

GREAT ATLANTIC & PACIFIC TEA CO INC  
Form S-4  
May 24, 2007

As filed with the Securities and Exchange Commission on May 24, 2007

Registration No. 333-

**SECURITIES AND EXCHANGE COMMISSION**  
**WASHINGTON, D.C. 20549**

**FORM S-4**  
**REGISTRATION STATEMENT**  
*UNDER*  
*THE SECURITIES ACT OF 1933*

**The Great Atlantic & Pacific Tea Company, Inc.**  
(Exact name of registrant as specified in its charter)

**Maryland**  
(State or other jurisdiction of  
incorporation or organization)

**5411**  
(Primary Standard Industrial  
Classification Code Number)

**13-1890974**  
(I.R.S. Employer  
Identification No.)

**Two Paragon Drive**  
**Montvale, New Jersey 07645**  
**(201) 573-9700**  
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

**Allan Richards**  
**Senior Vice President, Human Resources, Labor Relations, Legal Services & Secretary**  
**The Great Atlantic & Pacific Tea Company, Inc.**  
**Two Paragon Drive**  
**Montvale, New Jersey 07645**  
**(201) 573-9700**  
(Name, address, including zip code, and telephone number, including area code, of agent for service)  
*With copies to:*

**Kenneth W. Orce, Esq.**  
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**80 Pine Street**  
**New York, New York 10005**  
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**505 Montgomery Street,**  
**Suite 2000**  
**San Francisco, California 94111-2562**  
**(415) 391-0600**

Approximate date of commencement of proposed sale of the securities to the public: As soon as practicable after this Registration Statement is declared effective and upon completion of the merger described in the enclosed joint proxy statement/prospectus.

If the securities being registered on this form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, please check the following box.

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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. o

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 statement for the same offering. o

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per share	Proposed maximum aggregate offering price	Amount of registration fee
Common Stock, \$1.00 par value per share	6,780,537 <sup>(1)</sup>	Not Applicable <sup>(2)</sup>	\$182,550,913.48 <sup>(3)</sup>	\$5,604.31

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- (1) Represents the maximum number of shares of common stock of The Great Atlantic & Pacific Tea Company, Inc. ( *A&P* ) expected to be issued upon the completion of the merger of Sand Merger Corp., a wholly owned subsidiary of A&P, ( *Merger Sub* ) with and into Pathmark Stores, Inc. ( *Pathmark* ), based on the number of shares of Pathmark common stock outstanding (other than any shares held by A&P, Pathmark or Sand Merger Corp. to be canceled prior to the completion of the merger), or reserved for issuance under various plans, as of May 22, 2007, (collectively, the *Pathmark Outstanding Shares* ) and the exchange of each share of Pathmark common stock for 0.12963 shares of A&P common stock.
- (2) Omitted in reliance on Rule 457(o) under the Securities Act of 1933, as amended.
- (3) Estimated solely for the purpose of calculating the registration fee and computed pursuant to Rules 457(f) and 457(c) under the Securities Act of 1933, as amended, based on the market value of the Pathmark Stores, Inc. common stock to be exchanged in the merger, as the product of (1) \$12.49, the average of the high and low sale prices of Pathmark common stock, as quoted on the NASDAQ Global Market, on May 22, 2007, and (2) 52,306,852, which is the number of Pathmark Outstanding Shares. Pursuant to Rule 457(f) of the Securities Act, the \$470,761,668.00 of cash consideration to be paid by A&P in exchange for Pathmark common stock to be exchanged in the merger to the holders of Pathmark common stock in the merger (which equals \$9.00 multiplied by 52,306,852, which is the number of Pathmark Outstanding Shares) has been deducted from the value of the shares of Pathmark common stock to be exchanged in the merger.

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**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 thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until this Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.**

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PRELIMINARY SUBJECT TO COMPLETION DATED MAY [ ], 2007

**TO THE STOCKHOLDERS OF  
THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC. AND  
PATHMARK STORES, INC.**

**YOUR VOTE IS VERY IMPORTANT**

On March 4, 2007, Pathmark Stores, Inc. ( *Pathmark* ), The Great Atlantic & Pacific Tea Company, Inc. ( *A&P* ) and Sand Merger Corp., a wholly owned subsidiary of A&P, entered into a merger agreement, pursuant to which A&P will acquire Pathmark and its subsidiaries through a merger. Upon completion of the merger, Pathmark stockholders will be entitled to receive, without interest, \$9.00 in cash and 0.12963 shares of A&P common stock for each share of common stock of Pathmark.

Upon completion of the merger, we estimate that Pathmark's former stockholders will own approximately 14% of the then-outstanding common stock of A&P on a fully-diluted basis. A&P's stockholders will continue to own their existing shares, which will not be affected by the merger.

The merger cannot be completed unless (i) Pathmark stockholders approve and adopt the merger agreement and the transactions contemplated thereby, including the merger, and (ii) A&P stockholders approve both the issuance of A&P's common stock pursuant to the merger agreement and the amendment to the A&P charter to exempt the transactions contemplated by the merger agreement and the agreements entered into in connection therewith from the preemptive rights provisions of the A&P charter. We are each holding a special meeting of stockholders in order to obtain the stockholder approvals necessary to complete the merger. The times, dates and places of the special meetings to consider and vote upon the proposals are as follows:

**For A&P Stockholders:**  
[\_\_\_\_], 2007, 9:00 a.m., Eastern Daylight Time  
The Woodcliff Lake Hilton  
200 Tice Boulevard  
Woodcliff Lake, New Jersey 07677

**For Pathmark Stockholders:**  
[\_\_\_\_], 2007, [ ] a.m., Eastern Daylight Time  
Pathmark Corporate Headquarters  
200 Milik Street  
Carteret, New Jersey 07008

After careful consideration, each of our boards of directors has determined that the merger agreement and the transactions contemplated thereby are fair to and in the best interests of our respective stockholders.

**Accordingly, the A&P board of directors unanimously recommends that A&P stockholders vote FOR the proposal to approve the issuance of shares of A&P common stock pursuant to the merger agreement and FOR the proposal to approve the amendment to A&P's charter regarding preemptive rights.**

**The Pathmark board of directors unanimously recommends that the Pathmark stockholders vote FOR the proposal to approve and adopt the merger agreement and the transactions contemplated thereby, including the merger.**

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Additionally, the effectiveness of each of the proposal to approve the issuance of A&P common stock in connection with the merger and the proposal to approve the amendment to the A&P charter is conditioned on approval of the other, which means that neither proposal will be effective unless both are approved. We cannot complete the merger unless both the A&P proposals are approved by the A&P stockholders, and the proposal to adopt the merger agreement and the transactions contemplated thereby, including the merger, is approved by Pathmark's stockholders.

The affirmative vote of a majority of the votes cast by holders of A&P common stock at the special meeting is required to approve the issuance of A&P common stock in connection with the merger, *provided* that the total votes cast must represent a majority of the outstanding shares of A&P common stock entitled to vote on the matter. Tengemann Warenhandelsgesellschaft KG ( *Tengemann* ) has agreed to vote all of its shares of A&P common stock, approximately 53% of the outstanding A&P common stock, in favor of the issuance of A&P common stock in the merger and the amendment to the A&P charter. This means that the approval of the issuance of the A&P common stock pursuant to the merger agreement is assured. The affirmative vote of two-thirds of the outstanding shares of A&P common stock entitled to vote on the matter is required to approve and adopt the amendment to the A&P charter to exempt the transactions contemplated by the merger agreement and the agreements entered into in connection therewith from the preemptive rights provisions of the A&P charter.

The affirmative vote of a majority of the outstanding shares of Pathmark common stock is required to adopt the merger agreement and approve the transactions contemplated thereby, including the merger.

The joint proxy statement/prospectus attached to this letter provides you with information about A&P, Pathmark, the proposed merger and the special meetings of each of our companies' stockholders. **In particular, please see the section titled Risk Factors beginning on page 27 of the accompanying joint proxy statement/prospectus which contains a description of the risks that you should consider in evaluating the proposals.** You may also obtain more information about A&P and Pathmark from documents each party has filed with the Securities and Exchange Commission (the *SEC* ). Shares of A&P common stock are listed on the New York Stock Exchange under the symbol *GAP*. Shares of Pathmark common stock are listed on the NASDAQ Global Market under the symbol *PTMK*.

**Your vote is important.** Accordingly, you are requested to vote your shares by promptly completing, signing and dating the enclosed proxy card relating to your shares and returning it in the appropriate envelope provided, or in the case of A&P stockholders, use the Internet or telephone proxy authorization options detailed on the proxy card, whether or not you plan to attend the respective special meeting. Alternatively, if your shares are held in *street name* by a bank, brokerage firm or nominee you should follow the instructions of your bank, brokerage firm or nominee, regarding the voting of your shares and if your bank, brokerage firm or nominee makes the following options available you may be able to grant a proxy to have your shares voted over the Internet or by telephone. Submitting a proxy by any of these methods available to you will ensure that your proxy can be voted at the respective special meeting even if you are not there in person.

Thank you for your cooperation and continued support.

Allan Richards  
Senior Vice President, Human Resources, Labor  
Relations, Legal Services & Secretary  
Great Atlantic & Pacific Tea Company, Inc.

John T. Standley  
Chief Executive Officer  
Pathmark Stores, Inc.

**Neither the SEC nor any state securities commission has approved or disapproved the securities to be issued in connection with the merger or determined if the accompanying joint proxy statement/prospectus is accurate or complete. Any representation to the contrary is a criminal offense.**

Information contained in this document is subject to completion or amendment. A registration statement relating to these securities has been filed with the SEC. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This joint proxy statement/prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under securities laws of such state.

THIS JOINT PROXY STATEMENT/PROSPECTUS IS DATED [ ], 2007, AND IS BEING FIRST MAILED TO STOCKHOLDERS OF A&P AND PATHMARK ON OR ABOUT [ ], 2007.

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**THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.**

2 Paragon Drive  
Montvale, New Jersey 07645

**NOTICE OF SPECIAL MEETING OF STOCKHOLDERS  
TO BE HELD ON [     ], 2007**

To the stockholders of The Great Atlantic & Pacific Tea Company, Inc.:

We will hold a special meeting of stockholders of The Great Atlantic & Pacific Tea Company, Inc., a Maryland corporation ( *A&P* ), at The Woodcliff Lake Hilton, 200 Tice Boulevard, Woodcliff Lake, New Jersey, on [     ], [     ], 2007, at [     ] a.m., Eastern Daylight Time, for the following purposes:

1. to consider and vote on a proposal to approve the issuance of A&P common stock pursuant to the Agreement and Plan of Merger, dated as of March 4, 2007, by and among A&P, Sand Merger Corp. ( *Merger Sub* ) (a wholly owned subsidiary of A&P established for the purpose of effecting the merger) and Pathmark Stores, Inc. ( *Pathmark* ), as amended from time to time, which provides for the merger of Merger Sub with and into Pathmark, with Pathmark as the surviving corporation;
2. to consider and vote on a proposal to approve an amendment to the A&P charter in the form attached to the accompanying joint proxy statement/prospectus as Annex H and incorporated herein by reference to exempt the transactions contemplated by the merger agreement and the agreements entered into in connection therewith from the preemptive rights provisions of Article VII of the A&P charter; and
3. to transact any other business as may properly come before the meeting and any adjournments or postponements thereof.

The A&P board of directors has fixed [     ], 2007, as the record date for this meeting. Only stockholders of record at the close of business on that date are entitled to receive notice and to vote at the meeting or at any adjournment or postponement thereof.

The effectiveness of each of Proposal 1 and 2 is conditioned on approval of the other, which means that neither proposal will have any effect unless both are approved. We cannot complete the merger unless Proposals 1 and 2 are approved by the A&P stockholders. The affirmative vote of a majority of the votes cast by holders of A&P common stock at the special meeting is required to approve Proposal 1, *provided* that the total votes cast must represent a majority of the outstanding shares of A&P common stock entitled to vote on the proposal. The affirmative vote of two-thirds of the outstanding shares of A&P common stock entitled to vote on the matter is required to approve Proposal 2.

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Whether or not you plan to attend the meeting, please either complete, sign and return the accompanying proxy card to A&P in the enclosed envelope, which requires no postage if mailed in the United States, or use the Internet or telephone proxy authorization options detailed on the proxy card. If you hold your shares through a bank, brokerage firm or nominee, you should follow the instructions of your bank, brokerage firm or nominee regarding voting your shares.

By Order of the Board of Directors

Allan Richards  
Senior Vice President, Human Resources, Labor Relations,  
Legal Services & Secretary

[            ], 2007

**You are cordially invited to attend the meeting. Whether or not you plan to do so, your vote is important. Please promptly submit your proxy by mail, telephone or the Internet.**

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**PATHMARK STORES, INC.  
200 MILIK STREET  
CARTERET, NEW JERSEY 07008**

**NOTICE OF SPECIAL MEETING OF STOCKHOLDERS  
TO BE HELD ON [            ], 2007**

To the stockholders of Pathmark Stores, Inc.:

A special meeting of stockholders of Pathmark Stores, Inc. ( *Pathmark* ), a Delaware corporation, will be held on [\_\_\_\_], 2007, at [\_\_\_\_] a.m., Eastern Daylight Time, at Pathmark's corporate headquarters, 200 Milik Street, Carteret, New Jersey 07008, for the following purposes:

1. to consider and vote upon a proposal to approve and adopt the Agreement and Plan of Merger, dated March 4, 2007, by and among Pathmark, The Great Atlantic & Pacific Tea Company, Inc. ( *A&P* ) and Sand Merger Corp. ( *Merger Sub* ), and the transactions contemplated by the merger agreement, as amended from time to time, including the merger, pursuant to which Merger Sub would merge with and into Pathmark and each outstanding share of Pathmark common stock would be converted into the right to receive, without interest, \$9.00 in cash and 0.12963 shares of A&P common stock; and
2. to consider and vote on such other matters as may properly come before the special meeting or any adjournment or postponement thereof.

Only stockholders of record as of the close of business on [\_\_\_\_], 2007, are entitled to notice of and to vote at the special meeting and at any adjournment or postponement thereof. A list of these stockholders will be available for inspection by stockholders of record during regular business hours at Pathmark's corporate headquarters, 200 Milik Street, Carteret, New Jersey 07008, for ten days prior to the date of the special meeting. All stockholders of record are cordially invited to attend the special meeting in person. Your vote is important, regardless of the number of shares of Pathmark common stock that you own. The adoption of the merger agreement requires the approval of the holders of a majority of the outstanding shares of our common stock entitled to vote on the matter. **The Pathmark board of directors unanimously recommends that the Pathmark stockholders vote FOR the proposal to approve and adopt the merger agreement and the transactions contemplated thereby, including the merger.**

Even if you plan to attend the meeting in person, we request that you complete, sign, date and return the enclosed proxy card and thus ensure that your shares will be represented at the special meeting if you become unable to attend. If you sign, date and return your proxy card without indicating how you wish to vote, the shares represented by your proxy will be voted FOR the approval and adoption of the merger agreement and transactions contemplated thereby, including the merger, and will be voted in accordance with the recommendations of our board of directors on any other matters properly brought be-

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fore the meeting for a vote. If you hold your shares through a bank, brokerage firm or nominee, you should follow the instructions of your bank, brokerage firm or nominee regarding voting your shares.

Whether you attend the meeting or not, you may revoke a proxy at any time before it is voted at the meeting. You may do so by executing and returning a proxy card dated later than the previous one or by attending the special meeting and voting in person. Simply attending the meeting, however, will not revoke your proxy. If you hold your shares through a bank, brokerage firm or nominee, you should follow the instructions of your bank, brokerage firm or nominee regarding revocation of proxies. If your bank, brokerage firm or nominee allows you to submit a proxy by telephone or the Internet, you may be able to change your vote by submitting a subsequent proxy by telephone or the Internet.

By Order of the Board of Directors,

Marc A. Strassler  
Senior Vice President, Secretary and General Counsel

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**References to Additional Information**

The accompanying joint proxy statement/prospectus incorporates by reference important business and financial information about A&P and Pathmark from documents that are not included in or delivered with this joint proxy statement/prospectus. This information is available to you without charge upon your written or oral request. You can obtain the documents incorporated by reference in the accompanying joint proxy statement/prospectus by requesting them in writing or by telephone from the appropriate company at the following addresses and telephone numbers:

**The Great Atlantic & Pacific Tea Company, Inc.**

Two Paragon Drive  
Montvale, New Jersey 07645  
Telephone: (201) 573-9700  
Attention: Secretary

**Pathmark Stores, Inc.**

200 Milik Street  
Carteret, New Jersey 07008  
Telephone: (732) 499-3000  
Attention: Secretary

*If you would like to request documents, please do so by [            ], 2007 in order to receive them before the special meetings.*

See **Where You Can Find More Information** beginning on page 186.

**About This Document**

This document, which forms part of a registration statement on Form S-4 filed with the SEC by A&P, constitutes a prospectus of A&P under Section 5 of the Securities Act of 1933, as amended, and the rules thereunder, with respect to the shares of A&P common stock to be issued to the holders of Pathmark common stock in connection with the merger. This document also constitutes (i) a proxy statement under Section 14(a) of the Securities Exchange Act of 1934, as amended, and the rules thereunder; (ii) a notice of meeting with respect to A&P's special meeting of stockholders, at which A&P stockholders will consider and vote upon (a) the issuance of shares of A&P common stock to Pathmark stockholders on the terms and conditions set forth in the merger agreement and (b) the amendment to the A&P charter to exempt the transactions contemplated by the merger agreement and the agreements entered into in connection therewith from the preemptive rights provisions of the A&P charter; and (iii) a notice of meeting with respect to Pathmark's special meeting of stockholders, at which Pathmark stockholders will consider and vote upon adoption of the merger agreement and the transactions contemplated thereby, including the merger.

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Annex H Form of Articles of Amendment to Certificate of Incorporation of The Great Atlantic & Pacific Tea Company, Inc.  
Annex I Form of Amendment to the By-Laws of The Great Atlantic & Pacific Tea Company, Inc.  
Annex J Section 262 of the General Corporation Law of the State of Delaware

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**QUESTIONS AND ANSWERS ABOUT VOTING PROCEDURES  
FOR THE SPECIAL MEETING**

*The questions and answers below highlight only selected procedural information from this document. They do not contain all of the information that may be important to you. You should read carefully the entire document and the additional documents incorporated by reference into this document because they contain important information.*

**Q: What are the proposals upon which I am being asked to vote?**

A: *A&P Stockholders.* Stockholders of The Great Atlantic & Pacific Tea Company, Inc. ( *A&P* ) are being asked to vote (1) to approve the issuance of shares of A&P common stock pursuant to the Agreement and Plan of Merger, dated March 4, 2007 (the *merger agreement* ), by and among Pathmark Stores, Inc. ( *Pathmark* ), A&P and Sand Merger Corp. ( *Merger Sub* ), under which A&P will acquire Pathmark and its subsidiaries through the merger of Merger Sub with and into Pathmark (the *merger* ), and (2) to approve an amendment to the A&P charter to exempt the transactions contemplated by the merger agreement and the agreements entered into in connection therewith from the preemptive rights provisions of the A&P charter.

