures;

the date or dates on which the principal of the junior subordinated debentures is payable or the method of determination thereof;

any fixed or variable interest rate or rates per annum;

any interest payment dates;

any provisions relating to the deferral of payment of any interest;

the place where the principal of and premium, if any, and interest on the junior subordinated debentures will be payable and where the junior subordinated debentures may be presented for registration of transfer or exchange;

any provisions for redemption, the redemption price and any remarketing arrangements;

the minimum denominations;

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whether the debt securities are denominated or payable in United States dollars or a foreign currency or units of two or more foreign currencies;

if other than the principal amount, the portion of the principal amount of the debt securities payable upon acceleration of the maturity of the debt securities;

any index used to determine the amount of payment of principal of, and any premium and interest on, the debt securities;

any additional or different events of default that apply to any debt securities of the series and any change in the right of the trustee or the required holders of those debt securities to declare the principal thereof due and payable;

any additional or different covenants that apply to any debt securities of the series;

any additions or changes to the junior subordinated indenture with respect to such junior subordinated debentures necessary to permit the issuance of the junior subordinated debentures in bearer form, registrable or not registrable as to principal, and with or without interest coupons;

the terms and conditions relating to the issuance of a temporary global security representing all of the junior subordinated debentures and the exchange of such temporary global security for definitive junior subordinated debentures;

whether the junior subordinated debentures will be issued in whole or in part in the form of one or more global securities and the depositary for any such global securities;

the appointment of any paying agent or agents;

the terms and conditions of any obligation or right of State Street or a holder to convert or exchange the junior subordinated debentures into capital securities; and

any other terms of the debt securities of that series.

Junior subordinated debentures may be sold at a substantial discount below their stated principal amount, bearing no interest or interest at a rate which at the time of issuance is below market rates. Material U.S. federal income tax consequences and special considerations applicable to any such junior subordinated debentures will be described in the applicable prospectus supplement.

If a prospectus supplement specifies that the junior subordinated debentures will be denominated in a currency or currency unit other than U.S. dollars, the prospectus supplement shall also specify the denomination in which the junior subordinated debentures will be issued and the coin or currency in which the principal, premium, if any, and interest, if any, on the junior subordinated debentures will be payable, which may be U.S. dollars based upon the exchange rate for such other currency or currency unit existing on or about the time a payment is due.

If any index is used to determine the amount of payments of principal of, premium, if any, or interest on any series of junior subordinated debentures, special U.S. federal income tax, accounting and other considerations will be described in the applicable prospectus supplement.

**Additional Interest**

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If, a trust is the holder of all the junior subordinated debentures, a tax event (as defined below) occurs and as a result of such event, a trust is required to pay any taxes, duties, assessments or governmental charges of whatever nature, other than withholding taxes, imposed by the United States, or any other taxing authority, then we will be required to pay additional interest on the junior subordinated debentures. The amount of any additional interest will be an amount sufficient so that the net amounts received and retained by the trust after paying any such taxes, duties, assessments or other governmental charges will be not less than the amounts that

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the trust would have received had no such taxes, duties, assessments or other governmental charges been imposed. This means that the trust generally will be in the same position it would have been in if it did not have to pay such taxes, duties, assessments or other charges.

### **Denominations, Registration and Transfer**

Unless otherwise indicated in the applicable prospectus supplement, we will issue the junior subordinated debentures in registered form only, without coupons. Junior subordinated debentures of any series will be exchangeable for other junior subordinated debentures of the same issue and series, of any authorized denominations, of a like principal amount, of the same original issue date and stated maturity and bearing the same interest rate.

Junior subordinated debentures may be presented for exchange as provided above, and may be presented for registration of transfer at the office of the appropriate securities registrar or at the office of any transfer agent designated by us for such purposes. No service charge will be made for any transfer or exchange of the junior subordinated debentures. However, we or the debenture trustee may require a holder to pay an amount sufficient to cover any tax or other governmental charge payable in connection with a transfer or exchange. We will appoint the debenture trustee as securities registrar under the junior subordinated indenture. If the applicable prospectus supplement refers to any transfer agents, in addition to the securities registrar, initially designated by us with respect to any series of junior subordinated debentures, we may at any time rescind the designation of any such transfer agent or approve a change in the location through which any such transfer agent acts, provided that we maintain a transfer agent in each place of payment of such series. We may at any time designate additional transfer agents with respect to any series of junior subordinated debentures.

In the event of any redemption, neither we nor the debenture trustee will be required to:

issue, register the transfer of, or exchange, junior subordinated debentures of any series during a period beginning at the opening of business 15 days before the day of selection for redemption and ending at the close of business on the day of mailing of notice of redemption; or

transfer or exchange any junior subordinated debentures so selected for redemption, except, in the case of any junior subordinated debentures being redeemed in part, any portion thereof not to be redeemed.

### **Payment and Paying Agents**

Unless otherwise indicated in the applicable prospectus supplement, we will pay principal and any premium and interest on junior subordinated debentures (other than those in global form) at the office of the debenture trustee in the city of New York or at the office of any paying agent that we may designate from time to time.

However, at our option, we may pay any interest by check mailed to the holders of registered junior subordinated debentures at their registered addresses or by transfer to an account maintained by a holder of registered junior subordinated debentures, as specified in the securities register. Unless otherwise indicated in the applicable prospectus supplement, payment of any interest on junior subordinated debentures will be made to the person in whose name the junior subordinated debentures are registered on the applicable record date, except in the case of defaulted interest. We may, at any time, designate additional paying agents or rescind the designation of any paying agent, provided that we at all times maintain a paying agent in each place of payment for each series of junior subordinated debentures.

Any amounts deposited with the debenture trustee or any paying agent, or then held by us in trust, for the payment of the principal of and premium, if any, or interest on any junior subordinated debentures and remaining unclaimed for two years after such amounts have become due and payable shall, at our request, be repaid to us, and the holder of the junior subordinated debenture will be able to look only to us for payment, as a general unsecured creditor.



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### **Option to Defer Interest Payments**

If provided in the applicable prospectus supplement, we will have the right from time to time during the term of any series of junior subordinated debentures to defer payment of interest for up to such number of consecutive interest payment periods as may be specified in the applicable prospectus supplement, subject to the terms, conditions and covenants, if any, specified in such prospectus supplement. Such deferral, however, may not extend beyond the stated maturity of such series of junior subordinated debentures. Certain U.S. federal income tax consequences and special considerations applicable to any such junior subordinated debentures will be described in the applicable prospectus supplement.

### **Redemption**

Unless otherwise indicated in the applicable prospectus supplement, the junior subordinated debentures will not be subject to any sinking fund.

Unless otherwise indicated in the applicable prospectus supplement, we may, at our option and subject to receipt of prior approval by The Board of Governors of the Federal Reserve System, or the Federal Reserve Board, if required, redeem the junior subordinated debentures of any series in whole at any time or in part from time to time. If the junior subordinated debentures of any series are so redeemable only on or after a specified date or upon the satisfaction of additional conditions, the applicable prospectus supplement will specify such date or describe such conditions. Except as otherwise specified in the applicable prospectus supplement, the redemption price for any junior subordinated debenture so redeemed will equal any accrued and unpaid interest thereon to the redemption date, plus 100% of the principal amount thereof.

Except as otherwise specified in the applicable prospectus supplement, if, in respect of a series of junior subordinated debentures, a tax event, an investment company event or capital treatment event (each as defined below) shall occur and be continuing, we may, at our option and subject to receipt of prior approval by the Federal Reserve Board, if required, redeem such series of junior subordinated debentures in whole, but not in part, at any time within 90 days following of the occurrence of such tax event, investment company event or capital treatment event, at a redemption price set forth in the applicable prospectus supplement.

Tax event means the receipt by the trust of an opinion of counsel experienced in such matters to the effect that, as a result of any amendment to, or change (including any announced proposed change) in, the laws (or any regulations thereunder) of the United States, or any political subdivision or taxing authority thereof or therein, or as a result of any official administrative pronouncement or judicial decision interpreting or applying such laws or regulations, which amendment or change is effective or which proposed change, pronouncement or decision is announced on or after the date of issuance of such capital securities, there is more than an insubstantial risk that (i) the trust is, or will be within 90 days of the date of such opinion, subject to U.S. federal income tax with respect to income received or accrued on the corresponding series of corresponding junior subordinated debentures, (ii) interest payable by State Street on such series of corresponding junior subordinated debentures is not, or within 90 days of the date of such opinion, will not be, deductible by State Street, in whole or in part, for U.S. federal income tax purposes, or (iii) such trust is, or will be within 90 days of the date of such opinion, subject to more than a de minimis amount of other taxes, duties or other governmental charges.

Investment company event means the receipt by the trust of an opinion of counsel experienced in such matters to the effect that, as a result of the occurrence of a change in law or regulation or a written change (including any announced prospective change) in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority, there is more than an insubstantial risk that the trust is or will be considered an investment company that is required to be registered under the Investment Company Act of 1940, as amended, which change or prospective change becomes effective or would become effective, as the case may be, on or after the date of the issuance of the capital securities.

Capital treatment event means our reasonable determination that, as a result of any amendment to, or change (including any proposed change) in, the laws (or any regulations thereunder) of the United States or any political

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subdivision thereof or therein, or as a result of any official or administrative pronouncement or action or judicial decision interpreting or applying such laws or regulations, which amendment or change is effective or which proposed change, pronouncement, action or decision is announced on or after the date of issuance of the applicable capital securities under the applicable trust agreement, there is more than an insubstantial risk that we will not be entitled to treat an amount equal to the liquidation amount of the applicable capital securities as Tier I Capital (or the then equivalent thereof) for purposes of the capital adequacy guidelines of the Federal Reserve Board, as then in effect and applicable to us.

Notice of any redemption will be mailed at least 30 days, but not more than 60 days, before the redemption date to each holder of junior subordinated debentures to be redeemed at its registered address. Unless we default in payment of the redemption price, on and after the redemption date, interest will cease to accrue on such junior subordinated debentures or portions thereof called for redemption.

**Restrictions on Certain Payments**

If junior subordinated debentures are issued to a trust or a trustee of a trust in connection with the issuance of trust securities by a trust and:

there shall have occurred any event that with the giving of notice or the lapse of time, or both, would constitute an event of default with respect to the junior subordinated debentures of which we have actual knowledge and which we have not taken reasonable steps to cure;

we shall be in default relating to our payment of any obligations under the guarantee; or

we shall have given notice of our election to defer payments of interest on the junior subordinated debentures by extending the interest payment period and such period, or any extension of such period, shall be continuing;

then:

we shall not declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any shares of our capital stock, other than:

- (1) repurchases, redemptions or other acquisitions of shares of our capital stock in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors or consultants, in connection with a dividend reinvestment or stockholder stock purchase plan or in connection with the issuance of our capital stock, or securities convertible into or exercisable for such capital stock, as consideration in an acquisition transaction entered into prior to the applicable extension period;
- (2) as a result of an exchange or conversion of any class or series of our capital stock or any capital stock of our subsidiaries, for any class or series of our capital stock, or of any class or series of our indebtedness for any class or series of our capital stock;
- (3) the purchase of fractional interests in shares of our capital stock pursuant to the conversion or exchange provisions of such capital stock or the security being converted or exchanged;
- (4) any declaration of a dividend in connection with any rights plan, or the issuance of rights, stock or other property under any rights plan, or the redemption or repurchase of rights pursuant thereto; or

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- (5) any dividend in the form of stock, warrants, options or other rights where the dividend stock or stock issuable upon exercise of such warrants, options or other rights is the same stock as that on which the dividend is being paid or ranks equally with or junior to such stock; and

we shall not make any payment of principal or premium, if any, or interest on or repay, repurchase or redeem any debt securities issued by us that rank equally in all respects with or junior to the junior subordinated debentures of such series.

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### **Limitation on Mergers and Sales of Assets**

The junior subordinated indenture provides that we may not consolidate with, or merge into, any other corporation or convey or transfer our properties and assets substantially as an entirety unless:

the successor entity is a corporation, partnership or trust organized and existing in the United States and expressly assumes our obligations under the junior subordinated indenture;

after giving effect thereto, no event of default and no event which, after notice or lapse of time, or both, would become an event of default, shall have happened and be continuing under the junior subordinated indenture;

such transaction is permitted under the related trust agreement and guarantee; and

certain other conditions as prescribed by the junior subordinated indenture are met.

The covenants contained in the indenture would not necessarily protect holders of the junior subordinated debentures in the event of a decline in credit quality resulting from takeovers, recapitalizations or similar restructurings.

### **Events of Default, Waiver and Notice**

The junior subordinated indenture provides that the following are events of default relating to the junior subordinated debentures:

default in the payment of the principal of, or premium, if any, on, any junior subordinated debentures at maturity;

default for 30 days in the payment of any installment of interest on any junior subordinated debentures;

default for 90 days after written notice in the performance of any other covenant or agreement in respect of the junior subordinated debentures; and

specified events of bankruptcy, insolvency or reorganization of State Street.

