

RITA MEDICAL SYSTEMS INC

Form S-4/A

June 24, 2004

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As filed with the Securities and Exchange Commission on June 24, 2004.

Registration No. 333-116378

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

AMENDMENT NO. 1

to

FORM S-4

REGISTRATION STATEMENT

Under

The Securities Act of 1933

RITA MEDICAL SYSTEMS, INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of

Incorporation or Organization)

3845
(Primary Standard Industrial

Classification Code Number)

94-3199149
(I.R.S. Employer

Identification Number)

967 N. Shoreline Blvd.

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Mountain View, CA 94043

(650) 314-3400

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

Joseph DeVivo

President and Chief Executive Officer

RITA Medical Systems, Inc.

967 N. Shoreline Blvd.

Mountain View, CA 94043

(650) 314-3400

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)

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Approximate date of commencement of proposed sale to the public: As soon as practicable after the effectiveness of this Registration Statement and the effective time of the merger of Hornet Acquisition Corp., a wholly-owned subsidiary of the Registrant, with and into Horizon Medical Products, Inc. as described in the Agreement and Plan of Merger, dated as of May 12, 2004, included as Annex A to the joint proxy statement/prospectus forming a part of this Registration Statement.

If the securities being registered on this form are being offered in connection with the formation of a holding company and are in compliance with General Instruction G, 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, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. " _____

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

THE REGISTRANT HEREBY AMENDS THIS REGISTRATION STATEMENT ON SUCH DATE OR DATES AS MAY BE NECESSARY TO DELAY ITS EFFECTIVE DATE UNTIL THE REGISTRANT SHALL FILE A FURTHER AMENDMENT WHICH SPECIFICALLY STATES THAT THIS REGISTRATION STATEMENT SHALL BECOME EFFECTIVE IN ACCORDANCE WITH SECTION 8(a) OF THE SECURITIES ACT OR UNTIL THIS REGISTRATION STATEMENT SHALL BECOME EFFECTIVE ON SUCH DATE AS THE SECURITIES AND EXCHANGE COMMISSION, ACTING PURSUANT TO SECTION 8(a), MAY DETERMINE.

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The information in this joint proxy statement/prospectus is not complete and may be changed. RITA may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This joint proxy statement/prospectus is not an offer to sell these securities nor the solicitation of any offer to buy these securities in any state where the offer or sale is not permitted.

SUBJECT TO COMPLETION, DATED JUNE 24, 2004

MERGER PROPOSAL YOUR VOTE IS IMPORTANT

The boards of directors of RITA Medical Systems, Inc. and Horizon Medical Products, Inc. have unanimously (with one Horizon director abstaining) approved a merger of the two companies. We believe the combined company will be able to create more stockholder value than could be achieved by either company individually. We ask for your support in voting in favor of the proposals to be presented at our respective stockholder meetings.

If the merger is completed, Horizon shareholders will be entitled to receive 0.4212 of a share of RITA common stock for each share of Horizon common stock they hold, plus cash in lieu of fractional shares. RITA stockholders will continue to own their existing shares of RITA common stock. Upon completion of the merger, Horizon will become a wholly-owned subsidiary of RITA and shares of RITA common stock will continue to trade on the Nasdaq National Market under the symbol RITA.

RITA stockholders are being asked to approve the issuance of the shares of RITA common stock in connection with the merger, to approve an amendment to RITA's certificate of incorporation to, among other things, increase the number of authorized shares of RITA common stock, to elect a director and to ratify the selection of independent registered public accountants at the RITA annual meeting. Horizon shareholders are being asked to approve the merger agreement and the merger and to elect seven directors and ratify the selection of independent registered public accountants at the Horizon annual meeting. If the merger is completed, the other Horizon annual meeting matters will, as a result, be superseded. The dates, times and places of the meetings are as follows:

For RITA stockholders:

July 29, 2004 at 10:00 a.m., local time

Mountain View, California

For Horizon shareholders:

July 29, 2004 at 1:00 p.m., local time

Atlanta, Georgia

We encourage you to read carefully this joint proxy statement/prospectus, including the section entitled Risk Factors beginning on page 18, before voting your shares.

We look forward to a successful combination of RITA and Horizon.

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/s/ Joseph DeVivo
Joseph DeVivo

President and Chief Executive Officer

RITA Medical Systems, Inc.

/s/ Robert J. Wenzel
Robert J. Wenzel

President, Chief Operating Officer

and Interim Chief Executive Officer

Horizon Medical Products, Inc.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the merger, the merger agreement or the stock to be issued pursuant to the merger or determined if this joint proxy statement/prospectus is accurate or complete. Any representation to the contrary is a criminal offense.