*Pathmark Stockholders.* Stockholders of Pathmark are being asked to vote to approve and adopt the merger agreement and the transactions contemplated thereby, including the merger. After the merger, Pathmark will be the surviving corporation and will be a wholly owned subsidiary of A&P.

**Q: What vote of Pathmark stockholders is required for adoption of the merger agreement?**

A: Adoption of the merger agreement and the transactions contemplated thereby, including the merger, requires the affirmative vote of a majority of the outstanding shares of Pathmark common stock entitled to vote. Therefore, if a Pathmark stockholder abstains or fails to vote, it will have the same effect as voting against the merger agreement. You are entitled to vote on the proposal to approve and adopt the merger agreement if you held Pathmark common stock at the close of business on the Pathmark record date, which is [        ], 2007. On that date, [        ] shares of Pathmark common stock were outstanding and entitled to vote.

The largest stockholders of Pathmark, Yucaipa Corporate Initiatives Fund I, LP, Yucaipa American Alliance (Parallel) Fund I, LP and Yucaipa American Alliance Fund I, LP, which we refer to collectively as the *Yucaipa Investors*, have agreed to vote the shares of Pathmark common stock that they own as of the Pathmark record date in favor of adoption of the merger agreement and the transactions contemplated thereby, including the merger, *provided* that these voting obligations do not apply to any shares owned by the Yucaipa Investors in excess of 33% of the outstanding Pathmark common stock. The remaining shares owned by the Yucaipa Investors may be voted in the Yucaipa Investors' discretion, although the Yucaipa Investors have expressed their present intention to vote all of the Pathmark shares they own (approximately 38% of the outstanding Pathmark common stock as of the Pathmark record date) in favor of the adoption of the merger agreement.

**Q: What vote of A&P stockholders is required for approval of the proposal to issue shares of A&P common stock pursuant to the merger agreement?**

A: The proposal to issue shares of A&P common stock pursuant to the merger agreement must be approved by a majority of the votes cast by the holders of A&P common stock, *provided* that the

total votes cast on the proposal must represent at least a majority of the outstanding shares of A&P common stock entitled to vote on the proposal. Because approval is based on the affirmative vote of a majority of votes cast, *provided* that the total votes cast on the proposal represent at least a majority of all shares entitled to vote on the proposal, an A&P stockholder's failure to vote will not affect the outcome of the vote to approve the issuance of A&P common stock in connection with the merger, assuming more than a majority of the outstanding shares are voted on the proposal. Because the New York Stock Exchange (the *NYSE*) treats abstentions as votes cast with respect to the proposal to issue shares of A&P common stock pursuant to the merger agreement, an abstention will have the same effect as a vote *AGAINST* the proposal. A&P stockholders are entitled to vote on the proposal to approve the issuance of A&P common stock if they held A&P common stock at the close of business on the A&P record date, which is [ ], 2007. On the A&P record date, [ ] shares of A&P common stock were outstanding and entitled to vote.

Tengelmann Warenhandelsgesellschaft KG ( *Tengelmann* ) has agreed to vote all of its shares of A&P common stock, constituting approximately 53% of the outstanding A&P common stock as of the A&P record date, in favor of the issuance of A&P common stock in the merger. This means that the approval of the issuance of the A&P common stock pursuant to the merger agreement is assured.

**Q: What vote of A&P stockholders is required for approval of the proposal to amend the A&P charter to exempt the transactions contemplated by the merger agreement and the agreements entered into in connection therewith from the preemptive rights provisions of the A&P charter?**

A: The affirmative vote of two-thirds of the outstanding shares of A&P common stock entitled to vote on the matter is required to approve the amendment to the A&P charter to exempt the transactions contemplated by the merger agreement and the agreements entered into in connection therewith from the preemptive rights provisions of the A&P charter. Therefore, if an A&P stockholder abstains or fails to vote, it will have the same effect as a vote against approval of the amendment to the A&P charter. A&P stockholders are entitled to vote on the proposal to approve the amendment to the A&P charter if they held A&P common stock at the close of business on the A&P record date. On the A&P record date, [ ] shares of A&P common stock were outstanding and entitled to vote.

Tengelmann has agreed to vote all of its shares of A&P common stock, approximately 53% of the outstanding A&P common stock as of the A&P record date, in favor of the issuance of A&P common stock in the merger and the amendment to the A&P charter. This means that the affirmative vote of an additional [ ] shares is necessary to approve the charter amendment.

**Q: What happens if the A&P stockholders vote to approve only one of the two A&P proposals?**

A: We cannot complete the merger unless both of the A&P proposals are approved by the A&P stockholders. The effectiveness of each of the proposal to approve the issuance of A&P common stock in connection with the merger and the proposal to approve the amendment to the A&P charter is conditioned on approval of the other, which means that neither proposal will have any effect unless both are approved.



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

A: We expect to complete the merger after the Pathmark stockholders adopt the merger agreement and the transactions contemplated thereby, including the merger, at the special meeting, after the A&P stockholders approve the two proposals set forth above at the A&P special meeting, and after we receive all necessary regulatory approvals. We currently anticipate completing the merger in the second half of A&P's 2007 fiscal year ending February 23, 2008.

**Q: If my shares are held in street name by a bank, brokerage firm or nominee, will they vote my shares for me?**

A: *A&P Stockholders.* You should instruct your bank, brokerage firm or nominee to vote your shares, following the directions they provide. If you do not instruct your bank, brokerage firm or nominee, they will generally not have the discretion to vote your shares. Because the approval of the proposal to issue A&P common stock in connection with the merger requires an affirmative vote of a majority of the votes cast by holders of A&P common stock at the special meeting, the failure to vote your shares will not affect the outcome of the vote on the proposal to approve the issuance of A&P common stock in connection with the merger, *provided* that the total votes cast on the proposal represent at least a majority of all shares entitled to vote on the proposal. Because the approval of the proposal to amend the A&P charter requires an affirmative vote of two-thirds of the outstanding shares of A&P common stock, the failure to vote your shares will have the same effect as votes cast against the proposal to approve the amendment to the A&P charter.

*Pathmark Stockholders.* You should instruct your bank, brokerage firm or nominee to vote your shares, following the directions they provide. If you do not instruct your bank, brokerage firm or nominee, they will generally not have the discretion to vote your shares. Because the adoption of the merger agreement requires an affirmative vote of a majority of the outstanding shares of Pathmark common stock for approval, the failure to vote your shares will have the same effect as votes cast against adoption of the merger agreement.

**Q: What do I need to do now?**

A: *A&P Stockholders.* After carefully reading and considering the information contained in this joint proxy statement/prospectus, please fill out and sign the proxy card, and then mail your signed proxy card in the enclosed prepaid envelope as soon as possible so that your shares may be voted at the A&P special meeting. Your signed proxy card will instruct the persons named on the card to vote your shares at the special meeting as you direct on the card. If you sign and send in your proxy card and do not indicate how you want your shares to be voted, your proxy will be voted FOR the approval of each of (1) the A&P proposal to approve the issuance of A&P common stock in connection with the merger and (2) the A&P proposal to approve an amendment to the A&P charter to exempt the transactions contemplated by the merger agreement and the agreements entered into in connection therewith from the preemptive rights provisions of the A&P charter. You may also authorize a proxy by telephone or through the Internet by following the instructions with your proxy card. If you hold your shares through a bank, brokerage firm or nominee, you should follow the instructions of your bank, brokerage firm or nominee regarding voting your shares. YOUR VOTE IS VERY IMPORTANT.

*Pathmark Stockholders.* After carefully reading and considering the information contained in this joint proxy statement/prospectus, please fill out and sign the proxy card, and then mail your signed proxy card in the enclosed prepaid envelope as soon as possible so that your shares may be voted at the Pathmark special meeting. Your signed proxy card will instruct the persons named

on the card to vote your shares at the Pathmark special meeting as you direct on the card. If you sign and send in your proxy card and do not indicate how you want your shares to be voted, your proxy will be voted FOR the adoption of the merger agreement and the transactions contemplated thereby, including the merger. If you hold shares through a bank, brokerage firm or nominee, you should follow the instructions of your bank, brokerage firm or nominee regarding voting your shares. YOUR VOTE IS VERY IMPORTANT.

**Q: May I change my vote after I have mailed my signed proxy card?**

A: You may change your vote at any time before your proxy is voted at the A&P special meeting or the Pathmark special meeting, as the case may be. You can do this in one of the following ways. First, you can send a written notice stating that you want to revoke your proxy to:

*In the case of A&P Stockholders:*

Allan Richards  
Senior Vice President, Human Resources, Labor Relations, Legal Services & Secretary  
The Great Atlantic & Pacific Tea Company, Inc.  
Two Paragon Drive  
Montvale, New Jersey 07645

*In the case of Pathmark Stockholders:*

Marc A. Strassler  
Senior Vice President, Secretary and General Counsel  
Pathmark Stores, Inc.  
200 Milik Street  
Carteret, New Jersey 07008

Second, you can complete and submit a new later-dated proxy card. Third, you can attend the A&P special meeting or the Pathmark special meeting, as the case may be, and vote in person. Simply attending the meeting, however, will not revoke your proxy; you must vote at the meeting. Fourth, A&P stockholders, but not Pathmark stockholders, can authorize a proxy by telephone or through the Internet at a later time, but not later than 11:59 p.m. (Eastern Daylight Time) on [ ], 2007 or the day before the meeting date if the special meeting is adjourned or postponed.

If you have instructed a broker to vote your shares, you must follow directions received from your broker to change your vote.

**Q: Should I send in my Pathmark stock certificates now?**

A: No. After the merger is completed, Pathmark stockholders will receive written instructions for exchanging their stock certificates.

A&P stockholders will continue to hold their A&P stock certificates following the merger and are not required to take any action with respect to their A&P stock certificates.

**Q: Who can help answer my questions?**

A: *A&P Stockholders.* If you have any questions about the A&P special meeting or if you need additional copies of this joint proxy statement/prospectus or the enclosed proxy card, please contact:

Investor Relations  
The Great Atlantic & Pacific Tea Company, Inc.  
Two Paragon Drive  
Montvale, New Jersey 07645  
Telephone: (201) 573-9700

*Pathmark Stockholders.* If you have any questions about the Pathmark special meeting or if you need additional copies of this joint proxy statement/prospectus or the enclosed proxy card, please contact:

Investor Relations  
Pathmark Stores, Inc.  
200 Milik Street  
Carteret, New Jersey 07008  
Telephone: (732) 499-3000

**SUMMARY**

The following summary highlights selected information from this joint proxy statement/prospectus and may not contain all of the information that may be important to you. Accordingly, stockholders are encouraged to carefully read this entire joint proxy statement/prospectus, its annexes and the documents referred to or incorporated by reference into this joint proxy statement/prospectus. Each item in this summary includes a page reference directing you to a more complete description of that item.

**The merger (Page 46)**

On March 4, 2007, A&P, Merger Sub, a newly formed wholly owned subsidiary of A&P, and Pathmark entered into the merger agreement, pursuant to which A&P will acquire Pathmark and its subsidiaries through the merger of Merger Sub with and into Pathmark. After the merger, Pathmark will be the surviving corporation and will become a wholly owned subsidiary of A&P. Shares of A&P common stock received by Pathmark stockholders in the merger will be listed on the NYSE under the symbol *GAP*. After completion of the merger, shares of A&P common stock will continue to be traded on the NYSE, but shares of Pathmark common stock will no longer be publicly listed or traded. Upon completion of the merger, approximately 86% of A&P common stock will be held by existing A&P stockholders and approximately 14% will be held by former Pathmark stockholders on a fully-diluted basis.

**The merger consideration (Page 115)**

*Pathmark Common Stock*

Pursuant to the merger, each share of Pathmark common stock will be converted into the right to receive (i) 0.12963, which we refer to as the *exchange ratio*, of a share of A&P common stock and (ii) \$9.00 in cash, which we refer to as the *per share cash consideration*, without interest. No fractional shares of A&P common stock will be issued in connection with the merger; holders of Pathmark common stock will receive cash in lieu of any fractional shares of A&P common stock they otherwise would have received in the merger.

The exchange ratio relating to the shares of A&P common stock to be issued in the merger is a fixed ratio, which means that it will not change between now and the time the merger is completed. Therefore, the market value of the A&P common stock received by Pathmark stockholders in the merger will depend on the market price of A&P common stock at the time the merger is completed.

For example, a Pathmark stockholder owning 1,000 shares of Pathmark common stock would receive total consideration of \$9,000.00 in cash and 129 shares of A&P common stock, plus a cash payment, determined as follows, in lieu of the fractional interest of 0.63 shares of A&P common stock that would otherwise be receivable: Pathmark stockholders will be paid an amount in cash for such fraction calculated by multiplying (i) the number of fractional shares of A&P common stock otherwise receivable by such holder, or 0.63 shares in this example, and (ii) the closing price of the A&P common stock on the NYSE on the trading day immediately prior to the closing date.

*Treatment of Pathmark Stock Options, Warrants and Equity-Based Awards*

Outstanding Pathmark stock options granted under Pathmark stock compensation plans will become fully vested and exercisable no less than fifteen days prior to the closing date of the merger. Outstanding Pathmark stock options at the closing date of the merger and granted under Pathmark stock compensation plans, other than certain options described in the next paragraph, will be canceled. Any stock options with exercise prices less than the per share closing price of Pathmark common stock on the last

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trading day immediately prior to the closing date will entitle their holders to receive a lump sum cash payment to be paid as soon as practicable after the completion of the merger, in an amount based on the Pathmark closing price, as described in more detail under Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Agreement Treatment of Pathmark Stock Options, Warrants and Other Equity-Based Awards. Any stock options with exercise prices equal to or greater than the Pathmark closing price will be canceled for no consideration.

With respect to Pathmark stock options that were granted under Pathmark stock plans prior to June 9, 2005, Pathmark will use commercially reasonable efforts to obtain consents to cancel any such options with exercise prices less than the Pathmark closing price on the last trading day immediately prior to the closing date in exchange for a lump sum cash payment as described in the previous paragraph. Any such Pathmark stock options not canceled and cashed out, or with exercise prices equal to or greater than the Pathmark closing price, will be converted into an option to purchase, on the same terms and conditions, a number of shares of A&P common stock and at an exercise price determined as described in more detail under Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Agreement Treatment of Pathmark Stock Options, Warrants and Other Equity-Based Awards.

Outstanding awards of Pathmark restricted stock units or restricted stock will become fully vested and will be converted into the right to receive a lump sum cash payment equal to the product of (a) the number of shares of Pathmark common stock subject to the award immediately prior to the closing and (b) the closing price of Pathmark common stock on the last trading day before the closing date, as described in more detail under Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Agreement Treatment of Pathmark Stock Options, Warrants and Other Equity-Based Awards.

The Yucaipa Investors' existing Series A and Series B Warrants to purchase Pathmark common stock will be exchanged for warrants to purchase A&P common stock. See Adoption of the Merger Agreement (Pathmark Proposal 1) Yucaipa Warrant Agreement.

A&P will assume the obligations of Pathmark under the Warrant Agreement dated as of September 19, 2000 between Pathmark and ChaseMellon Shareholder Services, LLC (the *2000 Warrant Agreement*), and the warrants issued thereunder, so that the holders of the assumed warrants will have the right to purchase A&P common stock on the terms and subject to the conditions set forth in the 2000 Warrant Agreement and the warrants thereunder.

### **Recommendations of the boards of directors**

*A&P (page 72).* The A&P board of directors has determined that entering into the merger agreement is advisable and in the best interests of A&P and has unanimously approved the merger agreement and the transactions it contemplates, recommended that its stockholders approve the issuance of A&P common stock pursuant to the merger agreement and the amendment to the A&P charter, and declared entering into the merger agreement advisable. For the factors considered by the A&P board of directors in reaching its decision to approve, and declare the advisability of entering into, the merger agreement and the transactions it contemplates, see Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger A&P's Reasons for the Merger; Recommendation of the A&P Board of Directors. The A&P board of directors unanimously recommends that the A&P stockholders vote FOR the proposal to approve the issuance of shares of A&P common stock pursuant to the merger agreement and FOR the proposal to approve the amendment to A&P's charter regarding preemptive rights.

*Pathmark (page 67).* The Pathmark board of directors has determined that the merger is fair to and in the best interests of Pathmark and its stockholders and has unanimously approved the merger agreement and the transactions it contemplates, including the merger, and has declared the merger agree-

ment advisable. For the factors considered by the Pathmark board of directors in reaching its decision to approve, and declare the advisability of entering into, the merger agreement and the transactions it contemplates, see Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Pathmark s Reasons for the Merger; Recommendation of the Pathmark Board of Directors. The Pathmark board of directors unanimously recommends that the Pathmark stockholders vote FOR the proposal to approve and adopt the merger agreement and the transactions contemplated thereby, including the merger.

#### **Opinions of financial advisors**

*A&P (page 85).* In deciding to approve the merger and advise that A&P stockholders approve the share issuance and the A&P charter amendment, the A&P board of directors considered the opinion of its financial advisor, J.P. Morgan Securities Inc., which we refer to as *JPMorgan*, provided to the A&P board of directors on March 4, 2007, that as of the date of the opinion, and based on and subject to the qualifications, assumptions and limitations set forth therein, the merger consideration to be paid by A&P was fair, from a financial point of view, to A&P. A copy of the opinion of JPMorgan is attached to this document as Annex F. A&P stockholders should read the opinion completely and carefully to understand, among other things, the assumptions made, procedures followed, matters considered and limits on the review undertaken by JPMorgan in providing its opinion. Additionally, A&P agreed to pay JPMorgan a transaction fee in connection with the merger, a significant portion of which is payable upon completion of the merger. The JPMorgan opinion is not a recommendation as to how any stockholder of A&P should vote with respect to the A&P share issuance, the A&P charter amendment or any other matter.

*Pathmark (page 74).* In deciding to approve the merger and advise that Pathmark stockholders approve and adopt the merger agreement, the Pathmark board of directors considered the opinion of its financial advisor, Citigroup Global Markets Inc., which we refer to as *Citigroup*, provided to the Pathmark board of directors on March 4, 2007, that as of the date of the written opinion and based upon and subject to the considerations and limitations set forth in its written opinion, its work described in the written opinion and other factors it deemed relevant, the merger consideration was fair, from a financial point of view, to the holders of Pathmark common stock (other than the Yucaipa Group, as defined below). A copy of the opinion of Citigroup is attached to this document as Annex G. Pathmark stockholders should read the opinion completely and carefully to understand, among other things, the assumptions made, procedures followed, matters considered and limits on the review undertaken by Citigroup in providing its opinion. Additionally, Pathmark agreed to pay Citigroup a transaction fee in connection with the merger, a significant portion of which is payable upon completion of the merger. The Citigroup opinion is not a recommendation as to how any stockholder should vote with respect to the proposal to approve and adopt the merger agreement or any other matter.

#### **Interests of certain persons in the merger (Page 92)**

Some of the members of A&P s and Pathmark s management, certain members of their boards of directors and certain of their significant stockholders have interests in the merger that are different from, or in addition to, the interests of A&P and Pathmark stockholders generally.