If an event of default (other than specified events of bankruptcy, insolvency or reorganization) under the junior subordinated indenture shall occur and be continuing, either the debenture trustee or the holders of not less than 25% in aggregate principal amount of the junior subordinated debentures of that series then outstanding may declare the principal of all junior subordinated debentures of that series to be due and payable immediately. If the holders of junior subordinated debentures fail to make such declaration, the holders of at least 25% in aggregate liquidation amount of the related capital securities shall have such right. If an event of default arising from specified events of bankruptcy, insolvency or reorganization shall occur, the principal amount of the junior subordinated debentures of that series then outstanding shall automatically become immediately due and payable.

Upon the cure of any event of default that has been declared, the holders of a majority of the aggregate outstanding principal amount of that series of junior subordinated debentures may annul the declaration and waive the default. If the holders of junior subordinated debentures fail to annul such declaration and waive such default, the holders of a majority of the aggregate liquidation amount of the related capital securities shall have such right.

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The holders of a majority of the aggregate outstanding principal amount of that series of junior subordinated debentures and, in the case of any related capital securities, the holders of a majority in aggregate liquidation amount, may waive any default, except (i) a default in payment of principal or interest (unless such default has been cured and a sum sufficient to pay all matured installments of interest and principal due other than by acceleration has been deposited with the debenture trustee) or (ii) a default in respect of a covenant or provision that under the junior subordinated indenture cannot be modified or amended without the consent of the holder of each outstanding junior subordinated debenture.

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The holders of a majority of the principal amount of the junior subordinated debentures of any series affected shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the debenture trustee under the junior subordinated indenture.

We are required to furnish to the debenture trustee annually a statement as to the performance of our obligations under the junior subordinated indenture and as to any default in such performance.

### **Distribution of the Junior Subordinated Debentures**

Under circumstances discussed more fully in the prospectus supplement involving the dissolution of a trust, provided that any required regulatory approval is obtained, junior subordinated debentures will be distributed to the holders of the trust securities in liquidation of that trust. See Description of the Capital Securities Liquidation Distribution upon Dissolution.

### **Modification of Junior Subordinated Indenture**

At any time and from time to time we and the debenture trustee may, without the consent of the holders of the junior subordinated debentures, waive or supplement the junior subordinated indenture for specified purposes, including, among other things:

evidencing the succession of another person to State Street;

conveying, transferring, assigning, mortgaging or pledging any property to or with the debenture trustee or surrendering any right or power conferred upon us in the junior subordinated indenture;

adding to the covenants of State Street for the benefit of other holders of all or any series of securities;

adding any additional events of default for the benefit of other holders of all or any series of securities;

changing or eliminating any of the provisions of the junior subordinated indenture, provided that any such change or elimination shall not apply to any outstanding securities, or shall become effective only when there is no security outstanding of any series created prior to the execution of the supplemental indenture that is entitled to the benefit of such provision;

curing ambiguities, defects or inconsistencies without materially and adversely affecting the holders of the junior subordinated debentures or the related capital securities;

evidencing and providing for the acceptance of appointment under the junior subordinated indenture by a successor trustee with respect to the securities of one or more series and adding to or changing any of the provisions of the junior subordinated indenture as shall be necessary to provide for or facilitate the administration of the trusts under the junior subordinated indenture by more than one trustee; and

qualifying the junior subordinated indenture under the Trust Indenture Act.

We and the debenture trustee may make modifications and amendments to the indenture with the consent of the holders of a majority in principal amount of the junior subordinated debentures of each series affected by such amendment at the time outstanding. However, no such modification or amendment may, without the consent of the holder of each junior subordinated debenture affected thereby:

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modify the payment terms of the junior subordinated debentures; or

reduce the percentage of holders of junior subordinated debentures necessary to modify or amend the indenture or waive compliance by us with any covenant or past default.

If the junior subordinated debentures are held by a trust or a trustee of a trust, no modification may be made that adversely affects the holders of the related capital securities, and no termination of the junior subordinated indenture may occur, and no waiver of any event of default or compliance with any covenant will be effective

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without the prior consent of a majority in liquidation amount of the capital securities of that trust. If the consent of the holder of each outstanding junior subordinated debenture is required, no modification shall be effective without the prior consent of each holder of related capital securities.

In addition, we and the debenture trustee may execute, without the consent of any holder of junior subordinated debentures, any supplemental junior subordinated indenture for the purpose of creating any new series of junior subordinated debentures.

### **Enforcement of Certain Rights by Holders of Capital Securities**

If an event of default with respect to a series of junior subordinated debentures has occurred and is continuing and such event of default is the result of our failure to pay interest or principal on the junior subordinated debentures when due, a holder of the related capital securities, to the fullest extent permitted by applicable law, may institute a legal proceeding directly against us for enforcement of payment to such holder of the principal of or interest on such corresponding junior subordinated debentures having a principal amount equal to the aggregate liquidation amount of the related capital securities. We may not amend the junior subordinated indenture to remove this right without the prior written consent of the holders of all of the related capital securities outstanding. If such right is removed, the applicable trust may become subject to reporting obligations under the Exchange Act. We will have the right under the junior subordinated indenture to set off against the corresponding junior subordinated debentures any payment made by us to such holder of capital securities in connection with any such direct action.

The holders of the capital securities will not be able to exercise directly any remedies other than those set forth in the preceding paragraph unless there shall have been an event of default under the applicable trust agreement. Please see Description of the Capital Securities Events of Default; Notice.

### **Defeasance and Discharge**

The junior subordinated indenture provides that when:

- (1) all junior subordinated debentures not previously delivered to the debenture trustee for cancellation have become due and payable, will become due and payable at their stated maturity within one year, or are to be called for redemption within one year under arrangements satisfactory to the trustee for the giving of notice of redemption by the trustee in our name and at our expense;
  - (2) we deposit with the debenture trustee, in trust, funds sufficient to pay all the principal of, and interest and premium, if any, on the junior subordinated debentures when such payments are due;
  - (3) we have paid all other sums payable under the indenture by us; and
  - (4) we have delivered to the debenture trustee an officers certificate and an opinion of counsel each stating that all conditions precedent in the indenture relating to the satisfaction and discharge of the indenture have been complied with,
- then the junior subordinated indenture will cease to be of further effect (except as to our obligations to pay all other sums due under the junior subordinated indenture and to provide the officers certificates and opinions of counsel described therein), and we will be deemed to have satisfied and discharged the junior subordinated indenture.

### **Conversion or Exchange**

The junior subordinated debentures may be convertible or exchangeable into junior subordinated debentures of another series or into capital securities of another series, on the terms provided in the applicable prospectus supplement. Such terms may include provisions for conversion or exchange, either mandatory, at the option of



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the holder, or at our option, in which case the number of shares of capital securities or other securities to be received by the holders of junior subordinated debentures would be calculated as of a time and in the manner stated in the applicable prospectus supplement.

**Subordination**

The junior subordinated indenture contains a covenant by us that any junior subordinated debentures issued thereunder will be subordinate and junior in right of payment to all senior debt (as defined below) to the extent provided therein. If we make any payment or distribution of our assets upon any liquidation, dissolution, winding up, reorganization, assignment for the benefit of creditors, marshaling of assets or any bankruptcy, insolvency, debt restructuring or similar proceedings in connection with any insolvency or bankruptcy proceeding, the holders of senior debt will first be entitled to receive payment in full of principal of and premium and interest, if any, on such senior debt before the holders of junior subordinated debentures will be entitled to receive or retain any payment in respect of the principal of and premium and interest, if any, on the junior subordinated debentures.

In the event of the acceleration of the maturity of any junior subordinated debentures, the holders of all senior debt outstanding at the time of such acceleration will first be entitled to receive payment in full of all amounts due thereon, including any amounts due upon acceleration, before the holders of the junior subordinated debentures will be entitled to receive or retain any payment in respect of the principal of or premium or interest, if any, on the junior subordinated debentures.

No payments on account of principal or premium, if any, or interest in respect of the junior subordinated debentures may be made if there shall have occurred and be continuing a default in any payment with respect to senior debt or an event of default with respect to any senior debt resulting in the acceleration of the maturity thereof, or if any judicial proceedings are pending with respect to any such default.

Debt means, with respect to any person, whether recourse as to all or a portion of the assets of such person and whether or not contingent:

every obligation of such person for money borrowed;

every obligation of such person evidenced by bonds, debentures, notes or other similar instruments, including obligations incurred in connection with the acquisition of property, assets or businesses;

every reimbursement obligation of such person with respect to letters of credit, bankers' acceptances or similar facilities issued for the account of such person;

every obligation of such person issued or assumed as the deferred purchase price of property or services other than trade accounts payable or accrued liabilities arising in the ordinary course of business;

every capital lease obligation of such person;

every obligation of such person for claims in respect of derivative products such as interest and foreign exchange rate contracts, commodity forward contracts, options and swaps and similar arrangements; and

every obligation of the type referred to above of another person and all dividends of another person the payment of which, in either case, such person has guaranteed or is responsible or liable for, directly or indirectly, as obligor or otherwise.

Senior debt means the principal of and premium, if any, and interest, including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to us whether or not such claim for post-petition interest is allowed in such proceeding, on debt, whether incurred on or prior to the date of the junior subordinated indenture or thereafter incurred, unless, in the instrument creating or evidencing the same or



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pursuant to which the same is outstanding, it is provided that such obligations are not superior in right of payment to the junior subordinated debentures or to other debt that is equal or subordinated to the junior subordinated debentures.

Senior debt does not include:

any debt of State Street that, when incurred and without respect to any election under Section 1111(b) of the United States Bankruptcy Code, as amended, was without recourse to State Street;

any debt of State Street to any of its subsidiaries;

any debt to any of our employees;

trade accounts payable;

accrued liabilities arising in the ordinary course of business; and

any other debt securities issued pursuant to the junior subordinated indenture.

The junior subordinated indenture places no limitation on the amount of senior debt that we may incur. We expect from time to time to incur additional indebtedness and other obligations constituting senior debt.

Under the junior subordinated indenture, any of the subordination provisions described above that relate to any particular issue of junior subordinated debentures may be changed prior to such issuance. Any such change would be described in the applicable prospectus supplement.

## **Governing Law**

The junior subordinated indenture and the junior subordinated debentures will be governed by, and construed in accordance with, the internal laws of the State of New York.

## **The Debenture Trustee**

The debenture trustee will have all of the duties and responsibilities specified under the Trust Indenture Act. Subject to those provisions, the debenture trustee is under no obligation to exercise any of the powers vested in it by the junior subordinated indenture at the request of any holder of junior subordinated debentures unless offered reasonable indemnity by such holder against the costs, expenses and liabilities that might be incurred thereby. The debenture trustee is not required to expend or risk its own funds or otherwise incur personal financial liability in the performance of its duties if the debenture trustee reasonably believes that repayment or adequate indemnity is not reasonably assured.

## **Corresponding Junior Subordinated Debentures**

State Street may issue one or more series of junior subordinated debentures under the junior subordinated indenture with terms corresponding to the terms of a series of related capital securities. In each such instance, concurrently with the issuance of each trust's capital securities, the trust will invest the proceeds thereof and the consideration paid by us for the trust's common securities in the series of corresponding junior subordinated debentures issued by us to such trust. Each series of corresponding junior subordinated debentures will be in the principal amount equal to the aggregate stated liquidation amount of the related capital securities and the common securities of the trust and will rank equally with all other series of junior subordinated debentures. Holders of the related capital securities for a series of corresponding junior subordinated debentures will have the rights, in connection with modifications to the junior subordinated indenture or upon occurrence of debenture events of default as described under [Modification of Junior Subordinated Indenture](#), [Events of Default, Waiver and Notice](#) and [Enforcement of Certain Rights by Holders of Capital Securities](#).



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We will covenant, as to each series of corresponding junior subordinated debentures:

- (1) to directly or indirectly maintain 100% ownership of the common securities of the trust unless a permitted successor succeeds to ownership of the common securities;
- (2) not to voluntarily terminate, windup or liquidate any trust, except, if so specified in the applicable prospectus supplement and upon prior approval of the Federal Reserve Board (if required):

in connection with a distribution of corresponding junior subordinated debentures to the holders of the capital securities in exchange therefor upon liquidation of the trust, or

in connection with certain mergers, consolidations or amalgamations permitted by the related trust agreement; and

- (3) to use our reasonable efforts, consistent with the terms and provisions of the related trust agreement, to cause such trust to continue not to be taxable as a corporation for U.S. federal income tax purposes.