This joint proxy statement/prospectus is dated June , 2004 and is first being mailed to the stockholders of RITA and the shareholders of Horizon on or about June , 2004.

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REFERENCES TO ADDITIONAL INFORMATION

This joint proxy statement/prospectus incorporates important business and financial information about RITA from other documents that are not included in or delivered with this joint proxy statement/prospectus. This information is available to you without charge upon your request. You can obtain the documents incorporated by reference in this joint proxy statement/prospectus by requesting them in writing or by telephone from RITA at 967 North Shoreline Road, Mountain View, California 94013, telephone (650) 314-3400.

If you would like to request documents, RITA must receive your request by July 22, 2004 (which is at least five business days before the date of the RITA annual meeting), in order for you to receive them before your annual meeting.

See "Where You Can Find More Information" beginning on page 170.

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NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

To All Stockholders of RITA Medical Systems, Inc.:

NOTICE IS HEREBY GIVEN that RITA will hold its annual meeting of stockholders on Thursday, July 29, 2004, 10:00 a.m., local time, at Heller Ehrman White & McAuliffe LLP, located at 2775 Sand Hill Road, Menlo Park, California 94025 for the following purposes:

1. To consider and vote on a proposal to approve the issuance of shares of RITA common stock pursuant to the Agreement and Plan of Merger, dated as of May 12, 2004, by and among RITA, Hornet Acquisition Corp. and Horizon Medical Products, Inc, as such may be amended from time to time. A copy of the merger agreement is included as Annex A to the accompanying joint proxy statement/prospectus.
2. To approve an amendment to RITA's certificate of incorporation to increase the number of authorized shares of RITA common stock from 100,000,000 to 150,000,000 and to clarify the authority of RITA's board of directors to fix the terms of preferred stock.
3. To elect two Class I directors to serve until the 2007 annual meeting of stockholders.
4. To ratify the appointment of PricewaterhouseCoopers LLP as RITA's independent registered public accounting firm for the fiscal year ending December 31, 2004.
5. To transact such other business as may properly come before the annual meeting.

Holders of record of shares of RITA common stock at the close of business on June 22, 2004, the record date, are entitled to receive this notice and to vote their shares at the annual meeting or any adjournment or postponement of that meeting. As of the record date, there were 18,039,158 shares of RITA common stock outstanding. Each share of RITA common stock is entitled to one vote on each matter properly brought before the annual meeting. A list of the stockholders entitled to vote at RITA's annual meeting will be available at the meeting and for 10 days prior to the meeting, during regular business hours, at RITA's corporate offices located at 967 North Shoreline Blvd, Mountain View, California, 94013. You should contact the RITA corporate secretary if you wish to review this list of stockholders.

After careful consideration, RITA's board of directors has unanimously determined that the merger is in the best interests of RITA and its stockholders and has unanimously approved and adopted the merger agreement, the proposed merger and the issuance of shares of RITA common stock to holders of Horizon common stock as contemplated by the merger agreement.

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RITA's board of directors unanimously recommends that you vote to approve each of RITA's proposals listed above, all of which are described in detail in the accompanying joint proxy statement/prospectus.

By Order of the Board of Directors,

June , 2004

Mountain View, California

/s/ Joseph DeVivo
Joseph DeVivo
President and Chief Executive Officer

IMPORTANT

Your vote is important. Even if you plan to attend the annual meeting, please complete and mail the enclosed proxy card as promptly as possible in the enclosed postage-paid envelope.

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NOTICE OF ANNUAL MEETING OF SHAREHOLDERS

To All Shareholders of Horizon Medical Products, Inc.:

NOTICE IS HEREBY GIVEN that Horizon Medical Products, Inc. will hold an annual meeting of its shareholders on Thursday, July 29, 2004, 1:00 p.m., local time, at the offices of King & Spalding LLP, 191 Peachtree Street, Atlanta, Georgia 30303 for the following purposes:

1. To consider and vote on a proposal to approve the Agreement and Plan of Merger, dated as of May 12, 2004, by and among RITA Medical Systems, Inc., Hornet Acquisition Corp. and Horizon, as such may be amended from time to time, and the merger contemplated thereby. A copy of the merger agreement is included as Annex A to the accompanying joint proxy statement/prospectus.
2. To consider and vote on a proposal to elect seven individuals to serve as members of Horizon's board of directors until Horizon's 2005 annual meeting of shareholders.
3. To consider and vote on a proposal to ratify the appointment of Grant Thornton LLP as Horizon's independent registered public accountants for the fiscal year ending December 31, 2004.
4. To transact such other business as may properly come before the annual meeting.