These interests include the right of certain of Pathmark s executive officers to receive severance payments and benefits under the terms of existing severance agreements and the acceleration of vesting of Pathmark stock options and other equity-based awards as a result of the merger.

The Yucaipa Companies LLC ( *Yucaipa Companies* ), an affiliate of the Yucaipa Investors, will receive a fee in connection with termination of the Management Services Agreement dated March 23, 2005 with Pathmark (the *Management Services Agreement* ) and Yucaipa Advisors, LLC ( *Yucaipa Advisors* ), also an affiliate of the Yucaipa Investors, will receive a transaction fee for services rendered in

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connection with the merger. In addition, warrants to purchase Pathmark common stock owned by the Yucaipa Investors will be converted into warrants to purchase A&P common stock and the Yucaipa Investors will receive certain registration rights for A&P shares acquired by the Yucaipa Investors in connection with the merger and those issuable upon conversion of the Yucaipa Investors' warrants.

In addition, subject to certain conditions, in connection with the merger, Gregory Mays, a director of Pathmark, will be elected by the existing A&P directors to fill the existing vacant position on the A&P board of directors without stockholder action, as provided for under the director election provisions in accordance with the bylaws of A&P and Maryland law.

The Pathmark board of directors was aware of these interests and considered them, among other matters, in approving and declaring the advisability of the merger agreement.

The largest stockholder of A&P, Tengelmann, has entered into a stockholder agreement with A&P whereby Tengelmann will have certain approval, registration, preemptive and other rights after the merger as described in more detail under "Adoption of the Merger Agreement (Pathmark Proposal 1) Tengelmann Stockholder Agreement." Tengelmann and A&P have also agreed to negotiate in good faith to enter into a services agreement for services rendered by Tengelmann to A&P from time to time in exchange for reasonable compensation as agreed by Tengelmann and A&P.

The A&P board of directors was aware of these interests and considered them, among other matters, in approving and declaring the advisability of the merger agreement, the A&P charter amendment and the A&P share issuance.

### **Board of directors and management following completion of the merger (Page 117)**

Following the merger, Christian Haub, Executive Chairman of A&P, will continue as Executive Chairman of A&P; Eric Claus, President and CEO of A&P, will also maintain those same positions at A&P. Four directors who were serving on A&P's board immediately prior to the closing of the merger and were not designated for nomination by Tengelmann will continue in their current positions and four directors will be designated for nomination to A&P's board by Tengelmann. Gregory Mays, a director of Pathmark, will be elected to the A&P board of directors by the existing A&P directors, subject to certain conditions, as provided for under the bylaws of A&P and Maryland law.

### **Financing (Page 101)**

A&P estimates that the total amount of funds necessary to pay the cash portion of the merger consideration will be approximately \$485.5 million. A&P expects that this amount will be provided through a combination of (a) \$190.0 million of net cash proceeds from the sale of 6,350,000 of its shares of Metro, Inc. (*Metro*) common stock, which A&P received in connection with the August 2005 sale of its Canadian operations to Metro, a Canadian supermarket and pharmacy operator, and (b) up to \$780 million in senior secured notes (or, if the offering of senior secured notes is not completed on or prior to the closing of the merger, up to \$780 million under a senior secured bridge credit facility). On March 13, 2007, A&P sold 6,350,000 shares of its holdings in Metro for net cash proceeds of approximately \$203.5 million. A&P continues to hold approximately 11.7 million Metro shares. The merger is not conditioned on receipt of financing by A&P. Bank of America, N.A. (*Bank of America*), Banc of America Bridge LLC (*Banc of America Bridge*), Banc of America Securities LLC (*BAS*), Lehman Brothers Commercial Bank (*LBCB*), Lehman Brothers Inc. (*Lehman*) and Lehman Commercial Paper Inc. (*LCPI*) have entered into a commitment letter with A&P whereby (i) Bank of America has committed to provide a \$615 million secured revolving credit facility to finance the working capital of A&P and certain of its subsidiaries (including Pathmark) upon consummation of the merger and (ii) Banc of America Bridge

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and LBCB have severally committed to provide in the aggregate up to \$780 million of senior secured loans as bridge or interim financing to senior secured notes which may be issued by A&P and/or certain of its subsidiaries for the purpose of refinancing advances made under such bridge facility.

### Governmental and regulatory approvals (Page 105)

Under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder, which we refer to as the *HSR Act*, the merger may not be consummated unless a waiting period has expired or been terminated and there can be no assurances that such expiration or termination will be obtained. A&P and Pathmark filed the required notification and report forms with the Antitrust Division of the Department of Justice and the Federal Trade Commission regarding the merger on March 19, 2007. On April 18, 2007, A&P and Pathmark each received a request for additional information and documentary materials, which we refer to as the *Second Request*, from the Federal Trade Commission. As a result of the Second Request, A&P cannot complete the merger under the HSR Act until the earlier of (i) 30 days after both parties substantially comply with the Second Request (or on the next regular business day if the 30th day falls on a Saturday, Sunday or legal public holiday), unless that waiting period is extended by agreement between A&P and the Federal Trade Commission, or (ii) when the Federal Trade Commission terminates its review of the merger. On May 21, 2007, A&P announced that it had entered into a timing agreement with the Federal Trade Commission, pursuant to which A&P agreed, subject to certain conditions, to not (i) certify that they have substantially complied with the Second Requests prior to June 30, 2007, or (ii) consummate the merger for at least 60 days following the date that A&P and Pathmark substantially comply with the Second Requests.

### Conditions to completion of the merger (Page 131)

The obligations of A&P and Pathmark to complete the merger are subject to the satisfaction or waiver of a number of conditions, including:

the receipt of the required approval of Pathmark stockholders to adopt the merger agreement and the required approvals of A&P stockholders to approve the issuance of A&P common stock in the merger and to approve the A&P charter amendment;

the expiration or termination of the waiting period applicable to the merger under the HSR Act;

the approval for listing of the shares of A&P common stock to be issued in connection with the merger on the NYSE;

the continued effectiveness of the registration statement on Form S-4, of which this joint proxy statement/prospectus forms a part; and

other customary conditions set forth in the merger agreement, including the accuracy of representations and warranties set forth in the merger agreement; the performance of obligations under the merger agreement; and the absence of orders, injunctions or other legal restraints or prohibitions preventing completion of the merger.

In addition, A&P's obligation to complete the merger is subject to the conditions that the aggregate number of shares of Pathmark stock held by Pathmark stockholders who are entitled to demand, and who properly demand, an appraisal of such holders' shares in accordance with Section 262 of the General



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Corporation Law of the State of Delaware, which we refer to as the *DGCL* (and who comply in all other respects with Section 262), does not exceed 10% of the shares of Pathmark stock outstanding immediately prior to the completion of the merger; that there be no pending or threatened legal action or similar proceeding seeking to restrain or prohibit the merger, impose certain limitations on implementing the merger or which has had or would reasonably be expected to have a material adverse effect with respect to Pathmark; that no material adverse effect has occurred or would reasonably be expected to occur with respect to Pathmark; and that the Management Services Agreement and related consulting agreement have been terminated pursuant to their terms.

### **Restrictions on soliciting third-party acquisition proposals (Page 124)**

Subject to certain exceptions, the merger agreement restricts Pathmark, its subsidiaries and their respective directors, officers and other representatives from soliciting or knowingly encouraging or facilitating third-party proposals to acquire Pathmark or from entering into, initiating or participating in any discussions or negotiations, furnishing any nonpublic information or assisting or knowingly encouraging any third party with respect to such proposals. Under certain circumstances, however, if Pathmark receives an unsolicited acquisition proposal from a third party, Pathmark may furnish nonpublic information to, and engage in negotiations with, that third party, subject to specified conditions.

### **Termination of the merger agreement (Page 133)**

A&P and Pathmark may terminate the merger agreement without completing the merger by agreement in writing at any time, even after the Pathmark stockholders have voted to adopt the merger agreement and the A&P stockholders have approved the issuance of A&P common stock and the A&P charter amendment. The merger agreement may also be terminated at any time prior to the effective time of the merger in other specified circumstances, including:

by either A&P or Pathmark if:

the merger is not completed by the outside date of March 4, 2008 (the *Outside Date* ), which date may be extended once for a period up to ninety days under certain circumstances;

Pathmark stockholders fail to adopt the merger agreement at the Pathmark special meeting or A&P stockholders fail to approve the issuance of A&P common stock in the merger or to approve the A&P charter amendment at the A&P special meeting;

a governmental entity issues an order, injunction or other legal restraint or prohibition preventing completion of the merger; or

the other party breaches or fails to perform any representation, warranty, covenant or agreement in the merger agreement which breach or failure to perform would cause the failure of a closing condition which is not curable or is not cured following notice; or

by A&P if:

prior to the Pathmark special meeting, the Pathmark board of directors withdraws, modifies or qualifies in a manner adverse to A&P its recommendation of the merger; or

on September 4, 2007 or on December 4, 2007, the A&P board of directors elects to terminate the merger agreement based on its good faith determination that completing the merger would be reasonably likely to require divesting stores, businesses or other assets of A&P and Pathmark in excess of an aggregate of \$36.0 million of scheduled store level cashflow, subject to requirements to discuss the determination with Pathmark and to pay certain fees and expenses, if applicable, as described under Termination fees and expenses ; or

by Pathmark if:

A&P fails to obtain \$190.0 million of net cash proceeds by June 2, 2007 from the sale of Metro common stock or A&P common stock and/or preferred stock (on March 13, 2007, A&P sold 6,350,000 shares of its holdings in Metro, Inc. for proceeds of approximately \$203.5 million) or such amount fails to remain unencumbered and held separately to pay the merger consideration; or

the marketing period provided under the merger agreement to arrange the debt financing for the merger has expired, the conditions to the completion of the merger have been satisfied or waived and A&P does not have available funds to pay the aggregate cash consideration payable in the merger.

**Termination fees and expenses (Page 135)**

Pathmark will pay A&P a termination fee of \$25.0 million in connection with the termination of the merger agreement in certain circumstances involving a competing acquisition proposal by a third party or a change in the Pathmark board of directors recommendation of the merger to Pathmark s stockholders.

In addition, A&P has agreed to pay Pathmark termination fees under the following circumstances:

a \$25.0 million termination fee, referred to as the *Nine-Month Termination Fee*, if (1) A&P terminates the merger agreement on December 4, 2007 because A&P has determined in good faith, subject to certain requirements, that required divestitures would be reasonably likely to exceed \$36.0 million of aggregate scheduled store level cashflow or (2) A&P or Pathmark terminates the merger agreement after September 4, 2007 and on or before December 4, 2007 because any court or other governmental entity has restrained or prohibited completion of the merger at the request of any person seeking relief under antitrust laws;

a \$50.0 million termination fee, referred to as the *One-Year Termination Fee*, if (1) March 4, 2008 has been reached and (A) the Outside Date for completing the merger has not been extended, (B) the antitrust-related conditions to closing the merger have not been satisfied and (C) A&P or Pathmark terminates the merger agreement because of failure to complete the merger by the Outside Date or (2) A&P or Pathmark terminates the merger agreement after December 4, 2007 and on or before March 4, 2008 because any court or other governmental entity has restrained or prohibited completion of the merger at the request of any person seeking relief under antitrust laws;

a \$75.0 million termination fee, referred to as the *Extension Termination Fee*, if (1) the Outside Date for completing the merger has been extended and A&P or Pathmark terminates the merger agreement because of failure to complete the merger by the extended Outside

Date or (2) A&P or Pathmark terminates the merger agreement after March 4, 2008 because any court or other governmental entity has restrained or prohibited completion of the merger at the request of any person seeking relief under antitrust laws;

a \$50.0 million termination fee if Pathmark terminates the merger agreement because of A&P's failure to obtain \$190.0 million of net cash proceeds by June 2, 2007 from the sale of Metro common stock or A&P common stock and/or preferred stock (on March 13, 2007, A&P sold 6,350,000 shares of its holdings in Metro for proceeds of approximately \$203.5 million) or because such amount fails to remain unencumbered and held separately to pay the merger consideration; and

a \$50.0 million termination fee if Pathmark terminates the merger agreement on or prior to March 4, 2008 (or \$75.0 million if so terminated after March 4, 2008) because (1) A&P does not have available funds to pay the aggregate cash consideration payable in the merger, (2) the marketing period provided under the merger agreement to arrange the debt financing for the merger has expired and (3) the conditions to the completion of the merger have been satisfied or waived.

If A&P or Pathmark terminates the merger agreement because of the failure of the Pathmark stockholders to adopt the merger agreement at the Pathmark special meeting, then Pathmark must pay A&P all filing fees paid by A&P under the HSR Act as well as legal fees and expenses incurred by A&P in connection with the merger agreement and the transactions contemplated thereby. This payment of fees and expenses will reduce the amount of any termination fees to be paid by Pathmark.

If A&P or Pathmark terminates the merger agreement because of the failure of the A&P stockholders to approve the issuance of the A&P common stock pursuant to the merger agreement or the A&P charter amendment at the A&P special meeting or if A&P terminates the merger agreement on September 4, 2007, pursuant to A&P's right to terminate the merger agreement under certain circumstances if A&P determines that it is reasonably likely that divestitures required to meet antitrust requirements would exceed \$36.0 million of aggregate scheduled store level cashflow, then A&P must pay Pathmark the legal fees and expenses incurred by Pathmark in connection with the merger agreement and the transactions contemplated thereby.

#### **Certain material United States federal income tax consequences (Page 107)**

The receipt of the merger consideration, or cash pursuant to the exercise of dissenters' rights, by Pathmark stockholders in exchange for Pathmark common stock will be a taxable transaction for United States federal income tax purposes.

You should read Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Certain Material United States Federal Income Tax Consequences for a more complete discussion of the United States federal income tax consequences of the merger. Tax matters are complicated and the tax consequences of the merger to you will depend on the facts of your particular situation. Because individual circumstances may differ, we urge you to consult with your tax advisor as to the specific tax consequences of the merger to you, including the applicability of United States federal, state, local, foreign and other tax laws.

#### **Differences between the rights of A&P stockholders and Pathmark stockholders (Page 149)**

As a result of the merger, the holders of Pathmark common stock will become holders of A&P common stock. Following the merger, Pathmark stockholders will have different rights as stockholders

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of A&P than as stockholders of Pathmark due to differences between the laws of the states of incorporation and the different provisions of the governing documents of A&P and Pathmark. See Adoption of the Merger Agreement (Pathmark Proposal 1) Comparison of Stockholders Rights beginning on page 149.

### Comparative stock prices and dividend information (Page 25)

Shares of A&P common stock are listed on the NYSE under the symbol GAP. Shares of Pathmark common stock are listed on the NASDAQ Global Market ( *NASDAQ* ) under the symbol PTMK. The following table presents the last reported sale prices of A&P common stock and Pathmark common stock, as reported on:

February 26, 2007, the last full trading day before both A&P and Pathmark issued press releases regarding a potential business combination involving the companies;

March 2, 2007, the last full trading day prior to the public announcement of the merger agreement; and

[ ], 2007, the last full trading day prior to the printing date of this proxy statement/ prospectus.

The table also presents the equivalent value of the merger consideration per share of Pathmark common stock on those dates.

	A&P Common Stock	Pathmark Common Stock	Equivalent Price Per Share of Pathmark Common Stock <sup>(1)</sup>
February 26, 2007	\$ 30.87	\$ 12.05	\$ 13.00
March 2, 2007	\$ 30.86	\$ 11.25	\$ 13.00
[ ], 2007	\$ [ ]	\$ [ ]	\$ [ ]

<sup>(1)</sup> Calculated by adding (a) the cash portion of the merger consideration, or \$9.00, and (b) the A&P closing per share stock price on February 26, 2007, March 2, 2007 or [ ], 2007 (as the case may be) multiplied by 0.12963.

Trading prices of A&P and Pathmark common stock and, consequently, the value of the merger consideration will fluctuate prior to the closing date of the merger, and A&P and Pathmark stockholders are urged to obtain current market quotations prior to making any decision with respect to how such stockholders will vote regarding the merger, the A&P share issuance proposal or the A&P charter amendment proposal, as the case may be.

Although A&P declared and paid a special one-time dividend to its stockholders of record on April 17, 2006 equal to \$7.25 per share in April 2006, A&P's policy is to not pay dividends. As such, A&P has not paid any dividends, other than the special one-time dividend paid in 2006, during the previous four years and does not intend to pay dividends in the normal course of business in fiscal 2007. A&P is permitted, however, under the terms of its credit agreements, to pay cash dividends on shares of common stock.

Pathmark did not pay any cash dividends to its stockholders during fiscal 2006 and does not currently anticipate paying cash dividends during fiscal 2007. Pathmark is prohibited from paying cash dividends to holders of Pathmark common stock under the terms of its amended and restated \$250 million

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senior secured credit facility dated as of October 1, 2004, as amended, with a group of lenders led by Fleet Retail Group. In addition, Pathmark is restricted from paying cash dividends to holders of Pathmark common stock under the indenture governing its \$350 million 8.75% Senior Subordinated Notes, due 2012.

### **Pathmark stockholders will be entitled to demand appraisal rights (Page 109)**

Under Delaware law, if the merger is completed, Pathmark stockholders of record who demand an appraisal of their shares, do not vote in favor of the merger and properly perfect their appraisal rights pursuant to, and in accordance with, Section 262 of the DGCL (and do not subsequently lose or withdraw such rights) will be entitled to receive payment in cash for the judicially determined fair value of their shares of Pathmark common stock plus a fair rate of interest, if any, on the amount determined to be the fair value of the shares. The relevant provisions of the DGCL relating to the rights of Pathmark stockholders to such appraisal are included as Annex J to this joint proxy statement/prospectus.

### **The A&P special meeting (Page 37)**

The A&P special meeting will be held at The Woodcliff Lake Hilton, 200 Tice Boulevard, Woodcliff Lake, New Jersey, on [ ], [ ], 2007, at 9:00 a.m., Eastern Daylight Time, for the following purposes:

to consider and vote on a proposal to approve the issuance of A&P common stock pursuant to the merger agreement;

to consider and vote on a proposal to approve an amendment to A&P's charter to exempt the transactions contemplated by the merger agreement and the agreements entered into in connection therewith from the preemptive rights provisions of the A&P charter; and

to transact any other business that may properly be brought before the A&P special meeting and any adjournments or postponements thereof.

Only record holders of A&P common stock at the close of business on [ ], 2007 will be entitled to vote at the A&P special meeting. Each share of A&P common stock is entitled to one vote for each matter presented at the meeting. As of the record date of [ ], 2007, there were [ ] shares of A&P common stock entitled to vote at the A&P special meeting.

The stock issuance proposal requires the affirmative vote of a majority of all votes cast by the holders of common stock at a meeting, *provided* that the total votes cast represent at least a majority of the outstanding shares entitled to vote on the proposal. Because approval is based on the affirmative vote of a majority of votes cast, an A&P stockholder's failure to vote will not affect the outcome of the vote to approve the issuance of A&P common stock in connection with the merger, assuming the total votes cast on the proposal represent at least a majority of all shares entitled to vote on the proposal. Because the NYSE treats abstentions as votes cast with respect to the proposal to issue shares of A&P common stock pursuant to the merger agreement, an abstention will have the same effect as a vote **AGAINST** this proposal. Abstentions will be counted for the purposes of determining whether a quorum exists at the A&P special meeting.