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**DESCRIPTION OF THE CAPITAL SECURITIES**

The capital securities will be issued pursuant to the terms of an amended and restated trust agreement. The trust agreement will be qualified as an indenture under the Trust Indenture Act. The property trustee, U.S. Bank National Association, will act as trustee for the capital securities under the trust agreement for purposes of compliance with the provisions of the Trust Indenture Act. The terms of the capital securities will include those stated in the trust agreement and those made part of the trust agreement by the Trust Indenture Act.

Set forth below is a summary of the material terms and provisions of the capital securities. This summary, which describes the material provisions of the capital securities, is not intended to be complete and is qualified by the trust agreement, the form of which is filed as an exhibit to the registration statement which contains this prospectus supplement, the Delaware Statutory Trust Act and the Trust Indenture Act.

**General**

The declaration of trust authorizes the trustees to issue the trust securities on behalf of the trust. The trust securities represent undivided beneficial interests in the assets of the trust. The trust securities consist of the capital securities and the common securities. We will own, directly or indirectly, all of the common securities. The common securities rank equally, and payments will be made on a pro rata basis, with the capital securities. However, if a debenture event of default with respect to payment occurs and is continuing, the rights of the holders of the common securities to receive payments will be subordinated to the rights of the holders of the capital securities. Please see Description of the Trusts for the definition of debenture event of default.

The trust agreement does not permit the trust to issue any securities other than the trust securities or to incur any indebtedness. Under the trust agreement, the property trustee will own the junior subordinated debentures purchased by the trust for the benefit of the holders of the trust securities. Each guarantee agreement executed by us for the benefit of the holders of a trust's trust securities, each a guarantee, will be a guarantee on a subordinated basis with respect to the related trust securities but will not guarantee payment of distributions or amounts payable on redemption or liquidation of such trust securities when the related trust does not have funds on hand available to make such payments. Please see Description of the Capital Securities Guarantees.

**Distributions**

Distributions on the capital securities:

will be cumulative;

will accumulate from the date of original issuance; and

will be payable on such dates as specified in the applicable prospectus supplement.

In the event that any date on which distributions are payable on the capital securities is not a business day, then payment of the distribution will be made on the next succeeding business day, and without any interest or other payment in respect to any such delay, except that, if such business day is in the next calendar year, payment of the distribution will be made on the immediately preceding business day. Each date on which distributions are payable in accordance with the foregoing is referred to as a distribution date. The term distribution includes any interest payable on unpaid distributions unless otherwise stated.

The amount of distributions payable for any period will be computed on the basis of a 360-day year of twelve 30-day months. The amount of distributions payable for any period shorter than a full distribution period will be computed on the basis of the actual number of days elapsed per 30-day month. Distributions to which holders of capital securities are entitled will accumulate additional distributions at the rate per annum if and as specified in the applicable prospectus supplement.

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If provided in the applicable prospectus supplement, we have the right under the junior subordinated indenture, pursuant to which we will issue the corresponding junior subordinated debentures, to defer the payment of interest on any series of the corresponding junior subordinated debentures for up to a number of consecutive interest payment periods that will be specified in the prospectus supplement relating to such series (an extension period), provided that no extension period may extend beyond the stated maturity of the corresponding junior subordinated debentures.

As a consequence of any such deferral, distributions on the related capital securities would be deferred, but would continue to accumulate additional distributions at the rate per annum, if any, set forth in the prospectus supplement for such capital securities, by the trust during any extension period. If we exercise our deferral right, then during any extension period, we may not:

make any payment of principal of or interest or premium, if any, on or repay, repurchase or redeem any debt securities that rank equally in all respects with or junior in interest to the junior subordinated debentures of such series; or

declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any shares of our capital stock, other than:

repurchases, redemptions or other acquisitions of shares of our capital stock in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors or consultants, in connection with a dividend reinvestment or stockholder stock purchase plan or in connection with the issuance of our capital stock, or securities convertible into or exercisable for such capital stock, as consideration in an acquisition transaction entered into prior to the applicable extension period,

as a result of an exchange or conversion of any class or series of our capital stock or any capital stock of our subsidiaries, for any class or series of our capital stock, or of any class or series of our indebtedness for any class or series of our capital stock,

the purchase of fractional interests in shares of our capital stock pursuant to the conversion or exchange provisions of such capital stock or the securities being converted or exchanged,

any declaration of a dividend in connection with any rights plan, or the issuance of rights, stock or other property under any rights plan, or the redemption or repurchase of rights pursuant thereto, or

any dividend in the form of stock, warrants, options or other rights where the dividend stock or the stock issuable upon exercise of such warrants, options or other rights is the same stock as that on which the dividend is being paid or ranks equally with or junior to such stock.

The revenue of each trust available for distribution to holders of its capital securities will be limited to payments under the corresponding junior subordinated debentures in which the trust will invest the proceeds from the issuance and sale of its trust securities. If we do not make interest payments on such corresponding junior subordinated debentures, the property trustee will not have funds available to pay distributions on the related capital securities. The payment of distributions, if and to the extent the trust has funds legally available for the payment of such distributions and cash sufficient to make such payments, is guaranteed by us on the basis set forth under **Description of the Capital Securities Guarantees**.

Distributions on the capital securities will be payable to the holders thereof as they appear on the register of such trust on the relevant record dates, which, as long as the capital securities remain in book-entry form, will be one business day prior to the relevant date of distribution. In the event any capital securities are not in book-entry form, the relevant record date for such capital securities shall be specified in the applicable prospectus supplement.





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**Redemption or Exchange**

**Mandatory Redemption**

Upon the repayment or redemption, in whole or in part, of any corresponding junior subordinated debentures, whether at maturity or upon earlier redemption as provided in the junior subordinated indenture, the property trustee shall apply the proceeds from such repayment or redemption to redeem a like amount (as defined below) of the trust securities, upon not less than 30 nor more than 60 days' notice, at a redemption price equal to the aggregate liquidation amount of such trust securities plus accumulated and unpaid distributions to the date of redemption and the related amount of the premium, if any, paid by us upon the concurrent redemption of such corresponding junior subordinated debentures. Please see Description of Junior Subordinated Debentures Redemption. If less than all of the trust securities are to be repaid or redeemed on a redemption date, then the proceeds from such repayment or redemption will be allocated pro rata to the redemption of the related capital securities and the common securities. The amount of premium, if any, paid by us upon the redemption of all or any part of the trust securities to be repaid or redeemed on a redemption date shall be allocated pro rata to the redemption of the related capital securities and the common securities.

We will have the right to redeem any series of corresponding junior subordinated debentures:

on or after such date as may be specified in the applicable prospectus supplement, in whole at any time or in part from time to time;  
or

at any time, in whole, but not in part, upon the occurrence of a tax event, investment company event or capital treatment event, in any case subject to receipt of prior approval by the Federal Reserve Board (if required). Please see Description of Junior Subordinated Debentures Redemption.

If any tax event, investment company event or capital treatment event in respect of a series of capital securities and common securities shall occur and be continuing, then within 90 days of such occurrence we will have the right to redeem the corresponding junior subordinated debentures in whole, but not in part, and thereby cause a mandatory redemption of such capital securities and common securities in whole, but not in part, at the redemption price specified in the applicable prospectus supplement. In the event a tax event, investment company event or capital treatment event in respect of a series of capital securities and common securities has occurred and is continuing and we do not elect to redeem the corresponding junior subordinated debentures and thereby cause a mandatory redemption of such capital securities and common securities or to dissolve the related trust and cause the corresponding junior subordinated debentures to be distributed to holders of such capital securities and common securities in exchange therefor upon liquidation of the trust as described below, such capital securities will remain outstanding.

Like amount means:

with respect to a redemption of any series of trust securities, trust securities of such series having a liquidation amount (as defined below) equal to that portion of the principal amount of corresponding junior subordinated debentures to be contemporaneously redeemed in accordance with the junior subordinated indenture, the proceeds of which will be used to pay the redemption price of such trust securities;

with respect to an exchange of trust securities, corresponding junior subordinated debentures having a principal amount equal to the liquidation amount of the trust securities exchanged therefor;

with respect to a distribution of corresponding junior subordinated debentures to holders of any series of trust securities in connection with a dissolution or liquidation of the related trust, corresponding junior subordinated debentures having a principal amount equal to the liquidation amount of the trust securities of the holder to whom such corresponding junior subordinated debentures would be distributed; and

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with respect to any distribution of additional interest to the holders of any series of trust securities, corresponding junior subordinated debentures having a principal amount equal to the liquidation amount of the trust securities in respect of which such distribution is made.

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Liquidation amount means the stated amount per trust security as set forth in the applicable prospectus supplement.

### **Exchange**

If at any time, we or any of our affiliates own any related capital securities, we or such affiliate will have the right to deliver to the property trustee, all or such portion of such related capital securities as we or our affiliate elect, in exchange for a like amount of junior subordinated debentures. In the event of such exchange, we and any of our affiliates that own outstanding common securities, will also deliver to the property trustee a proportional amount of the outstanding common securities in exchange for a like amount of junior subordinated debentures.

### **Distribution of Corresponding Junior Subordinated Debentures**

We have the right at any time to dissolve any trust and, after satisfaction of the liabilities of creditors of such trust as provided by applicable law, cause such corresponding junior subordinated debentures in respect of the related capital securities and common securities issued by such trust to be distributed to the holders of such related capital securities and common securities in exchange for such trust securities. This may require the prior approval of the Federal Reserve Board.

After the liquidation date fixed for any distribution of corresponding junior subordinated debentures for any series of capital securities:

such series of capital securities will no longer be deemed to be outstanding;

certificates representing a like amount of junior subordinated debentures will be issued to the holders of trust securities certificates, upon surrender of such certificates;

any certificates not surrendered will be deemed to represent a like amount of the corresponding junior subordinated debentures, bearing accrued and unpaid interest in an amount equal to the accumulated and unpaid distributions on such certificates until such certificates are surrendered; and

all rights of holders of such series of capital securities will cease, except the right of such holders to receive junior subordinated debentures.

We cannot assure you as to the market prices for the capital securities or the corresponding junior subordinated debentures that may be distributed in exchange for capital securities if a dissolution and liquidation of a trust were to occur. Accordingly, the capital securities that an investor may purchase, or the corresponding junior subordinated debentures that the investor may receive on dissolution and liquidation of a trust, may trade at a discount to the price that the investor paid to purchase the capital securities.

### **Subordination of Common Securities**

Payment of distributions on, the redemption price of and the liquidation amount in respect of, each trust's capital securities and common securities, as applicable, shall be made pro rata based on the liquidation amount of such capital securities and common securities. If, however, on any distribution date, redemption date or liquidation date, a debenture event of default shall have occurred and be continuing, no payment of any distribution on, redemption price of, or liquidation distribution in respect of, any of the trust's common securities, and no other payment on account of the redemption, liquidation or other acquisition of such common securities, shall be made unless payment in full in cash of all accumulated and unpaid distributions on all of the trust's outstanding capital securities for all distribution periods terminating on or prior thereto, or in the case of payment of the redemption price the full amount of such redemption price on all of the trust's outstanding capital securities then called for redemption, or in the case of payment of the liquidation distribution, the full amount of such liquidation distribution on all outstanding capital securities, shall have been made or provided for, and all funds immediately available to the property trustee shall first be applied to the payment in full in cash of all distributions on, redemption price of, or liquidation distribution in respect of, the trust's capital securities then due and payable.



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In the case of any event of default under the applicable trust agreement resulting from a debenture event of default, we as holder of such trust's common securities, will be deemed to have waived any right to act with respect to any such event of default under the applicable trust agreement until the effect of all such events of default with respect to such capital securities have been cured, waived or otherwise eliminated. Until all events of default under the applicable trust agreement with respect to the capital securities have been so cured, waived or otherwise eliminated, the property trustee shall act solely on behalf of the holders of such capital securities and not on our behalf, and only the holders of such capital securities will have the right to direct the property trustee to act on their behalf.

### **Liquidation Distribution Upon Dissolution**

Pursuant to each trust agreement, each trust shall automatically dissolve upon expiration of its term and shall dissolve on the first to occur of:

certain events of bankruptcy, dissolution or liquidation of State Street;

the distribution of a like amount of the corresponding junior subordinated debentures to the holders of its trust securities, if we, as depositor, have given written direction to the property trustee to dissolve such trust, subject to our having received prior approval of the Federal Reserve Board, if required;

redemption of all of the trust's capital securities as described under "Redemption or Exchange" "Mandatory Redemption";

an exchange of 100% of any series of capital securities for a like amount of junior subordinated debentures at our election, as described under "Redemption or Exchange" "Exchange"; and

the entry of an order for the dissolution of the trust by a court of competent jurisdiction.

As soon as is practicable after the occurrence of one of the events described above and upon completion of the winding up and liquidation of the trust, the trustees will terminate the trust by filing a certificate of cancellation with the Secretary of State of the State of Delaware.