Holders of record of shares of Horizon common stock at the close of business on June 23, 2004, the record date, are entitled to receive this notice and to vote their shares at the annual meeting or any adjournment or postponement of that meeting. As of the record date, there were 44,313,068 shares of Horizon common stock outstanding. Each share of Horizon common stock is entitled to one vote on each matter properly brought before the annual meeting. If the merger is completed, each share of Horizon common stock will be converted into the right to receive 0.4212 of a share of RITA common stock. Horizon will make available at its annual meeting a list of shareholders entitled to vote at the meeting for examination by any shareholder, or his or her agent or attorney.

After careful consideration, Horizon's board of directors has unanimously (with one abstention) determined that the merger is in the best interests of Horizon and its shareholders, approved and adopted the merger agreement and the proposed merger, and recommends that you vote to approve the merger agreement and the merger.

In order to complete the merger, the holders of at least a majority of outstanding shares of Horizon common stock must vote to approve the merger agreement and the merger. Approval of the other Horizon annual meeting matters is not a condition to the merger. If the merger is completed, the other Horizon annual meeting matters will, as a result, be superseded.

By Order of the Board of Directors,

June , 2004
Manchester, Georgia

/s/ Robert J. Wenzel
Robert J. Wenzel
President, Chief Operating Officer and
Interim Chief Executive Officer

IMPORTANT

Your vote is important. Even if you plan to attend the annual meeting, please complete and mail the enclosed proxy card as promptly as possible in the enclosed postage-paid envelope.

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QUESTIONS AND ANSWERS ABOUT THE MERGER

Q: Why are the companies proposing the merger?

A: We believe that a combination of RITA and Horizon will create a leading specialty medical device company that will capitalize on the complementary strengths of each company and produce greater stockholder value than would be expected absent the proposed merger.

Q: What will a shareholder be entitled to receive when the merger occurs?

A: Horizon shareholders will be entitled to receive 0.4212 of a share of RITA common stock for each share of Horizon common stock that they own at the time of the merger and cash in lieu of any fraction of a share. After the merger, RITA stockholders will continue to hold the shares of RITA common stock that they currently own; however, those shares will represent a smaller proportion of the outstanding shares of the combined company.

Q: Will Horizon shareholders pay tax as a result of the merger?

A: The merger is intended to be a tax-free reorganization, which means that Horizon shareholders should not pay U.S. federal income tax upon the receipt of shares of RITA common stock pursuant to the merger. Horizon shareholders may pay tax, however, on the receipt of cash paid in lieu of fractional shares that would otherwise be issued pursuant to the merger. See *The Proposed Merger* Material U.S. Federal Income Tax Consequences of the Merger on page 49.

Q: What do I need to do now?

A: After you carefully read this document, including the annexes, please vote your shares as soon as possible so that your shares will be represented at your company's annual meeting. Please follow the instructions set forth on the proxy card or on the instruction card provided by the record holder if your shares are held in the name of your broker, a bank or other nominee.

Q: Why is my vote important?

A: The merger agreement and Georgia law require that the holders of at least a majority of Horizon's outstanding shares of common stock approve the merger agreement and the merger. Although holders representing a majority of Horizon's outstanding shares of common stock have entered into voting agreements committing them to vote their shares in favor of the merger agreement and the merger, your vote is important. If you are a Horizon shareholder and you do not submit a proxy or vote in person at the Horizon annual meeting, it will have the same effect as a vote against approval of the merger agreement and the merger. If you submit a proxy and affirmatively elect to abstain from voting, your proxy will be counted as present for purposes of determining the presence of a quorum but will have the same effect as a vote against approval of the merger agreement and the merger. Horizon shareholder approval of the merger agreement and the merger is a condition to closing under the merger agreement. In addition, Horizon shareholders will be voting on the election of directors and ratification of Horizon's independent registered public accountants who will serve Horizon in the event the merger is not completed. See *Information About the Meetings and Voting* *The Horizon Annual Meeting* on page 153.

The issuance of shares of RITA common stock pursuant to the merger agreement requires the affirmative vote of a majority of shares present in person or by proxy at RITA's annual meeting and entitled to vote on the proposal. Holders of approximately 9.6% of RITA's outstanding common stock have entered into voting agreements committing them to vote their shares in favor of the issuance of stock pursuant to the merger. If you are a RITA stockholder and you do not submit a proxy or vote in person at the RITA annual meeting, it will not have any effect on the proposals to be presented at the annual meeting, although it may affect the presence of a quorum at the meeting. If you submit a proxy and affirmatively

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elect to abstain from voting, your proxy will be counted as present for purposes of determining the presence of a quorum, but will have the same effect as a no vote for the proposals to be voted upon. In addition, RITA stockholders will be

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voting on the election of directors, the amendment of RITA's certificate of incorporation and the ratification of RITA's independent registered public accounting firm. See "Information About the Meetings and Voting The RITA Annual Meeting" on page 149.