The proposal to amend the A&P charter requires the affirmative vote of two-thirds of the outstanding shares of A&P common stock entitled to vote on the matter. Therefore, an A&P stockholder's failure to vote or an abstention will have the same effect as a vote against approval of the amendment to the A&P charter.

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Additionally, the effectiveness of each of the proposal to approve the issuance of A&P common stock in connection with the merger and the proposal to approve the amendment to the A&P charter is conditioned on approval of the other, which means that neither proposal will have any effect unless both are approved. We cannot complete the merger unless these two proposals are approved by the A&P stockholders.

As of the A&P record date, directors and executive officers of A&P and their affiliates had the right to vote [ ] shares of A&P common stock, or [ ]% of the outstanding A&P common stock entitled to be voted at the A&P special meeting.

Tengelmann has agreed to vote all of its shares of A&P common stock, approximately 53% of the outstanding A&P common stock as of the A&P record date, in favor of the issuance of A&P common stock in the merger and the amendment to the A&P charter. This means that the approval of the issuance of the A&P common stock pursuant to the merger agreement is assured. The approval of the proposal to amend the A&P charter, however, is not assured.

### **The Pathmark special meeting (Page 42)**

The Pathmark special meeting will be held at Pathmark's corporate headquarters, 200 Milik Street, Carteret, New Jersey 07008, on [ ], [ ], 2007, at 10:00 a.m., Eastern Daylight Time, for the following purposes:

to consider and vote upon a proposal to adopt the merger agreement and the transactions contemplated thereby, including the merger; and

to consider and vote on such other matters as may properly be brought before the Pathmark special meeting and any adjournments or postponements thereof.

Only record holders of Pathmark common stock at the close of business on [ ], 2007 will be entitled to vote at the Pathmark special meeting. Each share of Pathmark common stock is entitled to one vote for each matter presented at the meeting. As of the record date of [ ], 2007, there were [ ] shares of Pathmark common stock entitled to vote at the Pathmark special meeting.

In order to complete the merger, an affirmative vote of the holders of a majority of the outstanding shares of Pathmark common stock entitled to vote on such proposal at such meeting at which a quorum is present must vote to approve and adopt the merger agreement. A Pathmark stockholder's failure to vote or an abstention will have the same effect as a vote AGAINST the proposal to adopt the merger agreement and the transactions contemplated thereby, including the merger, because approval is based on the affirmative vote of a majority of shares outstanding and entitled to vote on the proposal.

As of the Pathmark record date, directors and executive officers of Pathmark had the right to vote [ ] shares of Pathmark common stock, or [ ]% of the outstanding Pathmark common stock entitled to be voted at the Pathmark special meeting.

The Yucaipa Investors have agreed to vote shares of Pathmark common stock that they own as of the Pathmark record date in favor of adoption of the merger agreement and the transactions contemplated thereby, including the merger, *provided* that these voting obligations do not apply to any other shares owned by the Yucaipa Investors in excess of 33% of the outstanding Pathmark common stock. The remaining shares owned by the Yucaipa Investors may be voted in the Yucaipa Investors' discretion, although the Yucaipa Investors have expressed their present intention to vote all of the Pathmark shares

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they own (approximately 38% of the outstanding Pathmark common stock as of the Pathmark record date) in favor of the adoption of the merger agreement.

### **Information about the companies**

#### *A&P*

The address and telephone number of the executive offices are:

Two Paragon Drive  
Montvale, New Jersey 07645  
(201) 573-9700

A&P is a Maryland corporation and is engaged in the retail food business. A&P operated over 400 stores averaging over 40,000 square feet per store as of February 24, 2007.

Operating under the trade names A&P, Super Fresh, Sav-A-Center, Farmer Jack, Waldbaum's, Super Foodmart, Food Basics and The Food Emporium, A&P sells groceries, meats, fresh produce and other items commonly offered in supermarkets. In addition, many stores have bakery, delicatessen, pharmacy, floral, fresh fish and cheese departments and on-site banking. National, regional and local brands are sold as well as private label merchandise. In support of A&P's retail operations, A&P sells other private label products in its stores under other brand names of A&P which include, without limitation, America's Choice, Master Choice, Health Pride and Savings Plus.

#### *Merger Sub*

The address and telephone number of the executive offices are:

Two Paragon Drive  
Montvale, New Jersey 07645  
(201) 573-9700

Merger Sub is a Delaware corporation and a wholly owned subsidiary of A&P. Merger Sub was organized on February 22, 2007 solely for the purpose of effecting the merger with Pathmark. It has not carried on any activities other than in connection with the merger agreement.

#### *Pathmark*

The address and telephone number of the executive offices are:

200 Milik Street  
Carteret, New Jersey 07008  
(732) 499-3000

Pathmark is a Delaware corporation and is a leading supermarket chain in the densely populated New York-New Jersey and Philadelphia metropolitan areas, operating as a single segment with 141 stores. All of its stores are located within 100 miles of its corporate office in Carteret, New Jersey, and of its company-operated and outsourced distribution facilities. Pathmark was incorporated in Delaware in 1987 and is the successor by merger to a business established in 1966.

## SELECTED HISTORICAL FINANCIAL AND OTHER DATA OF A&amp;P

The following table sets forth selected historical consolidated financial information and other data of A&P for the periods presented. The selected financial information as of February 22, 2003, February 28, 2004, February 26, 2005, February 25, 2006 and February 24, 2007, and for each of the five fiscal years then ended, has been derived from A&P's consolidated financial statements audited by PricewaterhouseCoopers LLP, an independent registered public accounting firm. This financial information and other data should be read in conjunction with the audited consolidated financial statements of A&P, including the notes thereto, incorporated in this joint proxy statement/prospectus by reference. See "Where You Can Find More Information" beginning on page 186.

	Fiscal Year Ended				
	February 24, 2007(a) (b)	February 25, 2006(a) (b)	February 26, 2005	February 28, 2004	February 22, 2003
(In millions, except per share and Other amounts)					
<b>Operating Results</b>					
Sales	\$ 6,850.3	\$ 8,740.3	\$ 10,854.9	\$ 10,899.3	\$ 10,096.8
(Loss) income from operations	(10.1)	(320.7)	(72.9)	(142.8)	20.3
Depreciation and amortization	(177.8)	(207.3)	(268.1)	(274.9)	(251.1)
(Loss) gain on sale of Canadian operations	1.3	912.1			
Interest expense <sup>(c)</sup>	(73.8)	(92.2)	(114.1)	(103.1)	(99.9)
Income (loss) from continuing operations	26.5	390.4	(184.0)	(213.2)	(202.3)
Income (loss) from discontinued operations	0.4	2.2	(4.1)	64.3	7.6
Income (loss) before cumulative effect of change in accounting principle	26.9	392.6	(188.1)	(148.9)	(194.6)
Cumulative effect of a change in accounting principle FIN 46- <del>R</del> <sup>1</sup>				(8.0)	
Net income (loss)	26.9	392.6	(188.1)	(156.9)	(194.6)
<b>Per Share Data</b>					
Income (loss) from continuing operations basic	0.64	9.69	(4.77)	(5.54)	(5.25)
Income (loss) from discontinued operations basic	0.01	0.05	(0.11)	1.67	0.20
Cumulative effect of a change in accounting principle FIN 46- <del>R</del> <sup>1</sup>				(0.21)	
Net income (loss) basic	0.65	9.74	(4.88)	(4.08)	(5.05)
Income (loss) from continuing operations diluted	0.63	9.59	(4.77)	(5.54)	(5.25)
Income (loss) from discontinued operations diluted	0.01	0.05	(0.11)	1.67	0.20
Cumulative effect of a change in accounting principle FIN 46- <del>R</del> <sup>1</sup>				(0.21)	
Net income (loss) diluted	0.64	9.64	(4.88)	(4.08)	(5.05)
Cash dividends <sup>(e)</sup>	7.25				
Book value per share <sup>(e)</sup>	10.36	16.32	6.03	10.20	13.39

See notes to selected financial data.



## Fiscal Year Ended

	February 24, 2007(a) (b)	February 25, 2006(a) (b)	February 26, 2005	February 28, 2004	February 22, 2003
(In millions, except per share and Other amounts)					
<b>Financial Position</b>					
Current assets	\$ 748.9	\$ 1,210.0	\$ 1,164.7	\$ 1,199.0	\$ 1,121.4
Current liabilities	558.4	610.3	1,078.2	1,083.2	1,090.6
Working capital <sup>(e)</sup>	190.5	599.7	86.5	115.7	30.8
Current ratio <sup>(e)</sup>	1.34	1.98	1.08	1.11	1.03
Expenditures for property	208.2	191.1	216.1	161.0	242.4
Total assets	2,111.6	2,498.9	2,802.0	2,902.9	2,996.3
Current portion of long-term debt <sup>(f)</sup>	32.1	0.6	2.3	2.3	25.8
Current portion of capital lease obligations	1.6	2.3	8.3	15.9	13.8
Long-term debt <sup>(c)</sup>	284.2	246.3	634.0	642.3	803.3
Long-term portion of capital lease obligations	29.9	32.3	52.2	55.2	66.1
Total debt	347.8	281.4	696.8	715.7	909.0
Debt to total capitalization <sup>(i)</sup>	45%	30%	75%	65%	64%
<b>Equity</b>					
Stockholders' equity <sup>(g)</sup>	430.7	671.7	233.8	392.8	515.7
Weighted average shares outstanding - basic	41,430.6	40,301.1	38,558.6	38,516.8	38,494.8
Weighted average shares outstanding - diluted	41,902.3	40,725.9	38,558.6	38,516.8	38,494.8
Number of registered stockholders <sup>(e) (h)</sup>	4,649	4,916	5,289	5,469	5,751
<b>Other<sup>(e)</sup></b>					
Number of employees	38,000	38,000	73,000	74,185	78,710
New store openings	10	3	24	19	31
Number of stores at year end	406	405	647	633	695
Total store area (square feet)	16,538,410	16,508,969	25,583,138	24,724,168	26,817,650
Number of franchised stores served at year end			42	63	65
Total franchised store area (square feet)			1,375,611	2,048,016	2,066,401

- (a) At the close of business on August 13, 2005, A&P completed the sale of its Canadian business to Metro.
- (b) On February 27, 2005 the first day of A&P's 2005 fiscal year, A&P adopted the Financial Accounting Standards Board Statement of Financial Accounting Standards (SFAS) No. 123(R) and recorded share-based compensation expense of \$8.2 million and \$9.0 million in fiscal 2006 and fiscal 2005, respectively.
- (c) In fiscal 2005, A&P repurchased the majority of its 7.75% Notes due April 15, 2007 and its 9.125% Senior Notes due December 15, 2011.
- (d) In fiscal 2003, the Financial Accounting Standards Board (FASB) issued revised interpretation No. 46, Consolidation of Variable Interest Entities an interpretation of Accounting Research Bulletin No. 51. As of February 23, 2003, A&P adopted its guidance as A&P was deemed the primary beneficiary and included the franchise operations in A&P's consolidated financial statements for fiscal 2003, fiscal 2004 and fiscal 2005.
- (e) Not derived from audited financial information.
- (f) In April 2007, A&P's 7.75% Notes become due and payable in full.
- (g) On April 25, 2006, A&P paid a special one-time dividend to its stockholders of record on April 17, 2006 equal to \$7.25 per share. This dividend payout totaling \$299.1 million was recorded as a reduction of Additional paid in capital in A&P's Consolidated Balance Sheets at February 24, 2007.
- (h) Actual number, not millions.
- (i) Calculated as total debt divided by the sum of total debt and stockholders' equity.

## SELECTED HISTORICAL FINANCIAL AND OTHER DATA OF PATHMARK

The following table sets forth selected historical consolidated financial information and other data of Pathmark for the periods presented. The selected consolidated statements of income data for the fiscal years ended February 3, 2007, January 28, 2006 and January 29, 2005 and the selected consolidated balance sheet data as of February 3, 2007 and January 28, 2006 have been derived from Pathmark's audited consolidated financial statements, incorporated by reference in this joint proxy statement/prospectus. The selected consolidated statements of income data for the fiscal years ended January 31, 2004 and February 1, 2003 and the selected consolidated balance sheet data as of January 29, 2005, January 31, 2004 and February 1, 2003 are derived from audited consolidated financial statements not included or incorporated by reference in this joint proxy statement/prospectus. This consolidated financial information and other data should be read in conjunction with the audited consolidated financial statements of Pathmark, including the notes thereto, incorporated in this joint proxy statement/prospectus by reference. See *Where You Can Find More Information* beginning on page 186.

	Fiscal Year				
	53 weeks ended February 3, 2007	52 weeks ended January 28, 2006	52 weeks ended January 29, 2005	52 weeks ended January 31, 2004	52 weeks ended February 1, 2003
(in millions, except per share amounts)					
<b>Operating Results:</b>					
Sales:	\$ 4,058.0	\$ 3,977.0	\$ 3,978.5	\$ 3,991.3	\$ 3,937.7
Cost of goods sold	(2,875.2)	(2,846.3)	(2,846.1)	(2,852.6)	(2,816.7)
Gross profit	1,182.8	1,130.7	1,132.4	1,138.7	1,121.0
Selling, general and administrative expenses <sup>(a)</sup>	(1,056.8)	(1,040.9)	(984.9)	(953.9)	(944.4)
Depreciation and amortization <sup>(b)</sup>	(92.6)	(90.8)	(89.4)	(84.0)	(84.6)
Impairment of goodwill and long-lived assets <sup>(c)</sup>			(309.0)		
Operating earnings (loss)	33.4	(1.0)	(250.9)	100.8	92.0
Interest expense, net <sup>(d)</sup>	(62.3)	(64.7)	(67.0)	(72.5)	(65.1)
Earnings (loss) before income taxes and cumulative effect of an accounting change	(28.9)	(65.7)	(317.9)	28.3	26.9
Income tax benefit (provision)	10.6	25.6	9.3	(11.8)	(13.0)
Earnings (loss) before cumulative effect of an accounting change	(18.3)	(40.1)	(308.6)	16.5	13.9
Cumulative effect of an accounting change, net of tax <sup>(e)</sup>					(0.6)
Net earnings (loss)	\$ (18.3)	\$ (40.1)	\$ (308.6)	\$ 16.5	\$ 13.3
Weighted-average number of shares outstanding - basic	52.1	43.5	30.1	30.1	30.1
Weighted-average number of shares outstanding - diluted	52.1	43.5	30.1	30.4	30.4
Net earnings (loss) per share - basic	\$ (0.35)	\$ (0.92)	\$ (10.26)	\$ 0.55	\$ 0.44
Net earnings (loss) per share - diluted	\$ (0.35)	\$ (0.92)	\$ (10.26)	\$ 0.54	\$ 0.44
Same-store sales increase (decrease)	0.4%	(0.8)%	(0.8)%	1.2%	(1.7)%
Capital expenditures, including property acquired under capital leases and technology investments	\$ 71.8	\$ 64.5	\$ 119.0	\$ 79.3	\$ 121.1

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See notes to selected financial data.

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	At				
	February 3, 2007	January 28, 2006	January 29, 2005	January 31, 2004	February 1, 2003
<b>Financial Position:</b>					
Total assets <sup>(f)</sup>	\$ 1,132.4	\$ 1,254.6	\$ 1,253.4	\$ 1,520.9	\$ 1,522.6
Cash, cash equivalents and marketable securities	28.1	77.4	42.6	8.9	11.3
Debt (excluding capital lease obligations)	448.2	425.9	481.2	428.4	451.7
Capital lease obligations	169.8	179.6	193.4	196.5	201.2
Total debt, including capital lease obligations	618.0	605.5	674.6	624.9	652.9
Stockholders' equity <sup>(g)</sup>	128.4	171.3	65.2	375.0	356.8

See notes to selected financial data.

**Notes to Selected Historical Financial and Other Data of Pathmark**

- (a) Selling, general and administrative expenses ( *SG&A* ) in fiscal 2006 included a \$9.7 million non-cash charge related to stock-based compensation in accordance with SFAS No. 123(R), Shared-Based Payment and \$2.9 million in expenses related to the proposed merger with A&P, partially offset by gift card breakage income of \$3.5 million. SG&A in fiscal 2005 included a \$14.6 million charge related to employee-related separation costs, comprised of (a) a \$8.4 million charge related to a corporate headcount reduction program, (b) a \$3.6 million charge related to a store labor buyout initiative, and (c) a \$2.6 million charge related to separation agreements with two former executives. In addition, SG&A in fiscal 2005 included a \$4.7 million charge related to the merchandising and store initiative. SG&A in fiscal 2004 is net of a \$1.4 million credit to correct, on a cumulative basis, the accounting related to straight-line rent expense and long-term disability and a \$1.5 million gain from the sale of real estate. Fiscal 2003 included a \$13.7 million gain from the sale of real estate related to the assignment of two real estate leases and an \$8.1 million charge related to a store labor buyout initiative and a corporate headcount reduction program. Fiscal 2002 included a \$2.0 million charge related to a store labor buyout program.
- (b) Depreciation and amortization in fiscal 2004 included a charge of \$2.0 million to correct, on a cumulative basis, the amortization of certain leasehold improvements.
- (c) In accordance with the SFAS No. 142, Goodwill and Other Intangible Assets, Pathmark's goodwill balance is evaluated for impairment annually, or more frequently if events or changes in circumstances indicate that the asset might be impaired. Based on an evaluation of its fair value in fiscal 2002, fiscal 2003, fiscal 2005 and fiscal 2006, Pathmark concluded that there was no impairment of its goodwill.

Based on Pathmark's evaluation of its goodwill and long-lived assets performed in fiscal 2004, Pathmark recorded a non-cash impairment charge of \$309.0 million. The goodwill impairment of \$293.8 million, which is not deductible for income tax purposes, represented the write-down of the carrying value of Pathmark's goodwill to its implied fair value and was due to Pathmark's declining operating performance in fiscal 2004 and the reduced valuation multiples in the retail grocery industry, which were reflected in Pathmark's stock price and market capitalization. The long-lived assets impairment of \$15.2 million represents the writedown of under-performing stores to their fair market values.