If an early dissolution occurs as described above, the trustees will liquidate the trust as expeditiously as possible by distributing, after satisfaction of all claims and obligations of such trust as provided by applicable law, to the holders of such trust securities a like amount of the corresponding junior subordinated debentures. If the property trustee determines that such distribution is not practical, then the holders will be entitled to receive out of the assets of the trust available for distribution to holders, after satisfaction of the claims and obligations of such trust as provided by applicable law, an amount equal to, in the case of holders of capital securities, the aggregate liquidation amount plus accrued and unpaid distributions to the date of payment (such amount being the liquidation distribution). If the trust has insufficient assets available to pay in full the aggregate liquidation distribution, then the amounts payable directly by such trust on its capital securities shall be paid on a pro rata basis. The holder(s) of such trust's common securities will be entitled to receive distributions upon any such liquidation pro rata with the holders of its capital securities, except that if a debenture event of default with respect to payment has occurred and is continuing, the capital securities shall have a priority over the common securities.

### **Events of Default; Notice**

Any one of the following events constitutes an event of default under the trust agreement of a trust (a trust event of default) regardless of the reason for such event of default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body:

the occurrence of a debenture event of default with respect to the corresponding junior subordinated debentures held by such trust (please see "Description of the Junior Subordinated Debentures" "Events of Default, Waiver and Notice" );



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the default by the applicable trust in the payment of any distribution on any trust security of such trust when such becomes due and payable, and continuation of such default for a period of 30 days;

the default by the applicable trust in the payment of any redemption price of any trust security of such trust when such becomes due and payable;

the default in the performance, or breach, in any material respect, of any covenant or warranty of the trustees in such trust agreement, other than the payment defaults dealt with above, and continuation of such default or breach for a period of 90 days after there has been given, by registered or certified mail, to us and the trustees by the holders of at least 25% in aggregate liquidation amount of the outstanding capital securities of the applicable trust, a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a Notice of Default under such trust agreement; or

the occurrence of certain events of bankruptcy or insolvency with respect to the property trustee and the failure to appoint a successor property trustee within 90 days.

Within the 90 days after the occurrence of any event of default actually known to the property trustee, the property trustee will transmit notice of such event of default to the holders of such trust's capital securities, the administrative trustees and to us, as depositor, unless such event of default shall have been cured or waived. We, as depositor, and the administrative trustees are required to file annually with the property trustee a certificate as to whether or not we or they are in compliance with all the conditions and covenants applicable to us and to them under each trust agreement.

If a debenture event of default with respect to the corresponding junior subordinated debentures held by a trust has occurred and is continuing, the capital securities of such trust shall have a preference over such trust's common securities as described above. See Subordination of Common Securities and Liquidation Distribution Upon Dissolution. The existence of an event of default does not entitle the holders of capital securities to accelerate the maturity of such securities.

### **Removal of Trustees**

Unless a debenture event of default shall have occurred and be continuing, any trustee may be removed at any time by us. If a debenture event of default has occurred and is continuing, the property trustee and the Delaware trustee may be removed by the holders of a majority in liquidation amount of the outstanding capital securities. In no event will the holders of the capital securities have the right to vote to appoint, remove or replace the administrative trustees, which voting rights are vested exclusively in us. No resignation or removal of a trustee and no appointment of a successor trustee shall be effective until the acceptance of appointment by the successor trustee in accordance with the provisions of the applicable trust agreement.

### **Co-Trustees and Separate Property Trustee**

Unless a debenture event of default shall have occurred and be continuing, at any time or times, for the purpose of meeting the legal requirements of the Trust Indenture Act or of any jurisdiction in which any part of the trust property may at the time be located, we, as the holder of the common securities, and the administrative trustees shall have the power to appoint one or more persons either to act as a co-trustee, jointly with the property trustee, of all or any part of such trust property, or to act as separate trustee of any such property, in either case with such powers as may be provided in the instrument of appointment, and to vest in such person or persons in such capacity any property, title, right or power deemed necessary or desirable, subject to the provisions of the applicable trust agreement. If a debenture event of default has occurred and is continuing, the property trustee alone shall have power to make such appointment.

### **Merger or Consolidation of Trustees**

Any person into which the property trustee, the Delaware trustee or any administrative trustee that is not a natural person may be merged or converted or with which it may be consolidated, or any person resulting from

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any merger, conversion or consolidation to which such trustee shall be a party, or any person succeeding to all or substantially all the corporate trust business of such trustee, shall be the successor of such trustee under each trust agreement, provided such person shall be otherwise qualified and eligible and will be bound by the terms of such trust agreement.

**Mergers, Consolidations, Amalgamations or Replacements of the Trusts**

A trust may not merge with or into, consolidate, amalgamate, or be replaced by, or convey, transfer or lease its properties and assets substantially as an entirety to any corporation or other body, except as described below or as otherwise described in the trust agreement. A trust may, at our request, with the consent of the holders of at least a majority in liquidation amount of the capital securities, and without the consent of the administrative trustees, the property trustee or the Delaware trustee, merge with or into, consolidate, amalgamate, or be replaced by, or convey, transfer or lease its properties and assets substantially as an entirety to, a trust organized as such under the laws of any state if:

such successor entity either:

- (1) expressly assumes all of the obligations of such trust with respect to the capital securities, or
- (2) substitutes for the capital securities other securities having substantially the same terms as the capital securities, or the successor securities, so long as the successor securities rank the same as the capital securities in priority with respect to distributions and payments upon liquidation, redemption and otherwise;

we expressly appoint a trustee of such successor entity possessing the same powers and duties as the property trustee as the holder of the corresponding junior subordinated debentures;

such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not cause the capital securities to be downgraded by any nationally recognized statistical rating organization;

such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not adversely affect the rights, preferences and privileges of the holders of the capital securities (including any successor securities) in any material respect;

such successor entity has a purpose substantially identical to that of the trust;

prior to such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease, we have received an opinion from independent counsel to the trust experienced in such matters to the effect that:

- (1) such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not adversely affect the rights, preferences and privileges of the holders of the capital securities (including any successor securities) in any material respect, and
- (2) following such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease, neither the trust nor such successor entity will be required to register as an investment company under the Investment Company Act of 1940, as amended; and



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we or any permitted successor or assignee owns all of the common securities of such successor entity and guarantees the obligations of such successor entity under the successor securities at least to the extent provided by the guarantee.

Notwithstanding the foregoing, a trust will not, except with the consent of holders of 100% in liquidation amount of the capital securities, consolidate, amalgamate, merge with or into, or be replaced by or convey, transfer or lease its properties and assets substantially as an entirety to any other entity or permit any other entity to consolidate, amalgamate, merge with or into, or replace it if such consolidation, amalgamation, merger, replacement, conveyance, transfer or lease would cause the trust or the successor entity to be taxable as a corporation for U.S. federal income tax purposes.

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**Voting Rights; Amendment of Each Trust Agreement**

Except as provided below and under Description of the Capital Securities Guarantees Amendments and Assignment and as otherwise required by law and the applicable trust agreement, the holders of the capital securities will have no voting rights.

We and the administrative trustees may amend each trust agreement from time to time:

without the consent of the holders of the capital securities to:

- (1) cure any ambiguity, correct or supplement any provisions in such trust agreement that may be inconsistent with any other provision, or make any other provisions with respect to matters or questions arising under such trust agreement, which may not be inconsistent with the other provisions of such trust agreement; or
- (2) modify, eliminate or add to any provisions of such trust agreement to such extent as shall be necessary to ensure that the trust will not be taxable as a corporation or classified as other than a grantor trust for U.S. federal income tax purposes at all times that any trust securities are outstanding and/or to ensure that the trust will not be required to register as an investment company under the Investment Company Act of 1940, as amended;

provided, however that in the case of either clause (1) or (2), such action will not adversely affect in any material respect the interests of any holder of capital securities;

upon the consent of the property trustee and each affected holder of capital securities to:

- (1) change the timing of any distribution or the amount of distribution per liquidation amount on such trust securities held by such affected holder or otherwise adversely affect the amount of any distribution required to be made in respect of the liquidation amount of trust securities held by such affected holder as of a specified date; or
- (2) restrict the right of such affected holder of trust securities to institute suit for the enforcement of any such payment on or after such date;

upon the consent of the property trustee and the unanimous consent of all holders of capital securities to amend the amendment provisions requiring consent of each affected holder or unanimous consent of all holders of each trust agreement; and

upon the consent of the property trustee and the holders of a majority in liquidation amount of the capital securities for all amendments other than those specifically requiring consent of each affected holder or unanimous consent of all holders of each trust agreement.

So long as the property trustee holds any corresponding junior subordinated debentures, the trustees may not, without obtaining the prior approval of the holders of a majority in aggregate liquidation amount of all outstanding capital securities:

direct the time, method and place of conducting any proceeding for any remedy available to the debenture trustee, or executing any trust or power conferred on the property trustee with respect to such corresponding junior subordinated debentures;

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waive any past default that is waivable under the junior subordinated indenture;

exercise any right to rescind or annul a declaration that the principal of all the corresponding junior subordinated debentures is due and payable; or

consent to any amendment, modification or termination of the junior subordinated indenture or such corresponding junior subordinated debentures, where such consent shall be required.

If a consent under the junior subordinated indenture would require the consent of each holder of corresponding junior subordinated debentures affected thereby, no such consent may be given by the property

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trustee without the prior consent of each holder of the corresponding capital securities. The property trustee may not revoke any action previously authorized or approved by a vote of the holders of the capital securities except by subsequent vote of the holders of the capital securities. The property trustee will notify each holder of the capital securities of any notice of default with respect to the corresponding junior subordinated debentures. In addition to obtaining the foregoing approvals of the holders of the capital securities, prior to taking any of the foregoing actions, the trustees will obtain an opinion of counsel experienced in such matters to the effect that such action would not cause the trust to be classified as other than a grantor trust for U.S. federal income tax purposes.

Any required approval of holders of capital securities may be given at a meeting of holders of capital securities convened for such purpose or pursuant to written consent. The property trustee will cause a notice of any meeting at which holders of capital securities are entitled to vote, or of any matter upon which action by written consent of such holders is to be taken, to be given to each holder of record of capital securities in the manner set forth in each trust agreement.

No vote or consent of the holders of capital securities will be required for a trust to redeem and cancel its capital securities in accordance with the applicable trust agreement.

Notwithstanding that holders of capital securities are entitled to vote or consent under any of the circumstances described above, any of the capital securities that are owned by us or our affiliates or the trustees or any of their affiliates, shall, for purposes of such vote or consent, be treated as if they were not outstanding.

## **Payment and Paying Agency**

Payments on the capital securities shall be made to the depository, which shall credit the relevant accounts at the depository on the applicable distribution dates. If any trust's capital securities are not held by the depository, such payments shall be made by check mailed to the address of the holder as such address shall appear on the register.

Unless otherwise specified in the applicable prospectus supplement, the paying agent shall initially be U.S. Bank National Association and any co-paying agent chosen by the property trustee and acceptable to us and to the administrative trustees. The paying agent shall be permitted to resign as paying agent upon 30 days' written notice to the administrative trustees and to the property trustee. In the event that U.S. Bank National Association shall no longer be the paying agent, the property trustee will appoint a successor, which will be a bank or trust company acceptable to the administrative trustees and to us, to act as paying agent.

## **Registrar and Transfer Agent**

Unless otherwise specified in the applicable prospectus supplement, U.S. Bank National Association will act as registrar and transfer agent for the capital securities.

Registration of transfers of capital securities will be effected without charge by or on behalf of each trust, but upon payment of any tax or other governmental charges that may be imposed in connection with any transfer or exchange. The trusts will not be required to register or cause to be registered the transfer of their capital securities after such capital securities have been called for redemption.

## **Information Concerning the Property Trustee**

The property trustee, other than during the occurrence and continuance of an event of default, undertakes to perform only the duties that are specifically set forth in each trust agreement. After an event of default, the property trustee must exercise the same degree of care and skill as a prudent person would exercise or use in the conduct of his or her own affairs. Subject to this provision, the property trustee is under no obligation to exercise

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any of the powers vested in it by the applicable trust agreement at the request of any holder of capital securities unless offered indemnity satisfactory to it by such holder against the costs, expenses and liabilities that might be incurred. If no event of default has occurred and is continuing and the property trustee is required to decide between alternative causes of action, construe ambiguous provisions in the applicable trust agreement or is unsure of the application of any provision of the applicable trust agreement, and the matter is not one on which holders of capital securities are entitled under such trust agreement to vote, then the property trustee will deliver a notice to us requesting our direction, and the property trustee may take any action that it deems advisable and in the best interests of the holders of the trust securities and will have no liability except for its own bad faith, negligence or willful misconduct.

## **Trust Expenses**

Pursuant to the trust agreement of each trust, we, as depositor, agree to pay:

all costs, expenses or liabilities of each trust (other than with respect to the capital securities);

all costs and expenses of each trust (including costs and expenses relating to the organization of each trust, the fees and expenses of the trustees and the cost and expenses relating to the operation of each trust); and

any and all taxes and costs and expenses with respect thereto (other than United States withholding taxes) to which each trust might become subject.