Q: If my shares are held in street name by my broker, will my broker vote my shares for me?

A: Yes, but only if you instruct your broker as to how you want your shares voted. If you do not provide your broker with instructions on how to vote your street name shares, your broker cannot vote on the proposals relating to the merger.

Q: What if I fail to instruct my broker?

A: If you fail to instruct your broker to vote your shares and the broker submits an unvoted proxy, the resulting broker non-vote will be counted toward the quorum at the respective annual meetings, and, with the exception of the vote by Horizon shareholders to approve the merger agreement and the merger, it will have no effect on the proposals to be voted on at the meetings.

Q: Can I change my vote after I have mailed my proxy card?

A: Yes. Stockholders who hold shares in their own name can change their vote at any time before their proxy is voted at their company's annual meeting by:

RITA Stockholders:

Timely delivery by mail of a valid, subsequently dated proxy

Delivery to RITA's corporate secretary before or at the annual meeting of written notice revoking your proxy

Submitting a vote by ballot at the annual meeting

Horizon Shareholders:

Timely delivery by mail of a valid, subsequently-dated proxy

Delivery to Horizon's corporate secretary before or at the annual meeting of written notice revoking your proxy

Submitting a vote by ballot at the annual meeting

If you have instructed a broker to vote your shares, you must follow your broker's directions in order to change those instructions.

Q: When and where are the meetings?

A: RITA's annual meeting will take place on Thursday, July 29, 2004, at Heller Ehrman White & McAuliffe LLP, located at 2775 Sand Hill Road, Menlo Park, California 94025, at 10:00 a.m., local time.

Horizon's annual meeting will take place on Thursday, July 29, 2004, at the offices of King & Spalding LLP, 191 Peachtree Street, Atlanta, Georgia 30303, at 1:00 p.m., local time.

Q: Should I send in my stock certificates now?

A: No. After the merger is completed, RITA will send Horizon shareholders written instructions for exchanging their stock certificates. RITA stockholders will keep their existing stock certificates.

Q: When do you expect the merger to be completed?

A: We hope to complete the merger as soon as possible after the annual meetings occur and all closing conditions under the merger agreement are satisfied.

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Q: Who do I call if I have questions about the meetings or the merger?

A: If you have any questions about the merger, or if you need additional copies of this joint proxy statement/prospectus or the enclosed proxy, you should contact:

RITA STOCKHOLDERS:

967 N. Shoreline Blvd

Mountain View, CA 94043

(650) 314-3400

Attention: Donald Stewart

HORIZON SHAREHOLDERS:

One Horizon Way

P.O. Box 627

Manchester, GA 31816

(706) 846-3126

Attention: Corporate Secretary

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SUMMARY

*This summary highlights information from this joint proxy statement/prospectus that we believe is the most important information to be considered by the RITA stockholders and the Horizon shareholders in determining how to vote on the proposals described in this joint proxy statement/prospectus. This summary may not contain all of the information that is important to you, and we encourage you to read this joint proxy statement/prospectus in its entirety. The information contained in this summary is qualified in its entirety by, and should be read in conjunction with, the detailed information and financial statements, including the notes thereto, appearing elsewhere in this joint proxy statement/prospectus and the documents incorporated into this joint proxy statement/prospectus by reference. See *Where You Can Find More Information* on page 170. We have included references to other portions of this joint proxy statement/prospectus to direct you to a more complete description of the topics presented in this summary.*

The Companies (see page 70)

RITA Medical Systems, Inc.

RITA Medical Systems, Inc., or RITA, develops, manufactures and markets devices used by physicians to treat patients with solid cancerous or benign tumors. Founded in 1994, RITA is a publicly held company listed on the Nasdaq National Market under the symbol RITA. RITA's proprietary system, the RITA System, is a minimally invasive treatment option for cancer patients with unresectable, or inoperable, tumors. The system delivers controlled thermal energy to targeted tissue at a temperature high enough to ablate the tumor, or cause cell death. RITA's portfolio of products includes disposable electrosurgical devices, radiofrequency generators, introducers and software. RITA is a Delaware corporation and is headquartered in Mountain View, California. RITA's offices are located at 967 North Shoreline Blvd, Mountain View, California 94013, and RITA's telephone number is (650) 314-3400. RITA's internet website is www.ritamaterial.com. Information set forth on RITA's website is not incorporated by reference into this joint proxy statement/prospectus.