- (d) Interest expense in fiscal 2005 included a charge of \$2.8 million as a result of the defeasance of Pathmark's mortgage borrowings utilizing a portion of the proceeds of certain purchased securities. Fiscal 2004 included a write-off of deferred financing costs of \$1.7 million related to the refinancing and pay down of Pathmark's previous credit agreement. Fiscal 2003 included a derivative settlement charge of \$3.7 million related to the termination and settlement of Pathmark's \$150 million interest rate zero-cost collar and the writeoff of deferred financing costs of \$2.1 million as a result of the repayment of \$153 million of Pathmark's term loan primarily from proceeds from the issuance of an additional \$150 million (\$100 million on September 19, 2003 and \$50 million on December 18, 2003) aggregate principal amount of Senior Subordinated Notes. Fiscal 2002 included the reversal of an accrued interest liability of \$2.2 million related to the favorable resolution of certain tax issues.
- (e) In fiscal 2002, Pathmark adopted Emerging Issues Task Force ( *EITF* ) Issue No. 02-16, Accounting by a Customer (Including a Reseller) for Certain Consideration Received from a Vendor. In adopting EITF Issue No. 02-16, vendor payments related to advertising reimbursements are recorded as a reduction of cost of goods sold when both the required advertising is performed

and the inventory is sold; prior to this change, these reimbursements were recorded as a reduction of advertising expense when the required advertising was performed. As a result, Pathmark recorded a charge in fiscal 2002 of \$0.6 million, net of an income tax benefit of \$0.4 million, for the cumulative effect of an accounting change.

- (f) In fiscal 2006, Pathmark adopted SFAS No. 158, *Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans* an amendment of SFAS No. 87, 88, 106 and 132(R). As a result, Pathmark recognized the funded status of its defined benefit postretirement plans as an asset or a liability, with changes resulting from adoption reducing stockholders' equity by \$36.0 million as of February 3, 2007. SFAS No. 158 did not change the existing criteria for measurement of periodic benefit costs, plan assets or benefit obligations.

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## COMPARATIVE PER SHARE DATA

The following table sets forth certain historical, pro forma combined and pro forma-equivalent per share financial information for A&P common stock and Pathmark common stock. The pro forma and pro forma-equivalent per share information gives effect to the merger as if the merger had been effective on February 24, 2007, in the case of the book value data presented, and as if the merger had become effective at the beginning of the fiscal year ended February 24, 2007, in the case of the net income and dividends declared data presented.

The following information should be read in conjunction with the audited consolidated financial statements of A&P and Pathmark, which are incorporated by reference into this joint proxy statement/prospectus, and the unaudited pro forma condensed combined financial data beginning on page 138. The pro forma information below assumes that the merger will be accounted for using the purchase method of accounting, represents a current estimate based on available information and is subject to change as additional information becomes available. It is presented for informational purposes only and is not necessarily indicative of the operating results or financial position that would have occurred if the merger had been completed as of the beginning of the periods presented, nor is it necessarily indicative of the future operating results or financial position of the combined company.

	<b>Fiscal Year Ended February 24, 2007</b>
<b>A&amp;P Historical</b>	
Historical diluted per common share:	
Net income per share	\$ 0.63
Dividends declared per common share	\$ 7.25
Book value per share at period end	\$ 10.36
<b>Pathmark Historical<sup>(1)</sup></b>	
Historical diluted per common share:	
Net (loss) income per share	\$ (0.35)
Dividends declared per common share	\$
Book value per share at period end	\$ 2.46
<b>Unaudited Pro Forma Combined<sup>(1)</sup></b>	
Unaudited diluted pro forma per A&P common share:	
Net (loss) income per share	\$ (1.65)
Dividends declared per common share	\$
Book value per share at period end	\$ 18.38
<b>Unaudited Pro Forma Pathmark Equivalent<sup>(1)(2)</sup></b>	
Unaudited diluted pro forma per Pathmark common share:	
Net (loss) income per share	\$ (0.21)
Dividends declared per common share	\$
Book value per share at period end	\$ 2.38

(1) Pathmark information is presented as of and for the period ended February 3, 2007.

(2) Pathmark equivalent per share amounts are calculated by multiplying pro forma amounts by the exchange ratio of 0.12963.

## COMPARATIVE STOCK PRICES AND DIVIDENDS

## Comparison

A&P common stock is listed and traded on the NYSE under the symbol GAP. Pathmark common stock is listed and traded on NASDAQ under the symbol PTMK. The following table sets forth, for the fiscal quarters indicated, the high and low sales prices per share of A&P common stock and Pathmark common stock. The table also sets forth the quarterly cash dividends per share declared by A&P and Pathmark with respect to its common stock.

	A&P Common Stock			Pathmark Common Stock		
	High	Low	Dividends	High	Low	Dividends
2005						
First Quarter	\$ 27.52	\$ 11.12		\$ 7.93	\$ 4.48	
Second Quarter	\$ 32.58	\$ 23.96		\$ 11.21	\$ 7.72	
Third Quarter	\$ 31.17	\$ 25.29		\$ 12.28	\$ 8.77	
Fourth Quarter	\$ 32.39	\$ 28.41		\$ 11.03	\$ 9.62	
2006						
First Quarter	\$ 28.30	\$ 21.25	\$ 7.25	\$ 11.12	\$ 9.76	
Second Quarter	\$ 24.10	\$ 20.97		\$ 10.56	\$ 7.90	
Third Quarter	\$ 28.04	\$ 22.60		\$ 10.42	\$ 8.47	
Fourth Quarter	\$ 31.44	\$ 25.51		\$ 11.48	\$ 10.04	
2007						
First Quarter <sup>(a)</sup>	\$ 34.07	\$ 30.86	\$	\$ 12.84	\$ 11.10	\$

<sup>(a)</sup> In the case of A&P, through May 5, 2007.

On February 26, 2007, the last trading day before A&P and Pathmark issued press releases regarding a potential business combination involving the companies, the last sales price of Pathmark common stock was \$12.05 per share and the last sales price of A&P common stock was \$30.87 per share. On March 2, 2007, the last trading day prior to the announcement of the execution of the merger agreement, the last sales price of Pathmark common stock was \$11.25 per share and the last sales price of A&P common stock was \$30.86 per share. On [ ], 2007, the most recent practicable trading day prior to the printing of this joint proxy statement/prospectus, the last sales price of Pathmark common stock was \$[ ] per share and the last sales price of A&P common stock was \$[ ] per share. The market prices of shares of Pathmark common stock and A&P common stock are subject to fluctuation. As a result, Pathmark stockholders are urged to obtain current market quotations. On [ ], 2007, the record date for the Pathmark special meeting, there were approximately [ ] shares of Pathmark common stock outstanding. On [ ], the record date for the A&P special meeting, there were approximately [ ] shares of A&P common stock outstanding.

Although A&P declared and paid a special one-time dividend to its stockholders of record on April 17, 2006 equal to \$7.25 per share in April 2006, A&P's policy is to not pay dividends. As such, A&P has not made dividend payments, other than the special one-time dividend just described, in the previous five years and does not intend to pay dividends in the normal course of business in fiscal 2007. A&P is permitted, however, under the terms of its credit agreements, to pay cash dividends on shares of common stock.

Pathmark did not pay any cash dividends to its stockholders during fiscal 2006 and does not currently anticipate paying cash dividends during fiscal 2007. Pathmark is prohibited from paying cash divi-



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ends to holders of Pathmark common stock under the terms of its amended and restated \$250 million senior secured credit facility dated as of October 1, 2004, as amended, with a group of lenders led by Fleet Retail Group. In addition, Pathmark is restricted from paying cash dividends to holders of Pathmark common stock under the indenture governing its \$350 million 8.75% Senior Subordinated Notes, due 2012.

## RISK FACTORS

In addition to general investment risks and the other information included or incorporated by reference into this joint proxy statement/prospectus, you should carefully consider the risk factors described below in evaluating whether to adopt the merger agreement and the transactions contemplated thereby, in the case of Pathmark stockholders, or to approve the A&P share issuance proposal and the A&P charter amendment proposal, in the case of A&P stockholders.

### **Risk Factors Relating to A&P and Pathmark**

A&P's and Pathmark's businesses are and will be subject to the risks described below relating to the merger. In addition, A&P and Pathmark are, and will continue to be, subject to the risks described in Part I, Item 1A in each of A&P's annual report on Form 10-K for the year ended February 24, 2007 and Pathmark's annual report on Form 10-K, as amended, for the year ended February 3, 2007, in each case as filed with the Securities and Exchange Committee (SEC) and incorporated by reference into this joint proxy statement/prospectus. See "Where You Can Find More Information" beginning on page 186 for the location of information incorporated by reference into this joint proxy statement/prospectus.

### **Risk Factors Relating to the Merger**

*Because the market price of A&P common stock will fluctuate, Pathmark stockholders cannot be sure of the market value of the shares of A&P common stock that they will receive.*

The number of shares of A&P common stock to be received by holders of Pathmark common stock in the merger as part of the merger consideration is fixed at 0.12963 of a share of A&P common stock for each share of Pathmark common stock. That number will not be adjusted in the event of any increase or decrease in the price of either A&P common stock or Pathmark common stock. The price of A&P common stock may vary at the effective time of the merger from its price at the date of this joint proxy statement/prospectus and at the date of the special meeting. That variation may be the result of changes in the business, operations or prospects of A&P or Pathmark, market assessments of the likelihood that the merger will be completed and the timing of the merger, regulatory considerations, general market and economic conditions and other factors. In addition to the approval of Pathmark stockholders, completion of the merger is subject to the expiration or termination of the applicable waiting period and any extension of the waiting period under the HSR Act, and the satisfaction of other conditions that may not occur until some time after the special meeting. Therefore, at the time of the Pathmark special meeting, Pathmark stockholders will not know the precise dollar value of the merger consideration they will be entitled to receive upon completion of the merger. Pathmark stockholders are urged to obtain current market quotations for A&P common stock and Pathmark common stock.

*Obtaining required approvals and satisfying closing conditions may delay or prevent completion of the merger or reduce the anticipated benefits of the merger.*

Completion of the merger is conditioned upon the receipt of certain governmental authorizations, consents, orders and approvals, including the expiration or termination of the applicable waiting period (and any extension of the waiting period) under the HSR Act. These consents, orders and approvals may impose conditions on, or require divestitures relating to, the divisions, operations or assets of A&P or Pathmark. These conditions or divestitures may jeopardize or delay completion of the merger or may reduce the anticipated benefits of the merger. Further, no assurance can be given that the required consents and approvals will be obtained or that the required conditions to closing will be satisfied, and, if all required consents and approvals are obtained and the conditions are satisfied, no assurance can be given as to the terms, conditions and timing of the consents and approvals.

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Pursuant to the merger agreement, A&P may be required to dispose of significant assets if required by governmental entities in order to resolve potential antitrust objections to the merger. A&P and Pathmark have agreed to use their respective best efforts to cause the expiration or termination of the waiting period under the HSR Act. Subject to A&P's right to terminate the merger agreement prior to December 5, 2007 in the event that A&P has determined in good faith, subject to certain requirements, that required divestitures would be reasonably likely to exceed \$36.0 million of aggregate scheduled store level cashflow, A&P has agreed to use best efforts to take all actions necessary to, among other things, resolve any objections to the merger asserted by governmental authorities under antitrust laws and to prevent or have lifted any court order preventing or delaying the merger. This obligation includes, without limitation, executing settlements, undertakings, consent decrees, stipulations or other agreements and proposing to sell, divest, or otherwise convey any of its assets or the assets to be acquired in the merger, as necessary. Additionally, if the merger agreement is not terminated by December 5, 2007, the limitations on required asset dispositions set forth above will cease to apply, and A&P will remain obligated to use its best efforts to resolve any objections to the merger asserted by governmental authorities under antitrust laws and to prevent or have lifted any court order preventing or delaying the merger. The extent to which asset dispositions will be required and in what amount, and whether A&P will be able to dispose of such assets or, if those assets are sold, at which price they may be sold and the impact that such dispositions may have on A&P's profitability, is uncertain.

***The failure to successfully integrate Pathmark's business and operations in the expected time frame may adversely affect A&P's future results.***

The success of the merger will depend, in part, on the combined company's ability to realize the anticipated benefits from combining the businesses of A&P and Pathmark, including, as A&P has announced, anticipated annual integration synergies of approximately \$150 million within two years, through cost reductions in overhead, greater efficiencies, increased utilization of support facilities and the adoption of mutual best practices between the two companies. To realize these anticipated benefits, however, the businesses of A&P and Pathmark must be successfully combined. If the combined company is not able to achieve these objectives, the anticipated benefits of the merger may not be realized fully or at all or may take longer to realize than expected.

A&P and Pathmark have operated and, until the completion of the merger, will continue to operate independently. It is possible that the integration process could result in the loss of key employees, as well as the disruption of each company's ongoing businesses or inconsistencies in standards, controls, procedures and policies, any or all of which could adversely affect A&P's ability to maintain relationships with customers and employees after the merger or to achieve the anticipated benefits of the merger. Integration efforts between the two companies will also divert management attention and resources. These integration matters could have an adverse effect on each of A&P and Pathmark.

***The market price for A&P common stock may be affected by factors different from those affecting the shares of Pathmark.***

Upon completion of the merger, holders of Pathmark common stock will become holders of A&P common stock. A&P's businesses differ from those of Pathmark, and accordingly the results of operations of the combined company will be affected by factors different from those currently affecting the results of operations of Pathmark. For a discussion of the businesses of A&P and Pathmark and of certain factors to consider in connection with those businesses, see the documents incorporated by reference into this joint proxy statement/prospectus and referred to under "Where You Can Find More Information" beginning on page 186.

***Some directors, executive officers and significant stockholders of A&P and Pathmark have interests in the merger that may differ from the interests of the A&P and Pathmark stockholders.***

When considering the Pathmark board of directors' unanimous recommendation that the Pathmark stockholders vote FOR the proposal to approve and adopt the merger agreement and the transactions contemplated thereby, including the merger, and the A&P board of directors' unanimous recommendation that A&P stockholders vote FOR the proposal to approve the issuance of shares of A&P common stock pursuant to the merger agreement and FOR the proposal to approve the amendment to A&P's charter regarding preemptive rights, you should be aware that certain directors and executive officers of Pathmark have, and the Yucaipa Investors, Pathmark's largest stockholder, and Tengemann, A&P's largest stockholder, have, interests in the merger agreement and the merger that are different from, and may conflict with, your interests. In addition, subject to certain conditions, in connection with the merger, Gregory Mays, a director of Pathmark, will be elected by the existing A&P directors to fill the existing vacant position on the A&P board of directors without stockholder action, as provided for under the bylaws of A&P and in accordance with Maryland law. The directors and executive officers of Pathmark will receive certain benefits in connection with the merger, including accelerated vesting of stock options and restricted stock. Additionally, certain executive officers may be entitled to receive severance payments in connection with the merger. A&P has agreed to continue certain indemnification arrangements for directors and executive officers of Pathmark. Affiliates of the Yucaipa Investors will receive certain fees in connection with the merger. Additionally, warrants to purchase Pathmark common stock owned by the Yucaipa Investors will be converted into warrants to acquire A&P common stock and the Yucaipa Investors will receive certain registration rights for shares of A&P common stock acquired by the Yucaipa Investors in connection with the merger and those issuable upon conversion of the Yucaipa Investors' warrants. Tengemann has entered into a stockholder agreement with A&P whereby Tengemann will have certain approval, registration, preemptive and other rights after the merger. The A&P and Pathmark boards of directors were aware of these interests and considered them, among other matters, in authorizing and advising stockholder approval of the merger agreement and the A&P share issuance and the A&P charter amendment. See Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Interests of Certain Persons, beginning on page 92.

***The shares of A&P common stock to be received by Pathmark stockholders as a result of the merger will have different rights from shares of Pathmark common stock.***

Following completion of the merger, Pathmark stockholders will no longer be stockholders of Pathmark, a Delaware corporation, but will instead be stockholders of A&P, a Maryland corporation. There will be important differences between Pathmark stockholders' current rights and the rights to which they will be entitled as stockholders of A&P as a result of differences between Delaware law and Maryland law and the governing documents of Pathmark and A&P. See Adoption of the Merger Agreement (Pathmark Proposal 1) Comparison of Stockholders' Rights beginning on page 149 for a discussion of the different rights associated with A&P and Pathmark common stock.

***Two putative class action complaints have been filed in connection with the transactions and, if decided adversely to the defendants, could result in the entry of an injunction against the completion of the merger and an order for other relief.***

Two purported class action complaints have been filed alleging breach of fiduciary duty of the directors of Pathmark in New Jersey State court, seeking to enjoin the merger. While these cases are in the early stages, A&P and Pathmark believe that the cases are without merit. Any judgments, however, in respect of these lawsuits adverse to A&P and Pathmark may adversely affect A&P and Pathmark's ability to consummate the merger.

**Risks Relating to A&P's Operations (Including Pathmark) After Completion of the Merger**

*General economic conditions affecting the food industry may affect A&P's business and may adversely affect A&P's operating results.*

The retail food and food distribution industries are sensitive to a number of economic conditions such as (i) food price deflation or inflation, (ii) softness in local and national economies, (iii) increases in commodity prices, (iv) the availability of favorable credit and trade terms, and (v) other economic conditions that may affect consumer buying habits. Any one or more of these economic conditions can affect A&P's retail sales, the demand for products A&P distributes to its retailer customers, its operating costs and other aspects of its business.

*Threats or potential threats to food safety may adversely affect A&P's business.*

Acts of war, threats of terror, acts of terror or other criminal activity directed at the grocery or drug store industry, the transportation industry, or computer or communications systems, could increase security costs, adversely affect A&P's operations, or impact consumer behavior and spending as well as customer orders. Other events that give rise to actual or potential food contamination, drug contamination, or food-borne illness could have an adverse effect on A&P's operating results.

*A&P faces a high level of competition in the retail food and food distribution businesses from several retail formats, which may adversely affect A&P's profitability.*

The industries in which A&P competes are extremely competitive. Both the retail food and food distribution businesses are subject to competitive practices that may affect (i) the prices at which A&P is able to sell products at its retail locations; (ii) sales volume; (iii) the ability of A&P's distribution customers to sell products it supplies, which may affect future orders; and (iv) A&P's ability to attract and retain customers. In addition, the nature and extent of consolidation in the retail food and food distribution industries could affect A&P's competitive position or that of its distribution customers in the markets it serves.

A&P's retail food business faces competition from other retail chains, supercenters, nontraditional competitors and emerging alternative formats in the markets where it has retail operations. In the food distribution business, A&P's success depends in part on the ability of its independent retailer customers to compete effectively, its ability to attract new customers, and its ability to supply products in a cost-effective manner. Declines in the level of retail sales activity of distribution customers due to competition, consolidations of retailers or competitors, increased self-distribution by A&P's customers, or the entry of new or nontraditional distribution systems into the industry may adversely affect A&P's revenues.

**Risks Relating to Financing**

*A&P will take on substantial additional indebtedness to finance the merger, which will decrease A&P's business flexibility and increase its borrowing costs.*

Upon completion of the merger, A&P will have consolidated indebtedness that will be substantially greater than its indebtedness prior to the merger. The increased indebtedness and higher debt-to-equity ratio of A&P in comparison to that of A&P on a historical basis will have the effect, among other things, of reducing the flexibility of A&P to respond to changing business and economic conditions and increasing borrowing costs. See Selected Unaudited Pro Forma Combined Condensed Financial Data of A&P.

*The financing arrangements that A&P expects to enter into in connection with the merger will contain restrictions and limitations that could significantly impact A&P's ability to operate its business.*

A&P is incurring significant debt in connection with the merger. It is expected that A&P will utilize much of the financing to be made available pursuant to the financing commitments discussed in Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Financing to fund a portion of the cash consideration payable to the Pathmark stockholders in the merger. A&P, on a pro forma basis, will have approximately \$615 million of debt under its new senior secured revolving credit facility, and either \$780 million in aggregate principal amount of new senior secured notes or a \$780 million bridge facility. In addition, approximately \$[ ] billion of existing debt of A&P and Pathmark will remain outstanding following the merger.