## **Governing Law**

Each trust agreement will be governed by and construed in accordance with the laws of the state of Delaware.

## **Miscellaneous**

The administrative trustees are authorized and directed to conduct the affairs of and to operate the trusts in such a way that no trust will be required to register as an investment company under the Investment Company Act of 1940, as amended, and will not be taxable as a corporation or classified as other than a grantor trust for U.S. federal income tax purposes. The administrative trustees are authorized and directed to conduct their affairs so that the corresponding junior subordinated debentures will be treated as indebtedness of State Street for U.S. federal income tax purposes. In this connection, we and the administrative trustees are authorized to take any action, not inconsistent with applicable law, the certificate of trust of each trust or each trust agreement, that we and the administrative trustees determine to be necessary or desirable to achieve such end, as long as such action does not materially and adversely affect the interests of the holders of the related capital securities.

Holders of the capital securities have no preemptive or similar rights.

No trust may borrow money or issue debt or mortgage or pledge any of its assets.

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**COMMON SECURITIES**

In connection with the issuance of capital securities, each trust will issue one series of common securities having the terms, including distributions, redemption, voting and liquidation rights, set forth in the applicable prospectus supplement. Except for voting rights, the terms of the common securities will be substantially identical to the terms of the capital securities. The common securities will rank equally, and payments will be made on the common securities pro rata, with the capital securities, except that, upon an event of default, the rights of the holders of the common securities to payment in respect of distributions and payments upon liquidation, redemption and otherwise will be subordinated to the rights of the holders of the capital securities. Except in limited circumstances, the common securities of a trust carry the right to vote to appoint, remove or replace any of the trustees of that trust. We will own, directly or indirectly, all of the common securities of each trust.

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**DESCRIPTION OF THE CAPITAL SECURITIES GUARANTEES**

Set forth below is a summary of information concerning the capital securities guarantees that we will execute and deliver for the benefit of the holders of capital securities. Each capital securities guarantee will be qualified as an indenture under the Trust Indenture Act. U.S. Bank National Association will act as the guarantee trustee for purposes of the Trust Indenture Act. The terms of each capital securities guarantee will be those set forth in the capital securities guarantee and those made part of the capital securities guarantee by the Trust Indenture Act. The summary of the material terms of the capital securities guarantees is not intended to be complete and is qualified in all respects by the provisions of the form of capital securities guarantee which is filed as an exhibit to the registration statement which contains this prospectus, and the Trust Indenture Act. The guarantee trustee will hold each capital securities guarantee for the benefit of the holders of the capital securities of the applicable trust.

**General**

Pursuant to and to the extent set forth in the capital securities guarantee, we will irrevocably and unconditionally agree to pay in full to the holders of the trust securities, except to the extent paid by the trust, as and when due, regardless of any defense, right of set-off or counterclaim which the trust may have or assert, the following payments, which are referred to as guarantee payments, without duplication:

any accumulated and unpaid distributions that are required to be paid on the capital securities, to the extent the trust has funds available for distributions;

the redemption price, plus all accrued and unpaid distributions, to the extent the trust has funds available for redemptions, relating to any capital securities called for redemption by the trust; and

upon a voluntary or involuntary dissolution, winding-up or liquidation of the trust, other than in connection with the distribution of junior subordinated debentures to the holders of capital securities or the redemption of all of the capital securities, the lesser of:

(1) the aggregate of the liquidation amount and all accrued and unpaid distributions on the capital securities to the date of payment; and

(2) the amount of assets of the trust remaining for distribution to holders of the capital securities on liquidation of the trust.

The redemption price and liquidation amount will be fixed at the time the capital securities are issued.

Our obligation to make a guarantee payment may be satisfied by direct payment of the required amounts to the holders of capital securities or by causing the trust to pay such amounts to such holders.

The capital securities guarantees will not apply to any payment of distributions except to the extent a trust shall have funds available for such payments. If we do not make interest payments on the junior subordinated debentures purchased by a trust, the trust will not pay distributions on the capital securities and will not have funds available for such payments. Please see Status of the Guarantees. We are a holding company and conduct substantially all of our operations through subsidiaries. As a result, claims of holders of the capital securities guarantees, will generally have a junior position to claims of creditors of our subsidiaries, except to the extent that we may be recognized as a creditor of those subsidiaries. In addition, our right to participate as a shareholder in any distribution of assets of any subsidiary (and thus the ability of holders of the capital securities guarantees, to benefit as our creditors from such distribution) is junior to creditors of that subsidiary. In addition, dividends, loans and advances from certain of our banking subsidiaries, including State Street Bank, to us and our non-banking subsidiaries are restricted by federal and state statutes and regulations. Except as otherwise provided in the applicable prospectus supplement, the capital securities guarantees do not limit the incurrence or issuance by us of other secured or unsecured debt.

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The capital securities guarantees, when taken together with our obligations under the junior subordinated debentures, the indentures and the trust agreements, including our obligations to pay costs, expenses, debts and liabilities of the trusts, other than those relating to trust securities, will provide a full and unconditional guarantee on a subordinated basis of payments due on the capital securities.

We have also agreed separately to irrevocably and unconditionally guarantee the obligations of the trusts with respect to the common securities to the same extent as the capital securities guarantees, except that upon an event of default under the indenture, holders of capital securities shall have priority over holders of common securities with respect to distributions and payments on liquidation, redemption or otherwise.

### **Status of the Guarantees**

Each capital security guarantee will be unsecured and will rank:

subordinate and junior in right of payment to all our senior debt in the same manner as the junior subordinated debentures; and

equally with all other capital security guarantees that we issue.

Each capital securities guarantee will constitute a guarantee of payment and not of collection. This means that the guaranteed party may sue the guarantor to enforce its rights under the guarantee without suing any other person or entity. Each capital securities guarantee will be held for the benefit of the holders of the related trust securities and will be discharged only by payment of the guarantee payments in full to the extent not paid by the trust or upon the distribution of the junior subordinated debentures, including any distribution of junior subordinated debentures upon an exchange.

### **Amendments and Assignment**

The capital securities guarantee may be amended only with the prior approval of the holders of not less than a majority in aggregate liquidation amount of the outstanding capital securities. No vote will be required, however, for any changes that do not adversely affect the rights of holders of capital securities. All guarantees and agreements contained in the capital securities guarantee will bind our successors, assignees, receivers, trustees and representatives and will be for the benefit of the holders of the capital securities then outstanding.

### **Termination of the Guarantees**

Each capital securities guarantee will terminate upon full payment of the redemption price of all capital securities, upon distribution of the junior subordinated debentures to the holders of the trust securities, upon an exchange of 100% of any series of capital securities or upon full payment of the amounts payable in accordance with the trust agreement upon liquidation of such trust. Each capital securities guarantee will continue to be effective or will be reinstated, as the case may be, if at any time any holder of capital securities must restore payment of any sums paid under the capital securities or the capital securities guarantee.

### **Events of Default**

An event of default under a capital securities guarantee will occur if we fail to perform any payment or other obligations under the capital securities guarantee.

The holders of a majority in liquidation amount of the capital securities have the right to direct the time, method and place of conducting any proceeding for any remedy available to the guarantee trustee in respect of the capital securities guarantee or to direct the exercise of any trust or power conferred upon the guarantee trustee under the capital securities guarantee. Any holder of capital securities may institute a legal proceeding directly against us to enforce such holder's rights and our obligations under the capital securities guarantee, without first instituting a legal proceeding against the relevant trust, the guarantee trustee or any other person or entity.



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As guarantor, we are required to file annually with the guarantee trustee a certificate as to whether or not we are in compliance with all applicable conditions and covenants applicable under the capital securities guarantee.

### **Information Concerning the Guarantee Trustee**

Prior to the occurrence of a default relating to a capital securities guarantee, the guarantee trustee is required to perform only the duties that are specifically set forth in the capital securities guarantee. Following the occurrence of a default, the guarantee trustee will exercise the same degree of care and skill as a prudent person would exercise in the conduct of his or her own affairs. If the foregoing requirements have been met, the guarantee trustee is under no obligation to exercise any of the powers vested in it by a capital securities guarantee at the request of any holder of capital securities, unless offered indemnity satisfactory to it against the costs, expenses and liabilities which might be incurred thereby.

We and our affiliates maintain certain accounts and other banking relationships with the guarantee trustee and its affiliates in the ordinary course of business.

### **Governing Law**

The capital securities guarantees will be governed by and construed in accordance with the internal laws of the State of New York.

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**RELATIONSHIP AMONG THE CAPITAL SECURITIES, THE CORRESPONDING JUNIOR  
SUBORDINATED DEBENTURES AND THE CAPITAL SECURITIES GUARANTEES**

As set forth in the trust agreements, the sole purpose of the trusts is to issue the trust securities and to invest the proceeds in the junior subordinated debentures.

As long as payments of interest and other payments are made when due on the junior subordinated debentures, those payments will be sufficient to cover the distributions and payments due on the trust securities. This is due to the following factors:

the aggregate principal amount of junior subordinated debentures will be equal to the sum of the aggregate stated liquidation amount of the trust securities;

the interest rate and the interest and other payment dates on the junior subordinated debentures will match the distribution rate and distribution and other payment dates for the trust securities;

under the junior subordinated indenture, we will pay, and the trusts will not be obligated to pay, directly or indirectly, all costs, expenses, debts and obligations of the trusts, other than those relating to the trust securities; and

the trust agreements further provide that the trustees may not cause or permit the trusts to engage in any activity that is not consistent with the purposes of the trusts.

To the extent that funds are available, we guarantee payments of distributions and other payments due on the capital securities to the extent described in this prospectus. If we do not make interest payments on the junior subordinated debentures, the trust will not have sufficient funds to pay distributions on the capital securities. Each capital securities guarantee is a subordinated guarantee in relation to the capital securities. The capital securities guarantee does not apply to any payment of distributions unless and until the trust has sufficient funds for the payment of such distributions. Please see Description of the Capital Securities Guarantees.

We have the right to set off any payment that we are otherwise required to make under the junior subordinated indenture with any payment that we have previously made or are concurrently on the date of such payment making under a related guarantee.

The capital securities guarantees cover the payment of distributions and other payments on the capital securities only if and to the extent that we have made a payment of interest or principal or other payments on the junior subordinated debentures. The capital securities guarantees, when taken together with our obligations under the junior subordinated debentures and the indenture and our obligations under the trust agreement, will provide a full and unconditional guarantee of distributions, redemption payments and liquidation payments on the capital securities.

If we fail to make interest or other payments on the junior subordinated debentures when due, taking account of any extension period, the trust agreements allow the holders of the capital securities, to the fullest extent permitted by law, to direct the property trustee to enforce its rights under the junior subordinated debentures. If the property trustee fails to enforce these rights, any holder of capital securities may directly sue us to enforce such rights without first suing the property trustee or any other person or entity.

To the fullest extent permitted by law, a holder of capital securities may institute a direct action if a trust event of default has occurred and is continuing and such event is attributable to our failure to pay interest or principal on the junior subordinated debentures when due. A direct action may be brought without first (1) directing the property trustee to enforce the terms of the junior subordinated debentures or (2) suing us to enforce the property trustee's rights under the junior subordinated debentures. In connection with such direct action, we will be subrogated to the rights of such holder of capital securities under the trust agreement to the extent of any payment made by us to such holder of capital securities. Consequently, we will be entitled to

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payment of amounts that a holder of capital securities receives in respect of an unpaid distribution to the extent that such holder receives or has already received full payment relating to such unpaid distribution from a trust.

We acknowledge that the guarantee trustee will enforce the capital securities guarantees on behalf of the holders of the capital securities. A holder of capital securities may also directly sue us to enforce such holder's right to receive payment under the capital securities guarantees. Such holder need not first (1) direct the guarantee trustee to enforce the terms of the capital securities guarantee or (2) sue the trust or any other person or entity.

A default or event of default under any of our senior debt would not constitute a default or event of default under the junior subordinated indenture. However, in the event of payment defaults under, or acceleration of, our senior debt, the subordination provisions of the junior subordinated indenture provide that no payments may be made in respect of the corresponding junior subordinated debentures until such senior debt has been paid in full or any payment default thereunder has been cured or waived. Failure to make required payments on any series of corresponding junior subordinated debentures would constitute an event of default under the junior subordinated indenture.

We and the trusts believe that the above mechanisms and obligations, taken together, are equivalent to a full and unconditional guarantee on a subordinated basis by us of payments due on the capital securities. Please see "Description of the Capital Securities Guarantees - General."