Hornet Acquisition Corp.

Hornet Acquisition Corp. is a Delaware corporation and a wholly-owned subsidiary of RITA. Hornet Acquisition Corp. was organized solely for the purpose of entering into the merger agreement with Horizon and completing the merger. It has not conducted any business operations and has no assets. If the merger is completed, Hornet Acquisition Corp. will cease to exist following its merger with and into Horizon.

Horizon Medical Products, Inc.

Founded in 1990, Horizon Medical Products, Inc., or Horizon, is a specialty medical device company focused on developing, manufacturing, marketing and distributing vascular access products, including implantable ports, hemodialysis catheters, central venous catheters, needle infusion sets, peripherally inserted central venous catheters and other accessories used in vascular medical procedures. Horizon also markets a line of acute and chronic dialysis catheters used for kidney failure patients. Horizon is a Georgia corporation and is headquartered in Manchester, Georgia. Horizon's offices are located at One Horizon Way, Manchester, Georgia 31816, and Horizon's telephone number is (706) 846-3126. Horizon's internet website is www.hmpvascular.com. Information set forth on Horizon's website is not incorporated by reference into this joint proxy statement/prospectus.

The Proposed Merger (see page 22)

Under the terms of the proposed merger, Hornet Acquisition Corp., a wholly-owned subsidiary of RITA formed solely for the purpose of the merger, will merge with and into Horizon. As a result, Horizon will survive the merger and will become a wholly-owned subsidiary of RITA upon completion of the merger.

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The merger agreement is included as Annex A to this joint proxy statement/prospectus. We encourage you to read the merger agreement in its entirety, as it is the legal document that governs the merger.

What Horizon Shareholders Will Be Entitled to Receive Pursuant to the Merger

Horizon shareholders will be entitled to receive 0.4212 of a share of RITA common stock for each share of Horizon common stock they hold. The exchange ratio is fixed and will not be adjusted for changes in the market value of the common stock of Horizon or RITA. RITA will not issue fractional shares in the merger. Therefore, the total number of shares of RITA common stock that each Horizon shareholder will be entitled to receive pursuant to the merger agreement will be rounded down to the nearest whole number, and each Horizon shareholder will be entitled to receive a cash payment for the remaining fraction of a share of RITA common stock that such shareholder would otherwise receive, if any, based on the closing price of RITA common stock the trading day preceding the date of the merger. See "The Merger Agreement - Consideration to be Received Pursuant to the Merger; Treatment of Stock Options" on page 54.

Recommendations to Stockholders

To RITA Stockholders:

RITA's board of directors believes that the merger is in the best interests of RITA and its stockholders and unanimously recommends that RITA stockholders vote FOR the proposal to issue shares of RITA common stock pursuant to the merger agreement. See "The Proposed Merger - RITA's Reasons for the Merger" on page 30.

RITA's board of directors also unanimously recommends that RITA stockholders vote FOR the proposal to amend RITA's certificate of incorporation to increase the number of authorized shares of RITA common stock from 100,000,000 to 150,000,000 and to clarify the authority of RITA's board of directors to fix the terms of preferred stock.

RITA's board of directors recommends that RITA stockholders vote FOR the Class I director nominee named in this joint proxy statement/prospectus and FOR the ratification of the selection of PricewaterhouseCoopers LLP as RITA's independent registered public accounting firm for the fiscal year ending December 31, 2004.

To Horizon Shareholders:

Horizon's board of directors believes that the merger is in the best interests of Horizon shareholders and recommends that Horizon shareholders vote FOR the proposal to approve the merger agreement and the merger. See "The Proposed Merger - Horizon's Reasons for the Merger" on page 39.

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Horizon's board of directors recommends that Horizon shareholders vote FOR the election of the seven director nominees. Horizon's board of directors recommends a vote FOR the ratification of the appointment of Grant Thornton LLP to serve as Horizon's independent registered public accountants for the fiscal year ending December 31, 2004.

The merger agreement and Georgia law require that the holders of at least a majority of Horizon's outstanding shares of common stock approve the merger agreement and the merger. Approval of the other Horizon annual meeting matters is not a condition to the merger. If the merger is completed, the other annual meeting matters will, as a result, be superseded.

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Reasons for the Merger (see pages 30 and 39)

The boards of directors of RITA and Horizon believe that the merger will accelerate both companies' strategic plans and create a leading specialty medical device company. The boards of directors of both companies believe that the combined company will benefit from:

The complementary nature of the products, research and development skills and manufacturing resources of the two companies;

A larger sales force that is expected to provide deeper penetration into U.S. markets;

&nb