This debt could limit A&P's financial and operating flexibility, including by requiring A&P to dedicate a substantial portion of its cash flow from operations and the proceeds of equity issuances to the repayment of its debt and the interest on its debt, making it more difficult for the combined company to obtain additional financing on favorable terms, limiting the combined company's ability to capitalize on significant business opportunities and making the combined company more vulnerable to economic downturns.

A&P expects that the agreements governing the indebtedness that it will incur in connection with the merger will contain covenants that, among other things, will limit the ability of A&P and certain of its subsidiaries to:

make payments in respect of, or redeem or acquire, debt or equity issued by A&P or its subsidiaries, including the payment of dividends on A&P common stock;

incur additional indebtedness;

incur guarantee obligations;

pay dividends;

create liens on assets;

enter into sale and leaseback transactions;

make investments, loans or advances;

enter into hedging transactions;

engage in mergers, consolidations or sales of all or substantially all of their respective assets; and

engage in certain transactions with affiliates.

In addition, A&P will be required to comply with certain financial covenants set forth in these agreements. Certain of these agreements will require A&P to make an offer to purchase the related debt if A&P experiences specified changes of control or sells certain assets, and A&P's failure to purchase such debt agreements in accordance with the terms would result in a default under such agreements.

In addition, if A&P fails to maintain a specified minimum level of borrowing capacity under the senior secured revolving credit facility, which we refer to as the *ABL Facility*, which is more fully described in Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Financing, A&P will then be subject to a financial covenant under the ABL Facility that will obligate A&P to make mandatory prepayments under the ABL Facility to the extent the minimum level of borrowing capacity is exceeded.

A&P's ability to comply with this covenant in future periods will depend on its ongoing financial and operating performance, which in turn will be subject to economic conditions and to financial, market and competitive factors, many of which are beyond A&P's control. The ability to comply with this covenant in future periods will also depend on A&P's ability to successfully implement A&P's overall business strategy and realize contemplated merger synergies.

Various risks, uncertainties and events beyond A&P's control could affect its ability to comply with the covenants contained in its debt agreements. Failure to comply with any of the covenants in its existing or future financing agreements could result in a default under those agreements and under other agreements containing cross-default provisions. A default would permit lenders to accelerate the maturity of the debt under these agreements and to foreclose upon any collateral securing the debt. Under these circumstances, A&P might not have sufficient funds or other resources to satisfy all of its obligations. In addition, the limitations imposed by financing agreements on A&P's ability to incur additional debt and to take other actions might significantly impair its ability to obtain other financing. A&P cannot assure you that it will be granted waivers or amendments to these agreements if for any reason it is unable to comply with these agreements, or that it will be able to refinance its debt on terms acceptable to it, or at all.

***The terms of A&P's debt financing arrangements have not been finalized and are subject to market risk, which could result in less favorable borrowing costs and financial conditions than anticipated.***

The terms of the various credit facilities and debt financing arrangements described under Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Financing reflect the current state of discussions with respect to financing and have not yet been finalized. As such, those terms may materially change depending on market conditions at the time of the incurrence or offering of such indebtedness. The economic terms of the indebtedness, including interest rates and redemption prices, will be determined as part of the offering process and will vary depending on market conditions. Adverse market conditions could result in higher than expected redemption prices or subject A&P to restrictive covenants that impose restrictions and limitations that are in addition to, or more restrictive than, those currently expected. The funding of the bridge facility, if it occurs, would exacerbate these risks, and could adversely affect the ability of A&P and/or its subsidiaries to obtain other debt financing on favorable terms. In addition, if the bridge facility is funded in lieu of issuing the notes, the interest expense payable by the borrower could increase. See Selected Unaudited Pro Forma Combined Condensed Financial Data of A&P.

***A&P cannot assure you that it will be able to generate sufficient cash flow needed to service its indebtedness and inability to do so would adversely affect A&P's financial condition.***

A&P's ability to make scheduled payments on its indebtedness and to fund planned capital expenditures will depend on the ability of A&P and its subsidiaries to generate cash flow in the future. A&P's future performance is subject to general economic, financial, competitive, legislative, regulatory and other factors that are beyond its control. In addition, A&P's ability to borrow funds in the future will depend on the satisfaction of the covenants in A&P's credit facilities and its other debt agreements and

other financing arrangements it may enter into in the future. In the event that the credit facilities need to be refinanced, A&P cannot assure you that it will be able to do so or obtain additional financing, particularly because of its anticipated high levels of debt and the debt incurrence restrictions imposed by its debt agreements, as well as prevailing market conditions. A&P cannot assure you that its business will generate sufficient cash flow from operations or that future borrowings will be available in an amount sufficient to enable A&P to service its debt and fund its other liquidity needs.

If A&P's cash flow and capital resources are insufficient to fund its debt service obligations, A&P may be forced to reduce or delay capital expenditures, sell assets or seek to obtain additional equity capital, or refinance its indebtedness or obtain additional financing. In the future, A&P's cash flow and capital resources may not be sufficient for payments of interest on and principal of its debt and there can be no assurance that any of, or a combination of, such alternative measures would provide A&P with sufficient cash flows. In addition, such alternative measures could have an adverse effect on A&P's business, financial condition and results of operations.

In the absence of sufficient operating results and resources, A&P could face substantial liquidity problems and might be required to dispose of material assets or operations to meet its debt service and other obligations or otherwise risk default under the agreements governing its indebtedness. These agreements are expected to restrict A&P's ability to dispose of assets and restrict the use of proceeds from any such dispositions. If required, A&P cannot be sure as to the timing of such sales or adequacy of the proceeds that it could realize therefrom.

***An increase in interest rates would increase the cost of servicing A&P's debt and could reduce A&P's profitability.***

A significant portion of the debt that A&P will incur in connection with the merger will bear interest at variable rates. As a result, an increase in interest rates, whether because of an increase in market interest rates or a decrease in A&P's credit worthiness, would increase the cost of servicing A&P's debt and could materially reduce A&P's profitability and cash flows. The impact of such an increase would be more significant for A&P than it would be for less leveraged companies because of A&P's substantial debt.

***A&P's bridge facility and ABL Facility agreement may contain conditions that may not be satisfied, in which case A&P would need to arrange for alternative sources of financing, which could result in a less favorable financial condition than anticipated.***

A&P has entered into a debt financing commitment letter with respect to a bridge facility and the ABL Facility under which it may borrow up to \$1.395 billion. The commitment letter contemplates credit facilities containing various conditions to A&P's ability to borrow loans thereunder, including conditions that:

there has been no change, event or circumstance that has occurred that has had a material adverse effect on Pathmark that is continuing, or would reasonably be expected to have a material adverse effect on Pathmark since the date of the merger agreement; and

no agreement, order or decree has been entered into, or issued, requiring A&P, Pathmark or their respective subsidiaries to divest, dispose of or sell of any businesses or assets representing more than \$36.0 million of aggregate scheduled store level cashflow.

If these conditions are not satisfied, or any of the other conditions contained in the commitment letter are not satisfied or the proceeds of the financing are unavailable for any reason, A&P may have to



arrange for alternative sources of financing, which may be more expensive for A&P, may have an adverse impact on A&P's post-merger capital structure, or may be unavailable.

***Despite current indebtedness levels, A&P and its subsidiaries may still be able to incur substantially more debt. This could further exacerbate the risks associated with A&P's substantial leverage.***

A&P and its subsidiaries may be able to incur substantial additional indebtedness in the future. Although the contemplated facilities contain restrictions on the incurrence of additional indebtedness, these restrictions are subject to a number of significant qualifications and exceptions, and any indebtedness incurred in compliance with these restrictions could be substantial. For example, A&P will have the right under the ABL Facility to request up to \$100 million of additional commitments under this facility, although the lenders under this facility will not be under any obligation to provide any such additional commitments. Any increase in commitments under this facility will be subject to customary conditions precedent, and A&P's ability to borrow under this facility as so increased would remain limited by the amount of the borrowing base. The bridge facilities would allow A&P to incur this additional indebtedness under the ABL Facility without any restriction.

***A&P's ability to borrow under its revolving credit facility will be limited based on the value of a borrowing base that may fluctuate, which may diminish A&P's ability to use the revolving credit facility to meet its financing needs as anticipated.***

The contemplated ABL Facility will provide A&P with revolving loans, the amounts of which are based upon the estimated value of the borrowing base. The borrowing base will be comprised of A&P assets such as inventory, credit card receivables, prescription lists, prescription receivables, Coinstar receivables, real estate and leaseholds. If any estimates of the value of these assets are diminished, the borrowing base may be reduced, which may affect the amounts available under the ABL Facility. Furthermore, A&P's ability to borrow under the ABL Facility is subject to borrowing base limitations, including an excess availability reserve.

**SPECIAL NOTE CONCERNING FORWARD-LOOKING STATEMENTS**

Some of the statements contained or incorporated by reference into this joint proxy statement/prospectus, including those relating to A&P's and Pathmark's strategies and other statements that are predictive in nature, that depend upon or refer to future events or conditions, or that include words such as will, should, may, expects, anticipates, intends, plans, believes, estimates and similar expressions, are forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended (the *Exchange Act*). Forward-looking statements include the information concerning possible or assumed future results of operations of A&P and Pathmark as set forth under

Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger A&P's Reasons for the Merger; Recommendation of the A&P Board of Directors, Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Pathmark's Reasons for the Merger; Recommendation of the Pathmark Board of Directors, Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Opinion of A&P's Financial Advisor and

Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Opinion of Pathmark's Financial Advisor. These statements are not historical facts but instead represent only A&P's and Pathmark's expectations, estimates and projections regarding future events. These statements are not guarantees of future performance and involve certain risks and uncertainties that are difficult to predict, which may include the risk factors set forth above and other market, business, legal and operational uncertainties discussed elsewhere in this document and the documents which are incorporated herein by reference. Those uncertainties include, but are not limited to:

the ability to obtain requisite governmental approvals for the merger on the proposed terms and schedule including the expiration or termination of the waiting period under the HSR Act;

the failure of the Pathmark stockholders to adopt the merger agreement and the transactions contemplated thereby, including the merger;

the failure of the A&P stockholders to approve both the issuance of A&P's common stock pursuant to the merger agreement, and the amendment to the A&P charter to exempt the transactions contemplated by the merger agreement and the agreements entered into in connection therewith from the preemptive rights provisions of the A&P charter;

the risk that the businesses of A&P and Pathmark will not be successfully integrated following the consummation of the merger;

disruption from the merger, including lost business opportunities and difficulty maintaining relationships with employees, customers and suppliers;

legal risks, including litigation, whether or not related to the merger, and legislative and regulatory developments; and

changes in general economic and market conditions.

A&P's and Pathmark's actual results and financial conditions may differ, perhaps materially, from the anticipated results and financial conditions in any forward-looking statements, and, accordingly, readers are cautioned not to place undue reliance on such statements.

For more information concerning factors that could affect A&P's and Pathmark's future results and financial conditions, see, in addition to the factors discussed under the caption Risk Factors, begin-

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ning on page 27 of this joint proxy statement/prospectus, Management's Discussion and Analysis and Risk Factors in each of A&P's annual report on Form 10-K for the year ended February 24, 2007 and Pathmark's annual report on Form 10-K, as amended, for the year ended February 3, 2007, which are incorporated by reference into this joint proxy statement/prospectus. A&P and Pathmark undertake no obligation to update any forward-looking statements, whether as a result of new information, future events or otherwise.

**THE A&P SPECIAL MEETING**

**General**

The A&P special meeting will be held at The Woodcliff Lake Hilton, 200 Tice Boulevard, Woodcliff Lake, New Jersey, on [ ], [ ], 2007, at 9:00 a.m., Eastern Daylight Time.

The purposes of the special meeting are (1) to consider and vote upon a proposal to approve the issuance of shares of A&P common stock pursuant to the merger agreement, (2) to consider and vote upon a proposal to approve an amendment to the A&P charter to exempt the transactions contemplated by the merger agreement and the agreements entered into in connection therewith from the preemptive rights provisions of the A&P charter, and (3) to transact any other business that may properly be brought before the special meeting and any adjournments or postponements thereof.

**The A&P board of directors has unanimously determined that the merger agreement and the A&P proposals are advisable and in the best interests of A&P and its stockholders and unanimously recommends that A&P stockholders vote FOR the proposal to approve the issuance of shares of A&P common stock pursuant to the merger agreement and FOR the proposal to approve the amendment to A&P's charter regarding preemptive rights.**

**Record Date; Voting Information; Required Vote**

The A&P board of directors has fixed the close of business on [ ], 2007 as the record date for determining the holders of A&P common stock entitled to notice of, and to vote at, the special meeting. Only holders of record of A&P common stock at the close of business on the record date will be entitled to notice of, and to vote at, the special meeting or any adjournment or postponement of the special meeting.

As of the record date, [ ] shares of A&P common stock were issued and outstanding and entitled to vote at the special meeting and there were approximately [ ] holders of record of A&P common stock. Each share of A&P common stock entitles the holder to one vote on each matter to be considered at the special meeting. If you are a record holder of A&P common stock, you may vote your shares of A&P common stock in person at the special meeting or by proxy as described below under Voting by Proxy; Revocation of Proxies.

The presence in person or by proxy at the special meeting of the holders of at least a majority of the outstanding shares of A&P common stock entitled to vote at the meeting will constitute a quorum for the special meeting. Properly signed proxies that are marked abstain are known as abstentions. Abstentions will be counted for the purposes of determining whether a quorum exists at the special meeting.

The stock issuance proposal requires the affirmative vote of a majority of all votes cast by the holders of common stock at a meeting at which a quorum is present, *provided* that the total votes cast on the proposal represent at least a majority of the outstanding shares of A&P common stock entitled to vote on the proposal. Because approval is based on the affirmative vote of a majority of votes cast, an A&P stockholder's failure to vote will not affect the outcome of the vote on the proposal, assuming more than a majority of the outstanding shares are voted on the proposal. Because the NYSE treats abstentions as votes cast with respect to the stock issuance proposal, an abstention will have the same effect as a vote AGAINST this proposal.

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Tengelmann has agreed to vote all of its shares of A&P common stock, approximately 53% of the outstanding A&P common stock as of the A&P record date, in favor of the issuance of A&P common stock in the merger and the amendment to the A&P charter. This means that the approval of the issuance of the A&P common stock pursuant to the merger agreement is assured, although the amendment to the A&P charter is not assured.

The proposal to amend the A&P charter requires the affirmative vote of two-thirds of the outstanding shares of A&P common stock entitled to vote on the matter. Therefore, an A&P stockholder's failure to vote or an abstention will have the same effect as a vote against approval of the amendment to the A&P charter.

Additionally, the effectiveness of each of the proposal to approve the issuance of A&P common stock in connection with the merger and the proposal to approve the amendment to the A&P charter is conditioned on approval of the other, which means that neither proposal will have any effect unless both are approved. We cannot complete the merger unless these two proposals are both approved by the A&P stockholders.

Acting upon any procedural matters incident to the conduct of the special meeting (including adjournment to solicit additional proxies) will require the affirmative vote of a majority of the votes cast by the holders of A&P common stock with respect to such proposal.

A&P does not expect that any matter other than the proposals listed above will be brought before the special meeting. If, however, other matters are properly brought before the special meeting, or any adjournment of the special meeting, the persons named as proxies will vote in accordance with their discretion.

### **Voting by Proxy; Revocation of Proxies**

Each copy of this joint proxy statement/prospectus mailed to A&P stockholders is accompanied by a form of proxy and a self-addressed postage pre-paid envelope.

If you are a registered stockholder (that is, if you hold your A&P common stock in certificate form), you should either complete and return the proxy card accompanying this joint proxy statement/prospectus, or authorize a proxy by telephone, through the Internet or by any other electronic means by following the instructions included with your proxy card, in each case, to ensure that your vote is counted at the special meeting, or at any adjournment or postponement thereof, regardless of whether you plan to attend the special meeting.

If you hold your shares through a bank, brokerage firm or nominee, you should follow the separate voting instructions, if any, provided by the bank, brokerage or nominee with this joint proxy statement/prospectus. Your bank, brokerage firm or nominee may permit proxy authorization through the Internet or by telephone. Please contact your bank, brokerage firm or nominee to determine how to vote your proxy.

You can revoke your proxy at any time before the vote is taken at the special meeting. If you have not voted through your bank, brokerage firm or nominee, you may revoke your proxy before the proxy is voted by:

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delivering a written notice of revocation of proxy, which is dated a later date than the initial proxy, to A&P's Secretary;

delivering a duly executed proxy bearing a later date than the initial proxy;

authorizing a new proxy by telephone or through the Internet at a later time, but not later than 11:59 p.m. (Eastern Daylight Time) on [        ], 2007 or the day before the meeting date if the special meeting is adjourned or postponed; or

voting in person at the special meeting; however, simply attending the special meeting without voting will not revoke an earlier proxy.

To submit a written notice of revocation or other communications about revoking your proxy with respect to your shares of A&P common stock, or to request a new proxy card, you should contact:

The Great Atlantic & Pacific Tea Company, Inc.  
Two Paragon Drive  
Montvale, New Jersey 07645  
Telephone: (201) 573-9700  
Attention: Secretary

If your shares of A&P common stock are held in street name, you should follow the instructions of your bank, brokerage firm or nominee regarding the revocation of proxies. If your bank, brokerage firm or nominee allows you to authorize a proxy by telephone or through the Internet, you may be able to change your vote by submitting a proxy again by telephone or through the Internet.

All shares represented by valid proxies received through this solicitation, and not revoked, will be voted in accordance with your instructions on the proxy card. If you authorize a proxy by telephone or through the Internet, your shares will be voted at the special meeting as instructed.

If you sign and return your proxy card for your shares of A&P common stock without specifying on the proxy card, as to one or both proposals, how you want your shares of A&P common stock voted, your proxy will be voted (1) FOR the proposal to approve the issuance of A&P common stock in connection with the merger, if you do not specify a vote FOR or AGAINST that proposal; and (2) FOR the proposal to approve the amendment to the A&P charter, if you do not specify a vote FOR or AGAINST that proposal. We intend, with respect to any procedural matters incident to the conduct of the special meeting, such as adjournment of the special meeting, including for the purpose of soliciting additional proxies, that the shares represented by properly submitted proxies will be voted, or not voted, by and at the discretion of the persons named as proxies on the proxy card. No proxy voted against the proposal to issue shares of A&P common stock pursuant to the merger agreement or against the proposal to approve the amendment to A&P's charter regarding preemptive rights will be voted in favor of any adjournment.

A&P stockholders should NOT send stock certificates with their proxy cards. A&P stockholders will continue to hold their A&P stock certificates following the merger and are not required to take any action with respect to their A&P stock certificates.