### **Limited Purpose of Trusts**

Each trust's capital securities evidence a beneficial interest in such trust, and each trust exists for the sole purpose of issuing its capital securities and common securities and investing the proceeds in corresponding junior subordinated debentures. A principal difference between the rights of a holder of a capital security and a holder of a corresponding junior subordinated debenture is that a holder of a corresponding junior subordinated debenture is entitled to receive from us the principal amount of and interest accrued on corresponding junior subordinated debentures held, while a holder of capital securities is entitled to receive distributions from such trust (or from us under the applicable guarantee) if and to the extent such trust has funds available for the payment of such distributions.

### **Rights Upon Dissolution**

Upon any voluntary or involuntary dissolution, winding up or liquidation of any trust involving the liquidation of the corresponding junior subordinated debentures, after satisfaction of liabilities to creditors of the trust, the holders of the related capital securities will be entitled to receive, out of the assets held by such trust, the liquidation distribution in cash. Please see "Description of the Capital Securities - Liquidation Distribution Upon Dissolution." Upon any voluntary or involuntary liquidation or bankruptcy of State Street, the property trustee, as holder of the corresponding junior subordinated debentures, would be a subordinated creditor of State Street, subordinated in right of payment to all senior debt as set forth in the junior subordinated indenture, but entitled to receive payment in full of principal and interest before any of our stockholders receive distributions. Since we are the guarantor under each guarantee and have agreed to pay for all costs, expenses and liabilities of each trust, other than the trusts' obligations to the holders of its capital securities, the positions of a holder of such capital securities and a holder of such corresponding junior subordinated debentures relative to other creditors and to our stockholders in the event of liquidation or bankruptcy are expected to be substantially the same.

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**DESCRIPTION OF PREFERRED STOCK**

The following summary contains a description of the general terms and provisions of the preferred stock that we may issue. Other terms of any series of preferred stock will be described in the prospectus supplement relating to that series of preferred stock. The terms of any series of preferred stock may differ from the terms described below. Certain provisions of the preferred stock described below and in any prospectus supplement are not complete. You should refer to our Restated Articles of Organization, as amended, and the certificate of designation which will be filed with the SEC in connection with the offering of a particular series of preferred stock.

**General**

Our articles of organization permit our board of directors to authorize the issuance of up to 3,500,000 shares of preferred stock, without par value, in one or more series, without shareholder action. Of such number of shares of preferred stock, 5,001 shares have been designated as Non-Cumulative Perpetual Preferred Stock, Series A, or the series A preferred stock, and 20,000 shares have been designated as Fixed Rate Cumulate Preferred Stock, Series B, or the series B preferred stock. The board of directors can determine the rights, preferences and limitations of each series. Therefore, without shareholder approval, our board of directors can authorize the issuance of preferred stock with voting, conversion and other rights that could dilute the voting power and other rights of our common stockholders. 20,000 shares of our series B preferred stock are currently outstanding and none of our other preferred stock is currently outstanding.

The preferred stock has the terms described below unless otherwise provided in the prospectus supplement relating to a particular series of the preferred stock. You should read the prospectus supplement relating to the particular series of the preferred stock being offered for specific terms, including:

the designation and stated value per share of the preferred stock and the number of shares offered;

the amount of liquidation preference per share;

the price at which the preferred stock will be issued;

the dividend rate, or method of calculation, the dates on which dividends will be payable, whether dividends will be cumulative or noncumulative and, if cumulative, the dates from which dividends will commence to accumulate;

any redemption or sinking fund provisions;

if other than the currency of the United States, the currency or currencies including composite currencies in which the preferred stock is denominated and/or in which payments will or may be payable;

any conversion provisions;

whether we have elected to offer depository shares as described under Description of Depository Shares; and

any other rights, preferences, privileges, limitations and restrictions on the preferred stock.

The preferred stock will, when issued, be fully paid and nonassessable. Unless otherwise specified in the prospectus supplement, each series of the preferred stock will rank equally as to dividends and liquidation rights in all respects with each other series of preferred stock. The rights of

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holders of shares of each series of preferred stock will be subordinate to those of our general creditors.

One of the effects of authorized but unissued and unreserved shares of capital stock may be to make it more difficult or discourage an attempt by a potential acquirer to obtain control of our company by means of a merger, tender offer, proxy contest or otherwise. The issuance of these shares of capital stock may defer or prevent a change in control of our company without any further shareholder action.

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As described under Description of Depositary Shares, we may, at our option, with respect to any series of the preferred stock, elect to offer fractional interests in shares of preferred stock, and provide for the issuance of depositary receipts representing depositary shares, each of which will represent a fractional interest in a share of the series of the preferred stock. The fractional interest will be specified in the prospectus supplement relating to a particular series of the preferred stock.

### **Rank**

Our series B preferred stock has, and any other series of preferred stock upon issuance, including our series A preferred stock will have, preference over our common stock with respect to the payment of dividends and the distribution of assets in the event of our liquidation, winding up or dissolution. In particular, any series of the preferred stock that we may issue will, with respect to the priority of the payment of dividends and the priority of payments upon liquidation, winding up and dissolution, rank:

senior to all classes of common stock and all equity securities issued by us the terms of which specifically provide that the equity securities will rank junior to the preferred stock (the junior securities);

equally with all equity securities issued by us the terms of which specifically provide that the equity securities will rank equally with the preferred stock (the parity securities); and

junior to all equity securities issued by us the terms of which specifically provide that the equity securities will rank senior to the preferred stock.

Unless the terms of any preferred stock specifically provides that it will rank junior or senior to our series A preferred stock and/or our series B preferred stock, the series A preferred stock and series B preferred stock will be parity securities with respect to such preferred stock. The consent of at least a majority of the shares of series A preferred stock then outstanding is required for us to authorize any class or series of capital stock that would rank senior to the series A preferred stock with respect to the payment of dividends or the distribution of assets on our liquidation, winding up or dissolution. The consent of at least 66 2/3% of the shares of series B preferred stock then outstanding is required for us to authorize any class or series of capital stock that would rank senior to the series B preferred stock with respect to the payment of dividends or the distribution of assets on our liquidation, winding up or dissolution.

### **Dividends**

Holders of the preferred stock of each series will be entitled to receive, when, as and if declared by our board of directors, cash dividends at such rates and on such dates described in the prospectus supplement. Different series of preferred stock may be entitled to dividends at different rates or based on different methods of calculation. The dividend rate may be fixed or variable or both. Dividends will be payable to the holders of record as they appear on our stock books on record dates fixed by our board of directors, as specified in the applicable prospectus supplement.

Dividends on any series of the preferred stock may be cumulative or noncumulative, as described in the applicable prospectus supplement. If our board of directors does not declare a dividend payable on a dividend payment date on any series of noncumulative preferred stock, then the holders of that noncumulative preferred stock will have no right to receive a dividend for that dividend payment date, and we will have no obligation to pay the dividend accrued for that period, whether or not dividends on that series are declared payable on any future dividend payment dates. Dividends on any series of cumulative preferred stock will accrue from the date we initially issue shares of such series or such other date specified in the applicable prospectus supplement.

No full dividends may be declared or paid or funds set apart for the payment of any dividends on any parity securities unless dividends have been paid or set apart for payment on the preferred stock. If full dividends are not paid, the preferred stock will share dividends pro rata with the parity securities. No dividends may be

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declared or paid or funds set apart for the payment of dividends on any junior securities unless full cumulative dividends for all dividend periods terminating on or prior to the date of the declaration or payment will have been paid or declared and a sum sufficient for the payment set apart for payment on the preferred stock.

Our ability to pay dividends on our preferred stock is subject to policies established by the Federal Reserve Board.

### **Rights Upon Liquidation**

If we dissolve, liquidate or wind up our affairs, either voluntarily or involuntarily, the holders of each series of preferred stock, including any parity securities, will be entitled to receive, before any payment or distribution of assets is made to holders of junior securities, liquidating distributions in the amount described in the prospectus supplement relating to that series of the preferred stock, plus an amount equal to accrued and unpaid dividends and, if the series of the preferred stock is cumulative, for all dividend periods prior to that point in time. If the amounts payable with respect to the preferred stock of any series and any other parity securities are not paid in full, the holders of the preferred stock of that series and of the parity securities will share proportionately in the distribution of our assets in proportion to the full liquidation preferences to which they are entitled. After the holders of preferred stock and the parity securities are paid in full, they will have no right or claim to any of our remaining assets.

Because we are a bank holding company, our rights, the rights of our creditors and of our stockholders, including the holders of the preferred stock offered by this prospectus, to participate in the assets of any subsidiary upon the subsidiary's liquidation or recapitalization may be subject to the prior claims of the subsidiary's creditors except to the extent that we may ourselves be a creditor with recognized claims against the subsidiary.

### **Redemption**

A series of the preferred stock may be redeemable, in whole or in part, at our option with prior Federal Reserve Board approval. In addition, a series of preferred stock may be subject to mandatory redemption pursuant to a sinking fund or otherwise. The redemption provisions that may apply to a series of preferred stock, including the redemption dates and the redemption prices for that series, will be described in the prospectus supplement. In addition, our participation in the U.S. Treasury's TARP capital purchase program restricts our ability prior to October 28, 2011, or such earlier time as all shares of our series B preferred stock issued to the U.S. Treasury have been redeemed by us or transferred by the U.S. Treasury, to, subject to certain exceptions, redeem or purchase any of our capital stock or other equity securities, which includes preferred stock.

In the event of partial redemptions of preferred stock, whether by mandatory or optional redemption, our board of directors will determine the method for selecting the shares to be redeemed, which may be by lot or pro rata or by any other method determined to be equitable.

On or after a redemption date, unless we default in the payment of the redemption price, dividends will cease to accrue on shares of preferred stock called for redemption. In addition, all rights of holders of the shares will terminate except for the right to receive the redemption price.

Unless otherwise specified in the applicable prospectus supplement for any series of preferred stock, if any dividends on any other series of preferred stock ranking equally as to payment of dividends and liquidation rights with such series of preferred stock are in arrears, no shares of any such series of preferred stock may be redeemed, whether by mandatory or optional redemption, unless all shares of preferred stock are redeemed, and we will not purchase any shares of such series of preferred stock. This requirement, however, will not prevent us from acquiring such shares pursuant to a purchase or exchange offer made on the same terms to holders of all such shares outstanding.

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Under current regulations, bank holding companies, except in certain narrowly defined circumstances, may not exercise any option to redeem shares of preferred stock included as Tier 1 capital without the prior approval of the Federal Reserve Board. Ordinarily, the Federal Reserve Board would not permit such a redemption unless (1) the shares are redeemed with the proceeds of a sale by the bank holding company of common stock or perpetual preferred stock or (2) the Federal Reserve Board determines that the bank holding company's condition and circumstances warrant the reduction of a source of permanent capital.

### **Voting Rights**

Unless otherwise described in the applicable prospectus supplement, holders of the preferred stock will have no voting rights except as set forth below or as otherwise required by law or in our articles of organization.

In addition, if the dividends on (1) when shares of series A preferred stock are outstanding, the series A preferred stock or any securities designated as ranking on parity with the series A preferred stock or (2) when shares of series B preferred stock are outstanding, the series B preferred stock, have not been paid for an aggregate of six quarterly dividend periods or more (whether or not consecutive), the authorized number of directors then constituting our board of directors will be increased by two. Holders of the series A preferred stock and/or series B preferred stock, together with the holders of any outstanding securities designated as ranking on a parity with such series of preferred stock and with like voting rights, referred to as voting parity securities, voting as a single class, will be entitled to elect the two additional members of our board of directors, referred to as the preferred stock directors, at the next annual meeting (or at a special meeting called for the purpose of electing the preferred stock directors prior to the next annual meeting) and at each subsequent annual meeting until all accrued and unpaid dividends for all past dividend periods have been paid in full. The election of any preferred stock director is subject to the qualification that the election would not cause us to violate the corporate governance requirement of the New York Stock Exchange (or any other exchange on which our securities may be listed) that listed companies must have a majority of independent directors. Upon the termination of these rights of the holders of preferred stock and voting parity securities to vote for preferred stock directors, the preferred stock directors will immediately cease to be qualified as directors, their term of office shall terminate immediately and the number of authorized directors of State Street will be reduced by the number of preferred stock directors that the holders of preferred stock and voting parity securities had been entitled to elect.

Under regulations adopted by the Federal Reserve Board, if the holders of any series of the preferred stock are or become entitled to vote for the election of directors, such series may then be deemed a class of voting securities and a holder of 25% or more of such series, or a holder of 5% or more if it otherwise exercises a controlling influence over us, may then be subject to regulation as a bank holding company in accordance with the Bank Holding Company Act. In addition, at such time as such series is deemed a class of voting securities, (a) any other bank holding company may be required to obtain the approval of the Federal Reserve Board to acquire or retain 5% or more of that series and (b) any person other than a bank holding company may be required to obtain the approval of the Federal Reserve Board to acquire or retain 10% or more of that series.

### **Exchangeability**

The holders of shares of preferred stock of any series may be required at any time or at maturity to exchange those shares for our debt securities. The applicable prospectus supplement will specify the terms of any such exchange.