### Effects of Abstentions

Absent specific instructions from the beneficial owner of shares, brokers may not vote shares of A&P common stock with respect to the share issuance, the charter amendment, any other matters that may properly come before the special meeting, or any adjournment of the special meeting. Because the NYSE treats abstentions as votes cast with respect to the stock issuance proposal, an abstention will have the same effect as a vote AGAINST this proposal. For purposes of determining approval of the A&P charter amendment, abstentions will have the same effect as a vote against the approval of the A&P charter amendment.

### Share Ownership of Management and Certain Stockholders

At the close of business on the A&P record date, A&P's directors and executive officers as a group owned and were entitled to vote [ ] shares of A&P common stock, representing approximately [ ]% of the outstanding shares of A&P common stock entitled to vote (approximately [ ]% if the shares held by Tengelmann are excluded). [All of the directors and executive officers of A&P that are entitled to vote at the A&P special meeting have indicated that they currently intend to vote their shares of A&P common stock in favor of each of the proposal to approve the issuance of A&P common stock in connection with the merger and the proposal to approve an amendment to the A&P charter.]

Tengelmann has entered into a voting agreement with Pathmark pursuant to which Tengelmann has agreed to vote its shares of A&P common stock, approximately 53% of the shares of A&P common stock outstanding as of the A&P record date, in favor of each of the proposal to approve the issuance of A&P common stock in connection with the merger and the proposal to approve an amendment to the A&P charter and against any proposal that would compete with or delay the merger, subject to specified exceptions. See Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Interests of Certain Persons in the Merger beginning on page 92.

### Solicitation of Proxies

A&P will bear the costs of soliciting proxies from its stockholders. Other than as described in more detail under Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Agreement Termination Fees and Expenses, each of A&P and Pathmark will generally bear its own costs and expenses in connection with the merger. In addition to soliciting proxies by mail, directors, officers and employees of A&P, without receiving additional compensation therefor, may solicit proxies by telephone, by facsimile or in person. Arrangements may also be made with brokerage firms and other custodians, nominees and fiduciaries to forward solicitation materials to the beneficial owners of shares held of record by those persons, and A&P will reimburse those brokerage firms, custodians, nominees and fiduciaries for reasonable out-of-pocket expenses incurred by them in connection with those actions. In addition, MacKenzie Partners, Inc. ( *Mackenzie Partners* ) has been retained by A&P to assist in the solicitation of proxies. MacKenzie Partners may contact holders of shares of A&P common stock by mail, telephone, facsimile, telegraph or personal interviews and may request brokers, dealers and other nominee stockholders to forward materials to beneficial owners of shares of A&P common stock. MacKenzie Partners will receive reasonable and customary compensation for its services (estimated at \$[ ]) and will be reimbursed for certain reasonable out-of-pocket expenses and other customary costs.

**Adjournments**

Although it is not expected, the A&P special meeting may be adjourned for the purpose of soliciting additional proxies or for any other reason. The Maryland General Corporation Law provides that if the special meeting is convened on the date for which it was called, any adjournment may be made from time to time to a date not more than 120 days after the original record date without further notice. The bylaws of A&P further state that if there is no quorum present at the A&P special meeting, the holders of a majority of the outstanding shares of voting stock present in person or represented by proxy at the A&P special meeting may adjourn the meeting from time to time, without notice other than an announcement made at the special meeting, until the requisite amount of voting stock shall be present. Any signed proxies received by A&P which are otherwise silent on the matter will be voted in favor of an adjournment in these circumstances. Any adjournment of the special meeting will allow A&P stockholders who have already sent in their revocable proxies to revoke them at any time prior to their use. No proxy voted against the proposal to issue shares of A&P common stock pursuant to the merger agreement or against the proposal to approve the amendment to A&P's charter regarding preemptive rights will be voted in favor of any adjournment.



**THE PATHMARK SPECIAL MEETING**

**General**

**Date, Time and Place**

This joint proxy statement/prospectus is being furnished to Pathmark stockholders as part of the solicitation of proxies by the Pathmark board of directors for use at the special meeting to be held on [\_\_\_\_], 2007, at [\_\_\_] a.m., Eastern Daylight Time, at Pathmark's corporate headquarters, 200 Milik Street, Carteret, New Jersey 07008.

**Purpose of the Special Meeting**

At the special meeting, you will be asked:

1. to consider and vote upon a proposal to approve and adopt the Agreement and Plan of Merger, dated March 4, 2007, by and among Pathmark, A&P and Sand Merger Corp., and the transactions contemplated by the merger agreement, as amended from time to time, including the merger, pursuant to which Sand Merger Corp. would merge with and into Pathmark and each outstanding share of Pathmark common stock would be converted into the right to receive \$9.00 in cash and 0.12963 shares of A&P common stock; and
2. to consider and vote on such other matters as may properly come before the special meeting or any adjournment or postponement thereof.

**The Pathmark Board's Recommendation**

The Pathmark board of directors has unanimously determined that that the merger is advisable, fair to and in the best interests of Pathmark and the Pathmark stockholders and has approved the merger agreement and the merger. **Accordingly, the Pathmark board of directors unanimously recommends that Pathmark stockholders vote FOR the proposal to approve and adopt the merger agreement and the transactions contemplated thereby, including the merger.** See Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Pathmark's Reasons for the Merger; Recommendation of the Pathmark Board of Directors, beginning on page 67.

**Record Date**

The record holders of shares of Pathmark common stock as of the close of business on [\_\_\_\_], 2007, the record date for the Pathmark special meeting, are entitled to receive notice of, and to vote at, the special meeting. On the record date, there were [\_\_\_\_\_] outstanding shares of Pathmark common stock.

**Required Vote; How to Vote**

Each outstanding share of Pathmark common stock on [\_\_\_\_], 2007 entitles the holder to one vote at the special meeting. Adoption of the merger agreement and the transactions contemplated thereby, including the merger, requires the affirmative vote FOR the proposal to adopt the merger agreement by a majority of the shares of Pathmark common stock outstanding on the record date and entitled to vote on the matter. The approval of any other such other matters as may be properly presented incident to the conduct of the special meeting requires the affirmative vote FOR the approval of any

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such proposed transaction by a majority of the shares present in person or by proxy at the meeting and entitled to vote on the matter. In order for your shares of Pathmark common stock to be included in the vote, you must submit a proxy to have your shares voted by completing, signing, dating and returning the enclosed proxy or by voting in person at the special meeting.

If your shares of Pathmark common stock are held in street name by your bank, brokerage firm or nominee, you should instruct them how to vote your shares of Pathmark common stock using the instructions provided by them. If you have not received such voting instructions or require further information regarding such voting instructions, contact your bank, brokerage firm or nominee and they can give you directions on how to vote your shares. Under NASDAQ rules, banks, brokerage firms or nominees who hold shares of common stock in street name for customers without investment discretion over a customer's account pursuant to an advisory contract and who have not been designated in writing by the customer to vote proxies may not exercise their voting discretion in respect of the proposal to adopt the merger agreement. Accordingly, absent specific instructions from the beneficial owner of such shares, banks, brokerage firms or nominees are not empowered to vote such shares at the special meeting on the proposal to adopt the merger agreement. If your shares are held in street name and you do not provide your bank, brokerage firm or nominee with instructions as to how such shares are to be voted, your shares will not be submitted in connection with the special meeting. Because adoption of the merger agreement and the transactions contemplated thereby, including the merger, requires the affirmative vote FOR the approval of the proposal to adopt the merger agreement by a majority of shares of Pathmark common stock outstanding on the record date and entitled to vote on the matter, abstentions and failures to vote by you will have the same effect as a vote AGAINST the proposal. Because approval of any other such matters as may be properly presented incident to the conduct of the special meeting requires the affirmative vote FOR the approval of any such matters by a majority of the shares present in person or by proxy at the meeting and entitled to vote on the matter, abstentions will count as a vote AGAINST the proposed matters.

### **Quorum**

The holders of a majority of the outstanding shares of Pathmark common stock on [\_\_\_\_], 2007, represented in person or by proxy and entitled to vote at the Pathmark special meeting, will constitute a quorum for purposes of the Pathmark special meeting. A quorum is necessary to hold the Pathmark special meeting. For purposes of determining the presence of a quorum, abstentions will be included in determining the number of shares present and entitled to vote at the meeting; however, because brokers are not entitled to vote on the proposal to adopt the merger agreement absent specific instructions from the beneficial owner, there will be no broker nonvotes and, absent specific instructions from the beneficial owner, shares held by brokers will not be included in the number of shares present and entitled to vote at the meeting for purposes of establishing a quorum. Any shares of Pathmark common stock held in treasury by Pathmark or by any of its subsidiaries are not considered to be outstanding for purposes of determining a quorum. Once a share is represented at the special meeting, it will be counted for the purpose of determining a quorum at the special meeting and any adjournment or postponement of the special meeting. If a new record date is set for the adjourned special meeting, however, then a new quorum will have to be established.

### **Proxies; Revocation**

If you vote your shares of Pathmark common stock by properly completing, signing and dating the enclosed proxy card, your shares will be voted at the Pathmark special meeting as you indicate on your proxy card. If no instructions are indicated on your signed and dated proxy card, your shares of common stock will be voted FOR the approval and adoption of the merger agreement and transactions contemplated thereby, including the merger, and will be counted in accordance with the recommendations

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of Pathmark's board of directors on any other matters properly brought before the Pathmark special meeting for a vote.

You may revoke your proxy at any time before the vote is taken at the Pathmark special meeting. To revoke your proxy, you must either properly advise Pathmark's Secretary in writing, deliver a proxy dated after the date of the proxy you wish to revoke or attend the Pathmark special meeting and vote your shares in person. Attendance at the Pathmark special meeting will not by itself constitute revocation of a proxy. If you have instructed your bank, brokerage firm or nominee to vote your Pathmark shares, the above-described options for revoking your proxy do not apply and instead you must follow the directions provided by them to revoke your proxy.

To submit a written notice of revocation or other communications about revoking your proxy with respect to your shares of Pathmark common stock, or to request a new proxy card, you should contact:

Pathmark Stores, Inc.  
200 Milik Street  
Carteret, New Jersey 07008  
Telephone: (732) 499-3000  
Attention: Secretary

Pathmark does not expect that any matter other than the proposal to adopt and approve the merger agreement and the transactions contemplated thereby, including the merger, will be brought before the Pathmark special meeting. If, however, such a matter is properly presented at the special meeting or any adjournment or postponement thereof, the persons appointed as proxies will have discretionary authority to vote the shares represented by duly executed proxies in accordance with their discretion and judgment.

### **Solicitation of Proxies**

Pathmark will pay the cost of this proxy solicitation. In addition to soliciting proxies by mail, directors, officers and employees of Pathmark may solicit proxies personally and by telephone, facsimile or other electronic means of communication. These persons will not receive additional or special compensation for such solicitation services. Pathmark will, upon request, reimburse banks, brokerage firms and nominees for their expenses in sending proxy materials to their customers who are beneficial owners and obtaining their voting instructions. Pathmark has retained [Proxy Solicitor] to assist it in the solicitation of proxies for the special meeting and will pay [Proxy Solicitor] a fee of approximately \$[\_\_\_\_], plus reimbursement of out-of-pocket expenses].

### **Adjournments and Postponements**

Although it is not expected, the Pathmark special meeting may be adjourned or postponed for the purpose of soliciting additional proxies. Any adjournment or postponement may be made without notice, other than by an announcement made at the Pathmark special meeting, by approval of the holders of a majority of the shares of Pathmark common stock present in person or represented by proxy at the special meeting, whether or not a quorum exists. Any signed proxies received by Pathmark will be voted in favor of an adjournment or postponement in these circumstances. Any adjournment or postponement of the Pathmark special meeting for the purpose of soliciting additional proxies will allow Pathmark stockholders who have already sent in their proxies to revoke them at any time prior to their use. No proxy voted against the proposal to approve and adopt the merger agreement will be voted in favor of any adjournment.

**Share Ownership of Management and Certain Stockholders**

At the close of business on the record date, the directors and executive officers of Pathmark owned, in the aggregate, [\_\_\_\_\_] shares of Pathmark common stock, representing approximately [\_\_]% of the outstanding shares of Pathmark common stock entitled to vote (approximately [ ]% if the shares held by the Yucaipa Investors are excluded).

At the close of business on the record date, the Yucaipa Investors beneficially owned [\_\_\_\_\_] shares of Pathmark common stock (excluding shares of Pathmark common stock issuable upon the exercise of warrants owned by the Yucaipa Investors to purchase shares of Pathmark common stock). The Yucaipa Investors have entered into a voting agreement with A&P pursuant to which the Yucaipa Investors have agreed to vote shares of Pathmark common stock that they own as of the Pathmark record date in favor of adoption of the merger agreement and the transactions contemplated thereby, *provided* that these voting obligations do not apply to any other shares owned by the Yucaipa Investors in excess of 33% of the outstanding Pathmark common stock. The remaining shares owned by the Yucaipa Investors may be voted in the Yucaipa Investors' discretion, although the Yucaipa Investors have expressed their present intention to vote all of the Pathmark shares they own (approximately 38% of the outstanding Pathmark common stock) in favor of the adoption of the merger agreement. See Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Interests of Certain Persons in the Merger beginning on page 92.

**ADOPTION OF THE MERGER AGREEMENT (PATHMARK PROPOSAL 1)**

**THE MERGER**

**General**

On March 4, 2007, the Pathmark board of directors and the A&P board of directors each authorized and declared the advisability of the merger agreement, which provides for the acquisition by A&P of Pathmark through a merger of Merger Sub, a newly formed and wholly owned subsidiary of A&P, with and into Pathmark. After the merger, Pathmark will be the surviving corporation and will be a wholly owned subsidiary of A&P.

Upon completion of the merger, each share of Pathmark common stock (other than dissenting shares) will be converted into the right to receive (i) 0.12963 of a share of A&P common stock, par value \$1.00 per share, and (ii) \$9.00 in cash, without interest.

**Background of the Transaction**

In 2004 and 2005, Pathmark undertook a review of strategic alternatives, focusing in particular on a sale of Pathmark to a strategic buyer or private equity firm. During the course of that process, Pathmark hired an investment banker, which solicited over fifty potentially interested parties. In December 2004, Pathmark publicly announced that it had retained an investment banker to aid in reviewing strategic alternatives, which could result in a decision to sell the company.

After an extended process in seeking a buyer for the company, the Pathmark board decided instead to sell a substantial minority interest, in the form of common stock and Series A and B Warrants, to the Yucaipa Investors for \$150 million in cash in June 2005. At that time, Pathmark also entered into the Management Services Agreement with Yucaipa Companies, and the Stockholders Agreement with the Yucaipa Investors.

Following the execution of an agreement to make an investment in Pathmark, Yucaipa Companies began exploration of alternatives to enhance the value of Pathmark, including consideration of acquisitions of other businesses, stock-for-stock mergers with other companies, and a sale of control of Pathmark.

Ronald Burkle, a principal of Yucaipa Companies, contacted Christian Haub, Executive Chairman of the Board of A&P and Co-Chief Executive Officer of Tengemann, as part of this review of alternatives. Mr. Burkle and Mr. Haub held several meetings during 2005 regarding a potential combination of Pathmark and A&P, including discussions regarding operational synergies. These discussions, however, did not result in any specific acquisition proposals.

On October 25, 2005, the Pathmark board held a meeting at which the board discussed strategic alternatives for the company, including an acquisition of a supermarket chain with a significant number of stores in geographic areas that were contiguous to Pathmark's operating areas, and a merger of Pathmark with A&P.

Following the Pathmark board meeting, representatives of Yucaipa Companies, Mr. Haub and representatives of JPMorgan, as financial advisor to A&P, held a meeting in New York City, at which the parties discussed the possibility of a business combination between A&P and Pathmark.

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In early 2006, representatives of Yucaipa Companies resumed discussions with Mr. Haub and Andreas Guldin, Co-Chief Financial Officer of Tengelmann, regarding a possible business combination of A&P and Pathmark. In February 2006, Mr. Haub and representatives of JPMorgan and Yucaipa Companies began discussions regarding a stock-for-stock merger of Pathmark and A&P, structured as a merger of equals in which each company's stock would be valued based on then-current market prices, giving effect to an extraordinary cash dividend that A&P was otherwise planning to declare. Through an additional equity infusion, the Yucaipa Investors would have become significant stockholders of the combined company, with a stake approximately equal to that of Tengelmann, A&P's largest stockholder. As a result, Tengelmann and the Yucaipa Investors together would have owned more than 50% of the combined company and would have entered into agreements regarding board representation and governance and other stockholder rights. Under the potential transaction, the Yucaipa Investors' Series A Warrants would have been required by A&P to be exercised, but the exercise price would have been reduced in order to compensate the Yucaipa Investors for lost option value due to the forced early exercise. Under the potential transaction, the Series B Warrants would have been rolled over and exchanged for A&P warrants based on the transaction exchange ratio, which would have preserved the existing option value of the Series B Warrants.

At a regularly scheduled meeting of the Pathmark board of directors on March 13, 2006, Mr. Burkle advised the Pathmark board about the status of these discussions. In addition, Mr. Burkle advised the board about the possibility of a major strategic acquisition of another company. The board concluded that Yucaipa Companies should continue to explore these potential transactions.

During March 2006, representatives of Yucaipa Companies, Mr. Haub, Mr. Guldin, and representatives of JPMorgan and Latham & Watkins LLP, counsel to Pathmark ( *Latham & Watkins* ), had numerous meetings and phone calls regarding the potential merger of equals between Pathmark and A&P outlined above, including with respect to valuation, form of consideration, board representation and governance and other stockholder rights in respect of the combined company. Although the parties made progress on some issues, valuation and other substantial issues were not resolved, and the parties ceased further discussions.

Shortly thereafter and for the next several weeks, Yucaipa Companies continued to analyze the possibility of a major strategic acquisition by Pathmark of another company, as had been previously discussed with the Pathmark board on March 13, 2006. After a detailed review of valuation, Yucaipa Companies concluded that Pathmark would not be able to offer a sufficient premium price to make the proposal attractive to the seller.

In the summer of 2006, the management of Pathmark and Yucaipa Companies continued to review the possibility of a business combination between Pathmark and A&P, based on the strategic fit between the companies and the synergies that could be obtained. Since the earlier discussions involving a merger of equals between the two companies had not been successful and it appeared to Pathmark that A&P was not intending to make a proposal to acquire Pathmark, the management of Pathmark and Yucaipa Companies began to explore the possibility of Pathmark acquiring A&P in a cash merger.

Also during this period, Yucaipa Companies had discussions with another supermarket operator regarding Pathmark acquiring a significant number of stores in contiguous markets, which had previously been discussed at the October 25, 2005 Pathmark board meeting.

On September 26, 2006, the Pathmark board of directors held a meeting at which John Standley, Chief Executive Officer of Pathmark, informed the board that Pathmark management had been discussing with Yucaipa Companies the possibility of Pathmark making a proposal to acquire A&P. Mr. Standley indicated that the companies would be a good strategic fit, and that there were substantial synergies to be

obtained through elimination of duplicative administrative costs and efficiencies in the areas of distribution, transportation and marketing. Also, the combined companies would have increased economies of scale in purchasing. The board discussed some of the key issues in such a transaction. A&P had sold its Canadian operations and distributed a substantial portion of the sale consideration in the form of a special cash dividend to stockholders. A&P had significant liquid assets on its balance sheet, including a significant minority investment in Metro, the purchaser of A&P's Canadian operations. The board also discussed Pathmark's current market position, growth prospects, and liquidity needs within the next several years. The board acknowledged that, since Tengelmann held a majority of the stock of A&P, any transaction would require the support of Tengelmann. The board then authorized management and Yucaipa Companies to formulate a proposal for Pathmark to acquire A&P.