### **Transfer Agent and Registrar**

Unless otherwise indicated in the applicable prospectus supplement, American Stock Transfer and Trust Company will be the transfer agent, dividend and redemption price disbursement agent and registrar for shares of each series of the preferred stock.



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### **DESCRIPTION OF DEPOSITARY SHARES**

#### **General**

We may, at our option, elect to offer fractional shares of preferred stock, which we call depositary shares, rather than full shares of preferred stock. If we do, we will issue to the public receipts, called depositary receipts, for depositary shares, each of which will represent a fraction, to be described in the applicable prospectus supplement, of a share of a particular series of preferred stock. Unless otherwise provided in the prospectus supplement, each owner of a depositary share will be entitled, in proportion to the applicable fractional interest in a share of preferred stock represented by the depositary share, to all the rights and preferences of the preferred stock represented by the depositary share. Those rights include dividend, voting, redemption, conversion and liquidation rights.

The shares of preferred stock underlying the depositary shares will be deposited with a bank or trust company selected by us to act as depositary, under a deposit agreement between us, the depositary and the holders of the depositary receipts. The depositary will be the transfer agent, registrar and dividend disbursing agent for the depositary shares.

The depositary shares will be evidenced by depositary receipts issued pursuant to the depositary agreement. Holders of depositary receipts agree to be bound by the deposit agreement, which requires holders to take certain actions such as filing proof of residence and paying certain charges.

The summary of terms of the depositary shares contained in this prospectus is not complete. You should refer to the forms of the deposit agreement, our articles of organization and the certificate of designation for the applicable series of preferred stock that are, or will be, filed with the SEC.

#### **Dividends and Other Distributions**

The depositary will distribute all cash dividends or other cash distributions, if any, received in respect of the preferred stock underlying the depositary shares to the record holders of depositary shares in proportion to the numbers of depositary shares owned by those holders on the relevant record date. The relevant record date for depositary shares will be the same date as the record date for the preferred stock.

If there is a distribution other than in cash, the depositary will distribute property received by it to the record holders of depositary shares, unless the depositary determines that it is not feasible to make the distribution. If this occurs, the depositary may, with our approval, adopt another method for the distribution, including selling the property and distributing the net proceeds from the sale to the holders.

#### **Liquidation Preference**

If a series of preferred stock underlying the depositary shares has a liquidation preference, in the event of the voluntary or involuntary liquidation, dissolution or winding up of State Street, holders of depositary shares will be entitled to receive the fraction of the liquidation preference accorded each share of the applicable series of preferred stock, as set forth in the applicable prospectus supplement.

#### **Withdrawal of Stock**

Unless the related depositary shares have been previously called for redemption, upon surrender of the depositary receipts at the office of the depositary, the holder of the depositary shares will be entitled to delivery, at the office of the depositary to or upon his or her order, of the number of whole shares of the preferred stock and any money or other property represented by the depositary shares. If the depositary receipts delivered by the holder evidence a number of depositary shares in excess of the number of depositary shares representing the number of whole shares of preferred stock to be withdrawn, the depositary will deliver to the holder at the same time a new depositary receipt evidencing the excess number of depositary shares. In no event will the depositary deliver fractional shares of preferred stock upon surrender of depositary receipts.

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### **Redemption of Depositary Shares**

Whenever we redeem shares of preferred stock held by the depositary, the depositary will redeem as of the same redemption date the number of depositary shares representing shares of the preferred stock so redeemed, so long as we have paid in full to the depositary the redemption price of the preferred stock to be redeemed plus an amount equal to any accumulated and unpaid dividends on the preferred stock to the date fixed for redemption. The redemption price per depositary share will be equal to the redemption price and any other amounts per share payable on the preferred stock multiplied by the fraction of a share of preferred stock represented by one depositary share. If less than all the depositary shares are to be redeemed, the depositary shares to be redeemed will be selected by lot or pro rata or by any other equitable method as may be determined by the depositary.

After the date fixed for redemption, depositary shares called for redemption will no longer be deemed to be outstanding and all rights of the holders of depositary shares will cease, except the right to receive the moneys payable upon redemption and any money or other property to which the holders of the depositary shares were entitled upon redemption upon surrender to the depositary of the depositary receipts evidencing the depositary shares.

### **Voting the Preferred Stock**

Upon receipt of notice of any meeting at which the holders of the preferred stock are entitled to vote, the depositary will mail the information contained in the notice of meeting to the record holders of the depositary receipts relating to that preferred stock. The record date for the depositary receipts relating to the preferred stock will be the same date as the record date for the preferred stock. Each record holder of the depositary shares on the record date will be entitled to instruct the depositary as to the exercise of the voting rights pertaining to the number of shares of preferred stock represented by that holder's depositary shares. The depositary will endeavor, insofar as practicable, to vote the number of shares of preferred stock represented by the depositary shares in accordance with those instructions, and we will agree to take all action that may be deemed necessary by the depositary in order to enable the depositary to do so. The depositary will not vote any shares of preferred stock except to the extent it receives specific instructions from the holders of depositary shares representing that number of shares of preferred stock.

### **Charges of Depositary**

We will pay all transfer and other taxes and governmental charges arising solely from the existence of the depositary arrangements. We will pay charges of the depositary in connection with the initial deposit of the preferred stock and any redemption of the preferred stock. Holders of depositary receipts will pay transfer, income and other taxes and governmental charges and such other charges as are expressly provided in the deposit agreement to be for their accounts. If these charges have not been paid by the holders of depositary receipts, the depositary may refuse to transfer depositary shares, withhold dividends and distributions and sell the depositary shares evidenced by the depositary receipt.

### **Amendment and Termination of the Deposit Agreement**

The form of depositary receipt evidencing the depositary shares and any provision of the deposit agreement may be amended by agreement between us and the depositary. However, any amendment that materially and adversely alters the rights of the holders of depositary shares, other than fee changes, will not be effective unless the amendment has been approved by at least a majority of the outstanding depositary shares. The deposit agreement may be terminated by the depositary or us only if:

all outstanding depositary shares have been redeemed; or

there has been a final distribution of the preferred stock in connection with our dissolution and such distribution has been made to all the holders of depositary shares.

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### **Resignation and Removal of Depositary**

The depositary may resign at any time by delivering to us notice of its election to do so, and we may remove the depositary at any time. Any resignation or removal of the depositary will take effect upon our appointment of a successor depositary and its acceptance of such appointment. The successor depositary must be appointed within 60 days after delivery of the notice of resignation or removal and must be a bank or trust company having its principal office in the United States and having the requisite combined capital and surplus as set forth in the applicable agreement.

### **Notices**

The depositary will forward to holders of depositary receipts all notices, reports and other communications, including proxy solicitation materials received from us, that are delivered to the depositary and that we are required to furnish to the holders of the preferred stock. In addition, the depositary will make available for inspection by holders of depositary receipts at the principal office of the depositary, and at such other places as it may from time to time deem advisable, any reports and communications we deliver to the depositary as the holder of preferred stock.

### **Limitation of Liability**

Neither we nor the depositary will be liable if either of us is prevented or delayed by law or any circumstance beyond our control in performing our obligations. Our obligations and those of the depositary will be limited to performance in good faith of our and their duties thereunder. We and the depositary will not be obligated to prosecute or defend any legal proceeding in respect of any depositary shares or preferred stock unless satisfactory indemnity is furnished. We and the depositary may rely upon written advice of counsel or accountants, on information provided by persons presenting preferred stock for deposit, holders of depositary receipts or other persons believed to be competent to give such information and on documents believed to be genuine and to have been signed or presented by the proper party or parties.

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**DESCRIPTION OF COMMON STOCK**

**General**

We have 750,000,000 shares of authorized common stock, \$1.00 par value per share, of which 431,965,675 shares were outstanding as of January 31, 2009.

Holders of our common stock are entitled to receive dividends if, as and when declared by our board of directors out of any funds legally available for dividends. Holders of our common stock are also entitled, upon our liquidation, and after claims of creditors and the preferences of the series B preferred stock, and the series A preferred stock and any other class or series of preferred stock outstanding at the time of liquidation, to receive *pro rata* our net assets. We pay dividends on our common stock only if we have paid or provided for all dividends on our outstanding series of preferred stock, for the then current period and, in the case of any cumulative preferred stock, all prior periods.

In addition, the terms of the U.S. Treasury's TARP capital purchase program require us to pay preferred cumulative dividends to the U.S. Treasury and restrict our ability prior to October 28, 2011, or such earlier time as all shares of series B preferred stock issued by us to the U.S. Treasury have been redeemed by us or transferred by the U.S. Treasury, to increase dividends on our common stock to greater than \$0.24 per share, or, subject to certain exceptions, to redeem or purchase any of our capital stock or other equity securities, which includes our common stock. For more information on restrictions on our ability to pay dividends on our common stock see [Restrictions on Ownership](#) below.

Our series B preferred stock has, and our series A preferred stock and any other series of preferred stock upon issuance will have, preference over our common stock with respect to the payment of dividends and the distribution of assets in the event of our liquidation, winding up or dissolution. Our preferred stock also has such other preferences as may be fixed by our board of directors.

Holders of our common stock are entitled to one vote for each share that they hold and are vested with all of the voting power except as our board of directors has provided, or may provide in the future, with respect to preferred stock or any other class or series of preferred stock that the board of directors may hereafter authorize. See [Description of Preferred Stock](#). Shares of our common stock are not redeemable, and have no subscription, conversion or preemptive rights.

Our common stock is listed on the New York Stock Exchange. Outstanding shares of our common stock are validly issued, fully paid and non-assessable. Holders of our common stock are not, and will not be, subject to any liability as stockholders.

**Transfer Agent and Registrar**

The transfer agent and registrar for our common stock is American Stock Transfer and Trust Company.

**Restrictions on Ownership**

The Bank Holding Company Act requires any bank holding company, as defined in the Bank Holding Company Act, to obtain the approval of the Federal Reserve Board prior to the acquisition of 5% or more of our common stock. Any person, other than a bank holding company, is required to obtain prior approval of the Federal Reserve Board to acquire 10% or more of our common stock under the Change in Bank Control Act. Any holder of 25% or more of our common stock, or a holder of 5% or more if such holder otherwise exercises a controlling influence over us, is subject to regulation as a bank holding company under the Bank Holding Company Act. Chapter 167A of the General Laws of Massachusetts requires any bank holding company, as defined in Chapter 167A, to obtain prior approval of the board of bank incorporation before (i) acquiring 5% or more of our common stock, (ii) acquiring all or substantially all of our assets or (iii) merging or consolidating with us.

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**DESCRIPTION OF STOCK PURCHASE CONTRACTS AND STOCK PURCHASE UNITS**

We may issue stock purchase contracts, including contracts obligating holders to purchase from or sell to us, and obligating us to sell to or purchase from the holders, a specified number of shares of our common stock, preferred stock or depositary shares at a future date or dates, which we refer to in this prospectus as stock purchase contracts. The price per share of common stock, preferred stock or depositary shares and the number of shares of each may be fixed at the time the stock purchase contracts are issued or may be determined by reference to a specific formula set forth in the stock purchase contracts. The stock purchase contracts may be issued separately or as part of units, often known as stock purchase units, consisting of one or more stock purchase contracts and beneficial interests in:

debt securities,

debt obligations of third parties, including U.S. treasury securities,

capital securities issued by trusts, all of whose common securities are owned by us or by one of our subsidiaries, or

any other securities described in the applicable prospectus supplement or any combination of the foregoing, securing the holders' obligations to purchase the common stock, preferred stock or depositary shares under the stock purchase contracts. The stock purchase contracts may require us to make periodic payments to the holders of the stock purchase units or vice versa, and these payments may be unsecured or prefunded on some basis. The stock purchase contracts may require holders to secure their obligations under those contracts in a specified manner, including without limitation by pledging their interest in another stock purchase contract.

The applicable prospectus supplement will describe the terms of the stock purchase contracts and stock purchase units, including, if applicable, collateral or depositary arrangements.

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**DESCRIPTION OF WARRANTS**

We may issue warrants to purchase debt securities, preferred stock, depositary shares or common stock. We may offer warrants separately or together with one or more additional warrants, debt securities, preferred stock, depositary shares or common stock, or any combination of those securities in the form of units, as described in the applicable prospectus supplement. If we issue warrants as part of a unit, the accompanying prospectus supplement will specify whether those warrants may be separated from the other securities in the unit prior to the warrants' expiration date. Below is a description of certain general terms and provisions of the warrants that we may offer. Further terms of the warrants will be described in the prospectus supplement.

The applicable prospectus supplement will describe the following terms of any warrants in respect of which this prospectus is being delivered:

the specific designation and aggregate number of, and the price at which we will issue, the warrants;

the currency or currency units in which the offering price, if any, and the exercise price are payable;

the date on which the right to exercise the warrants will begin and the date on which that right will expire or, if you may not continuously exercise the warrants throughout that period, the specific date or dates on which you may exercise the warrants;

whether the warrants will be issued in fully registered form or bearer form, in definitive or global form or in any combination of these forms, although, in any case, the form of a warrant included in a unit will correspond to the form of the unit and of any security included in that unit;

any applicable material U.S. federal income tax consequences;

the identity of the warrant agent for the warrants and of any other depositaries, execution or paying agents, transfer agents, registrars or other agents;

the proposed listing, if any, of the warrants or any securities purchasable upon exercise of the warrants on any securities exchange;

the designation and terms of the preferred stock or common stock purchasable upon exercise of the warrants;

the designation, aggregate principal amount, currency and terms of the debt securities that may be purchased upon exercise of the warrants;

if applicable, the designation and terms of the debt securities, preferred stock, depositary shares or common stock with which the warrants are issued and, the number of warrants issued with each security;

if applicable, the date from and after which the warrants and the related debt securities, preferred stock, depositary shares or common stock will be separately transferable;

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the number of shares of preferred stock, the number of depositary shares or the number of shares of common stock purchasable upon exercise of a warrant and the price at which those shares may be purchased;

if applicable, the minimum or maximum amount of the warrants that may be exercised at any one time;

information with respect to book-entry procedures, if any;

the antidilution provisions of the warrants, if any;

any redemption or call provisions;

whether the warrants are to be sold separately or with other securities as parts of units; and

any additional terms of the warrants, including terms, procedures and limitations relating to the exchange and exercise of the warrants.

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**FORMS OF SECURITIES**

Each debt security, depositary share, stock purchase contract, stock purchase unit, warrant and capital security will be represented either by a certificate issued in definitive form to a particular investor or by one or more global securities representing the entire issuance of securities. Certificated securities in definitive form and global securities will be issued in registered form. Definitive securities name you or your nominee as the owner of the security, and in order to transfer or exchange these securities or to receive payments other than interest or other interim payments, you or your nominee must physically deliver the securities to the trustee, registrar, paying agent or other agent, as applicable. Global securities name a depositary or its nominee as the owner of the debt securities, depositary shares, stock purchase contracts, stock purchase units, warrants or capital securities represented by these global securities. The depositary maintains a computerized system that will reflect each investor's beneficial ownership of the securities through an account maintained by the investor with its broker/dealer, bank, trust company or other representative, as we explain more fully below.

**Global Securities**

*Registered Global Securities.* We may issue the registered debt securities, depositary shares, stock purchase contracts, stock purchase units, warrants and capital securities in the form of one or more fully registered global securities that will be deposited with a depositary or its nominee identified in the applicable prospectus supplement and registered in the name of that depositary or nominee. In those cases, one or more registered global securities will be issued in a denomination or aggregate denominations equal to the portion of the aggregate principal or face amount of the securities to be represented by registered global securities. Unless and until it is exchanged in whole for securities in definitive registered form, a registered global security may not be transferred except as a whole by and among the depositary for the registered global security, the nominees of the depositary or any successors of the depositary or those nominees.

If not described below, any specific terms of the depositary arrangement with respect to any securities to be represented by a registered global security will be described in the prospectus supplement relating to those securities. We anticipate that the following provisions will apply to all depositary arrangements.

Ownership of beneficial interests in a registered global security will be limited to persons, called participants, that have accounts with the depositary or persons that may hold interests through participants. Upon the issuance of a registered global security, the depositary will credit, on its book-entry registration and transfer system, the participants' accounts with the respective principal or face amounts of the securities beneficially owned by the participants. Any dealers, underwriters or agents participating in the distribution of the securities will designate the accounts to be credited. Ownership of beneficial interests in a registered global security will be shown on, and the transfer of ownership interests will be effected only through, records maintained by the depositary, with respect to interests of participants, and on the records of participants, with respect to interests of persons holding through participants. The laws of some states may require that some purchasers of securities take physical delivery of these securities in definitive form. These laws may impair your ability to own, transfer or pledge beneficial interests in registered global securities.

So long as the depositary, or its nominee, is the registered owner of a registered global security, that depositary or its nominee, as the case may be, will be considered the sole owner or holder of the securities represented by the registered global security for all purposes under the applicable indenture, stock purchase contract, unit agreement or warrant agreement. Except as described below, owners of beneficial interests in a registered global security will not be entitled to have the securities represented by the registered global security registered in their names, will not receive or be entitled to receive physical delivery of the securities in definitive form and will not be considered the owners or holders of the securities under the applicable indenture, stock purchase contract, unit agreement or warrant agreement. Accordingly, each person owning a beneficial interest in a registered global security must rely on the procedures of the depositary for that registered global security and, if that person is not a participant, on the procedures of the participant through which the person owns its interest, to



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exercise any rights of a holder under the applicable indenture, stock purchase contract, unit agreement, trust agreement or warrant agreement. We understand that under existing industry practices, if we request any action of holders or if an owner of a beneficial interest in a registered global security desires to give or take any action that a holder is entitled to give or take under the applicable indenture, stock purchase contract, unit agreement, trust agreement or warrant agreement, the depository for the registered global security would authorize the participants holding the relevant beneficial interests to give or take that action, and the participants would authorize beneficial owners owning through them to give or take that action or would otherwise act upon the instructions of beneficial owners holding through them.

Principal or premium, if any, and interest payments on debt securities and capital securities, and any payments to holders with respect to warrants, purchase contracts or units, represented by a registered global security registered in the name of a depository or its nominee will be made to the depository or its nominee, as the case may be, as the registered owner of the registered global security. None of State Street, the trustees, any warrant agent, unit agent or any other agent of State Street, agent of the trustee or agent of such warrant agent or unit agent will have any responsibility or liability for any aspect of the records relating to payments made on account of beneficial ownership interests in the registered global security or for maintaining, supervising or reviewing any records relating to those beneficial ownership interests.

We expect that the depository for any of the securities represented by a registered global security, upon receipt of any payment of principal, premium, interest or other distribution of underlying securities or other property to holders of that registered global security, will immediately credit participants' accounts in amounts proportionate to their respective beneficial interests in that registered global security as shown on the records of the depository. We also expect that payments by participants to owners of beneficial interests in a registered global security held through participants will be governed by standing customer instructions and customary practices, as is now the case with the securities held for the accounts of customers in bearer form or registered in street name, and will be the responsibility of those participants.

If the depository for any of these securities represented by a registered global security is at any time unwilling or unable to continue as depository or ceases to be a clearing agency registered under the Exchange Act, and a successor depository registered as a clearing agency under the Exchange Act is not appointed by us within 90 days, we will issue securities in definitive form in exchange for the registered global security that had been held by the depository. Any securities issued in definitive form in exchange for a registered global security will be registered in the name or names that the depository gives to the relevant trustee, warrant agent, unit agent or other relevant agent of ours or theirs. It is expected that the depository's instructions will be based on directions received by the depository from participants with respect to ownership of beneficial interests in the registered global security that had been held by the depository.

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**PLAN OF DISTRIBUTION**

We and the selling security holders may sell securities:

through underwriters;

through dealers;

through agents; or

directly to purchasers.

If any securities are sold pursuant to this prospectus by any persons other than us, we will, in a prospectus supplement, name the selling securityholders, indicate the nature of any relationship such holders have had with us or any of our affiliates during the three years preceding such offering, state the amount of securities of the class owned by such securityholder prior to the offering and the amount to be offered for the security holder's account, and state the amount and (if one percent or more) the percentage of the class to be owned by such security holder after completion of the offering.

We or any selling securityholder may directly solicit offers to purchase securities, or agents may be designated to solicit such offers. We will, in the prospectus supplement relating to such offering, name any agent that could be viewed as an underwriter under the Securities Act and describe any commissions that we or any selling security holder must pay. Any such agent will be acting on a best efforts basis for the period of its appointment or, if indicated in the applicable prospectus supplement, on a firm commitment basis. Agents, dealers and underwriters may be customers of, engage in transactions with, or perform services for us or any selling security holder in the ordinary course of business.

The distribution of the securities may be effected from time to time in one or more transactions:

at a fixed price, or prices, which may be changed from time to time;

at market prices prevailing at the time of sale;

at prices related to such prevailing market prices; or

at negotiated prices.

Each prospectus supplement will describe the method of distribution of the securities and any applicable restrictions.

The prospectus supplement with respect to the securities of a particular series will describe the terms of the offering of the securities, including the following:

the name of the agent or any underwriters;

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the public offering or purchase price;

any discounts and commissions to be allowed or paid to the agent or underwriters;

all other items constituting underwriting compensation;

any discounts and commissions to be allowed or paid to dealers; and

any exchanges on which the securities will be listed.

If any underwriters or agents are utilized in the sale of the securities in respect of which this prospectus is delivered, we and, if applicable, any selling securityholder will enter into an underwriting agreement or other agreement with them at the time of sale to them, and we will set forth in the prospectus supplement relating to such offering the names of the underwriters or agents and the terms of the related agreement with them.

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If a dealer is utilized in the sale of the securities in respect of which the prospectus is delivered, we will sell such securities to the dealer, as principal. The dealer may then resell such securities to the public at varying prices to be determined by such dealer at the time of resale.

Remarketing firms, agents, underwriters and dealers may be entitled under agreements which they may enter into with us to indemnification by us and by any selling securityholder against certain civil liabilities, including liabilities under the Securities Act, and may be customers of, engage in transactions with or perform services for us or any selling securityholder in the ordinary course of business.

If so indicated in the applicable prospectus supplement, we will authorize underwriters or other persons acting as our agents to solicit offers by certain institutions to purchase securities from us pursuant to delayed delivery contracts providing for payment and delivery on the date stated in the prospectus supplement. Each contract will be for an amount not less than, and the aggregate amount of securities sold pursuant to such contracts shall not be less nor more than, the respective amounts stated in the prospectus supplement. Institutions with whom the contracts, when authorized, may be made include commercial and savings banks, insurance companies, pension funds, investment companies, educational and charitable institutions and other institutions, but shall in all cases be subject to our approval. Delayed delivery contracts will not be subject to any conditions except that:

the purchase by an institution of the securities covered under that contract shall not at the time of delivery be prohibited under the laws of the jurisdiction to which that institution is subject; and

if the securities are also being sold to underwriters acting as principals for their own account, the underwriters shall have purchased such securities not sold for delayed delivery. The underwriters and other persons acting as our agents will not have any responsibility in respect of the validity or performance of delayed delivery contracts.

Certain of the underwriters and their associates and affiliates may be customers of, have borrowing relationships with, engage in other transactions with, and/or perform services, including investment banking services, for, us and/or the selling securityholders or one or more of our respective affiliates in the ordinary course of business.

In order to facilitate the offering of the securities, any underwriters may engage in transactions that stabilize, maintain or otherwise affect the price of the securities or any other securities the prices of which may be used to determine payments on such securities. Specifically, any underwriters may overallocate in connection with the offering, creating a short position for their own accounts. In addition, to cover overallocations or to stabilize the price of the securities or of any such other securities, the underwriters may bid for, and purchase, the securities or any such other securities in the open market. Finally, in any offering of the securities through a syndicate of underwriters, the underwriting syndicate may reclaim selling concessions allowed to an underwriter or a dealer for distributing the securities in the offering if the syndicate repurchases previously distributed securities in transactions to cover syndicate short positions, in stabilization transactions or otherwise. Any of these activities may stabilize or maintain the market price of the securities above independent market levels. Any such underwriters are not required to engage in these activities and may end any of these activities at any time.

The securities may be new issues of securities and may have no established trading market. The securities may or may not be listed on a national securities exchange. We can make no assurance as to the liquidity of or the existence of trading markets for any of the securities.

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**LEGAL MATTERS**

Unless the applicable prospectus supplement indicates otherwise, certain matters of Delaware law relating to the validity of the capital securities, the enforceability of the applicable trust agreement and the creation of each trust will be passed upon for State Street and for the trusts by Richards, Layton & Finger, P.A., special Delaware counsel to State Street and the trusts. Unless the applicable prospectus supplement indicates otherwise, the validity of the securities in respect of which this prospectus is being delivered will be passed upon by Wilmer Cutler Pickering Hale and Dorr LLP.

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**EXPERTS**

The consolidated financial statements of State Street Corporation appearing in State Street Corporation's Annual Report (Form 10-K) for the year ended December 31, 2008, and the effectiveness of State Street Corporation's internal control over financial reporting as of December 31, 2008 included therein, have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their reports thereon, included therein, and incorporated herein by reference. Such consolidated financial statements are incorporated herein by reference in reliance upon such reports given on the authority of such firm as experts in accounting and auditing.

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**State Street Corporation**

**\$500,100,000**

**% Junior Subordinated Debentures due 2018**

**Prospectus Supplement**

**February , 2011**

*Remarketing Agent and Sole Book-Runner*

**Goldman, Sachs & Co.**