Following additional review and analysis by management and Yucaipa Companies, the Pathmark board held a special telephonic meeting on October 6, 2006. At this meeting, management presented a proposed offer letter to acquire A&P, as well as a draft \$200 million equity commitment letter from Yucaipa Companies and a highly confidential letter from Citigroup for the debt financing. Under this structure, the Series A and B Warrants would have remained in place. After discussion, the board authorized management to execute the proposed offer letter to A&P, which would then be delivered to A&P by Mr. Burkle.

Also at this meeting, the board noted the fact that the Yucaipa Investors' existing Management Services Agreement with Pathmark provides that, if the board decides in its discretion to engage Yucaipa Companies for merger consultation on a matter such as a business combination with A&P, the fee for such services would be 1% of the transaction value. The board discussed Yucaipa Companies' extensive experience in food industry acquisitions, Yucaipa Companies' familiarity with A&P's business based on its industry experience, and its deep knowledge of Pathmark's operations and finances. The board authorized the retention of Yucaipa Companies as a consultant on Pathmark's acquisition of A&P, subject to execution of a definitive engagement letter with Yucaipa Companies.

On October 9, 2006, Mr. Burkle and Michael Duckworth, a member of the Pathmark board and a representative of Yucaipa Companies, had a meeting with Mr. Haub. They presented Mr. Haub with Pathmark's confidential, nonbinding letter setting forth an offer to acquire all outstanding shares of A&P for a purchase price of \$30.00 per share in cash. The letter included an equity commitment from Yucaipa Companies of up to \$200 million, and a highly confidential letter from Citigroup to raise the additional debt to finance the purchase price. Pathmark stated that it expected that the definitive acquisition agreement would not contain any financing condition. The letter indicated a two-week period for completion of confirmatory due diligence and stated that the proposal would expire on October 16, 2006.

At this meeting, Mr. Haub, speaking on behalf of Tengelmann, the majority stockholder of A&P, stated that Tengelmann would have no interest in the proposal. Mr. Haub also stated that he would inform the A&P board of the proposal at a meeting later that week. Thereafter, the Pathmark board held a telephonic meeting at which Messrs. Duckworth and Burkle updated the board on the meeting with Mr. Haub.

On October 11, 2006, the A&P board of directors held a regularly scheduled meeting and, among other things, met with senior management and Cahill Gordon & Reindel LLP ( *Cahill* ), its legal advisor, and JPMorgan, its financial advisor, to discuss and consider the terms of Pathmark's October 9 proposal as well as alternatives to such proposal. Mr. Haub reported that, speaking on behalf of Tengelmann, he had advised Pathmark's representatives that Tengelmann would have no interest in the proposal. The A&P board discussed and considered Pathmark's October 9 proposal and unanimously determined that it

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had no interest in pursuing the proposal at this time and authorized Mr. Haub to communicate that conclusion to Pathmark.

On October 16, 2006, Mr. Haub sent a letter to Mr. Burkle, stating that the A&P board had reviewed the Pathmark proposal and unanimously concluded that A&P had no interest in pursuing the proposal at that time. Mr. Haub also reiterated in the letter that Tengelmann had no interest in the proposal.

On October 20, 2006, Mr. Burkle sent a letter to Mr. Haub, stating that Pathmark was prepared to improve its offer. Mr. Burkle requested a meeting with Mr. Haub to discuss an increase in the offer. Mr. Haub did not respond to this letter.

From time to time after the discussions with Yucaipa Companies regarding a merger of equals which had ended in March 2006, A&P and Tengelmann also considered alternative structures for a combination of A&P and Pathmark. From July 2006 to November 2006, Tengelmann and A&P, together with JPMorgan and Cravath, Swaine & Moore LLP, counsel to Tengelmann ( *Cravath* ), explored a variety of ways to acquire Pathmark for consideration consisting entirely of cash and potential sources of financing for such a transaction. Beginning in August 2006, Tengelmann and JPMorgan, after consultation with the A&P board, approached a number of potential private equity investors on behalf of A&P to solicit interest in making a significant equity investment in A&P as part of the financing of the acquisition of Pathmark. Two separate investor groups indicated significant interest in making an investment in connection with an all-cash acquisition of Pathmark and, during October and November, Tengelmann, JPMorgan, Cravath and these investors continued discussions regarding valuation and other investment terms. In addition, the parties also discussed matters relating to board representation and governance and other stockholder rights as well as the possibility of Tengelmann selling some of its shares in A&P to the investors in order to equalize the levels of ownership of Tengelmann and the private equity investors. Beginning in November 2006, Tengelmann continued these discussions on an exclusive basis with one group that appeared to be prepared to offer terms which were more attractive to A&P and Tengelmann, but numerous significant issues could not be resolved and no final agreement was reached.

On November 15, 2006, A&P held a regularly scheduled telephonic executive committee meeting. Mr. Haub updated the other members of the executive committee of the A&P board on the status of an offer by A&P to acquire Pathmark for cash, including the status of discussions with potential debt financing sources. Mr. Haub also reviewed with the executive committee the possibility of a transaction involving a private equity investment. The consensus of the executive committee was to continue to pursue the Pathmark transaction and the financing alternatives and the executive committee authorized management to submit a proposal to Pathmark for an all-cash acquisition at \$12.00 per share.

On November 16, 2006, Mr. Haub sent to David Jessick, Chairman of the Pathmark board, a confidential, nonbinding letter which set forth a proposal to acquire all outstanding shares of Pathmark common stock for \$12.00 per share in cash. The proposal stated that it was premised on Pathmark having at closing 56.1 million fully diluted shares of common stock (calculated based on the treasury stock method assuming all in-the-money options and warrants would be exercised), but did not specify how outstanding options and warrants would be treated in the proposed merger. The proposal stated that the definitive acquisition agreement would not be contingent on financing, and debt financing commitment letters were attached to the letter.

On November 21, 2006, the Pathmark board of directors held a special telephonic meeting. At this meeting, Mr. Standley reviewed with the board the November 16 letter that had been received from A&P. The board discussed the letter, as well as a possible acquisition of another supermarket chain, which had previously been discussed at the March 13, 2006 Pathmark board meeting. Mr. Burkle, on behalf of Yucaipa Companies, attended the board meeting and expressed disappointment in the price offered



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by A&P. The board concluded that Mr. Burkle should discuss the proposal letter with A&P and explore possible alternatives thereto, including the possible acquisition of another supermarket chain.

Also on November 21, 2006, Mr. Standley and Mr. Burkle delivered a letter to Mr. Haub indicating that Pathmark was not prepared to pursue A&P's November 16 proposal at the current time.

On November 28, 2006, the Pathmark board of directors held a regularly scheduled meeting. At this meeting, the board again discussed the proposal from A&P, and the alternatives available. The board discussed the fact that A&P apparently had no interest in being acquired by Pathmark and Tengelmann would not support it, and in any event, such a transaction would put a heavy debt burden on Pathmark. Mr. Duckworth stated that Yucaipa Companies believed that at this time A&P was no longer interested in a merger of equals transaction, as had been discussed in March 2006. In the discussion of A&P's financing for the proposed transaction, it was noted that \$180 million of the proceeds to finance the acquisition of Pathmark were to come from A&P's sale of a portion of its minority interest in Metro, a Canadian public company. The board also discussed the status of Pathmark's business, new strategic initiatives including the possibility of a new format for certain of its stores, and the significant capital that would be required to be raised in order to remodel existing stores and to implement new merchandising concepts. The board decided to delay implementation of the new format, based on the possible further discussions with A&P.

On November 28, 2006 and November 30, 2006, the four members of the A&P board who were considered to be independent of Tengelmann held special telephonic meetings, with representatives of Cahill in attendance, to review the status of the Pathmark transaction and to discuss possible terms of the potential private equity investment. Representatives of Cahill reviewed the status of the potential private equity investment with the directors. The consensus of the independent directors was that they supported the business strategy of raising equity for an all-cash acquisition of Pathmark, but noted the reduced role that independent directors would have following the potential equity investment since they believed they would no longer constitute a majority of the board following the transaction. The directors determined to continue discussions at a later date depending upon the outcome of discussions with Pathmark.

On December 5, 2006, Messrs. Burkle and Haub met in New York City to discuss a possible transaction. After discussion, Mr. Burkle indicated that an all cash acquisition would not be acceptable to the Pathmark board and the Yucaipa Investors, but a transaction that consisted of \$8.00 in cash and \$5.00 in value of A&P common stock might be acceptable. In addition, Mr. Burkle noted the Yucaipa Investors would require that the option value of the Series A and B Warrants be preserved in any transaction, as would have occurred under both the March 2006 merger of equals discussions with A&P, as well as the September 2006 proposal by Pathmark to acquire A&P for cash. Mr. Haub noted that, in the proposed cash and stock merger structure, the Yucaipa Investors would have the potential to become significant stockholders of A&P. They discussed certain of the issues that Tengelmann and A&P would have with that structure and Mr. Haub outlined in principle some of the restrictions that would be required by A&P to limit the influence of the Yucaipa Investors on A&P operations and activities following the transaction.

On December 6, 2006 and December 7, 2006, the independent members of the A&P board held special meetings. Representatives of Cahill updated the independent directors on the status of discussions with Tengelmann's representatives and the terms of the proposed private equity investment.

From December 7 to December 15, 2007, representatives from Yucaipa Companies, Tengelmann and A&P had several discussions regarding various aspects of the potential transaction, including the purchase price, form of consideration and certain restrictions on the Yucaipa Investors.

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On December 14, 2006, Mr. Haub sent a draft term sheet to Mr. Burkle. The term sheet reflected a proposed purchase price per Pathmark share of \$9.50 in cash and \$2.50 in A&P common stock (the A&P stock to be valued based on the average closing price for the 5 trading days prior to execution of a definitive agreement). In addition, the term sheet included extensive restrictions related to the Yucaipa Investors ownership of A&P common stock and warrants after consummation of the proposed transaction, which restrictions would not be applicable to the other holders of Pathmark common stock and warrants. The term sheet provided that the Yucaipa Investors Series A and B Warrants would be rolled over and exchanged for warrants to acquire A&P common stock. The term sheet provided that the rollover warrants could only be exercised on a cashless basis, which would have the effect of limiting the Yucaipa Investors ability to increase its share ownership in A&P, and, upon exercise, the rollover warrants could be settled, in the sole discretion of A&P, in cash, stock or a combination thereof. The term sheet also proposed prohibiting the Yucaipa Investors from exercising during any twelve month period more than 50% of the rollover warrants issued for the Series B Warrants, except during the one year period prior to expiration of the Series B Warrants or in connection with or following a change of control of A&P. In addition, the term sheet proposed various standstill restrictions on the Yucaipa Investors ability to acquire additional shares of A&P stock, commence a proxy solicitation, seek A&P board representation, make any public acquisition proposal, or seek to control or influence management of A&P. The standstill restrictions, as proposed, could have continued for as long as 8 years from the closing. The transferability of the A&P stock and rollover warrants proposed to be issued to the Yucaipa Investors in the transaction would also be subject to restrictions. The transferability restrictions as proposed could have continued for as long as 10 years from the closing.

Also on that day, the independent members of the A&P board held a special telephonic meeting to review the status of the Pathmark transaction and to discuss the term sheet relating to a revised proposal to acquire Pathmark. The directors discussed, among other things, Mr. Haub's indication, based upon conversations with Mr. Burkle, that, at these valuation levels, the Yucaipa Investors would not accept an all cash transaction. The directors noted that having a greater portion of merger consideration consisting of A&P stock rather than cash would obviate the need for any third party equity investors and also address the Yucaipa Investors desire not to receive consideration consisting entirely of cash. Representatives of Cahill then reviewed with the directors the revised proposal for A&P to acquire Pathmark for a combination of cash and common stock.

On December 15, 2006, Mr. Haub and Mr. Burkle met in New York, at which time they discussed a number of principal terms of the proposed transaction, including the general mix of cash and stock consideration, the roll-over of the Pathmark warrants held by the Yucaipa Investors, and corporate governance matters related to the role of the Yucaipa Investors as an investor in the combined company.

On December 16, 2006, Cravath indicated to Cahill that because Tengelmann's ownership of A&P stock following the proposed transaction would fall below 50%, Tengelmann would require A&P to enter into a stockholder agreement providing Tengelmann with board representation, governance and other stockholder rights appropriate for a significant stockholder. In that regard, Cravath delivered to Cahill a draft of a proposed stockholder agreement. Cravath also indicated that Tengelmann believed an advisory fee was appropriate for its role and efforts.

On December 18, 2006, Cahill delivered a proposed form of confidentiality agreement to Latham & Watkins. Also on that day, Cravath delivered to Latham & Watkins a revised draft term sheet relating to the proposed acquisition of Pathmark, which indicated a proposed purchase price per Pathmark share of \$9.00 in cash and \$3.50 in A&P common stock. The A&P stock was to be valued for this purpose based on the average closing price of A&P's common stock for the twenty trading days preceding execution of a definitive agreement. In addition to restating the terms and restrictions relating to the warrants and

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common stock to be issued to the Yucaipa Investors, as set forth in the December 13 term sheet, the revised term sheet included a provision which allowed the Yucaipa Investors to exercise all, but not less than all, of the rollover warrants issued for the Series B Warrants at any time, but also permitted A&P to delay payment of 50% of the net value upon exercise of the Series B rollover warrants to be issued to the Yucaipa Investors, for a period of up to one year.

On December 19, 2006, the Pathmark board held a special meeting. Mr. Duckworth updated the board on discussions to date with A&P. The board authorized management to execute a confidentiality agreement with A&P and to continue further discussions. The board also discussed the fact that the board had previously decided to engage Yucaipa Companies as a consultant on the proposed acquisition of A&P by Pathmark. Now that the proposed transaction was an acquisition of Pathmark, the board approved the engagement of Yucaipa Companies as a consultant on the proposed transaction, subject to approval by the board of an engagement letter.

Also that day, Yucaipa Companies transmitted to A&P certain comments on A&P's draft term sheet from December 18. Yucaipa Companies accepted many restrictions and limitations on the A&P common stock and warrants that would be issued to the Yucaipa Investors in the proposed transaction and their rights to exercise such warrants. Over the succeeding days, the parties held several conference calls to discuss open issues on the term sheet, without resolution. Ultimately, the parties decided to proceed directly to definitive documentation. They discussed executing definitive agreements within thirty days.

On December 19, 2006, the A&P board held a special meeting at which Mr. Haub updated the board on the principal terms discussed between Mr. Haub and Mr. Burkle on December 15, 2006 and the implications of structuring the transaction in accordance with these terms rather than involving a new equity investor.

On December 20, 2006, A&P and Pathmark entered into a mutual confidentiality agreement covering the discussions between the companies and any information that might be exchanged by the parties.

On December 21, 2006, the independent members of the A&P board held a special telephonic meeting with representatives of Cahill and McGuireWoods LLP ( *McGuireWoods* ), its special Maryland counsel, also in attendance. Representatives of McGuireWoods discussed standards of conduct required of directors of a Maryland corporation and procedures applicable to the transaction generally, and in particular to the proposed stockholder agreement with Tengelmann and a potential advisory fee, under Maryland law. The independent directors then discussed these matters, and determined to retain an independent financial advisory firm.

Later on December 21, 2006, the executive committee of the A&P board held a regularly scheduled meeting at which they reviewed and discussed the proposed terms and determined to continue to pursue the transaction with Pathmark.

In early January 2007, each of A&P and Pathmark commenced business and legal due diligence on the other.

On January 8, 2007, the independent members of the A&P board met. Representatives of Cahill and McGuireWoods updated the independent directors on the status of discussions with Pathmark's representatives regarding the proposed transaction and the retention of Peter J. Solomon Co., L.P. ( *PJSC* ) as financial advisor to the independent members of the A&P board with respect to the proposed stockholder agreement with Tengelmann and Tengelmann's request for an advisory fee. The independent

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members of the A&P board discussed the qualifications of PJSC and determined to engage them as financial advisor.

On January 11, 2007, Cahill distributed the first draft of a merger agreement for the proposed transaction. The draft merger agreement contemplated a cash and stock merger, based on a fixed exchange ratio equal to \$3.50 divided by the average closing price of A&P common stock for the twenty trading days immediately prior to execution of the merger agreement. Among other things, the draft merger agreement contained a nonsolicitation covenant which prohibited Pathmark from having discussions with any other party unless that party had submitted a bona fide proposal that the Pathmark board had determined to be superior to the terms of the A&P transaction. The merger agreement also contained a covenant that Pathmark would submit the merger to a vote of its stockholders even if a superior proposal had been received, and Pathmark would not be able to terminate the merger agreement in order to accept a superior proposal. Although the draft merger agreement provided that the Yucaipa Investors would enter into an agreement with A&P to vote their Pathmark shares in favor of the transaction, no terms of the voting agreement were provided. In the event of termination of the merger agreement under various circumstances (including where the Pathmark stockholders had voted against the merger agreement at a time when no competing transaction had been proposed), the draft merger agreement contained a termination fee of \$30 million. The draft merger agreement also included a provision that A&P would not be required to divest stores for antitrust reasons, above an unspecified store level cash flow threshold. The draft merger agreement also contemplated that the Yucaipa Investors Series A and B Warrants would be assumed by A&P in the merger and converted into warrants to acquire A&P common stock in accordance with the term sheet.

On January 15, 2007, Cravath sent Cahill an initial draft stockholder agreement which reflected the term sheet provided in December and set forth Tengelmann's proposed board representation and governance and other stockholder rights which would apply after A&P's purchase of Pathmark.

On January 18, 2007, Latham & Watkins distributed comments to A&P's draft merger agreement. Among many other matters, in these comments, Pathmark objected to the failure to include an exception to the nonsolicitation covenant which would permit Pathmark to consider proposals that might reasonably be expected to lead to superior proposals. Pathmark also specified in the draft that it would be able to terminate the merger agreement in order to accept a superior proposal. Pathmark also objected to the provision requiring payment of a termination fee in the event that Pathmark stockholders failed to approve the merger at a time when no competing transaction had been proposed. In addition, Pathmark rejected the \$30 million termination fee as excessive, and proposed that if antitrust clearance required divestiture of stores, A&P would be required to make such divestitures without regard to amount.

Also on that day, the independent members of the A&P board held a special telephonic meeting with representatives of McGuireWoods, PJSC and Cahill to discuss the proposed terms of the Pathmark acquisition.

Also on January 18, 2006, the A&P board held a regularly scheduled meeting. Also in attendance were representatives of A&P management, JPMorgan and Cahill. Mr. Haub, with the assistance of the executives in attendance, reviewed the status of the Pathmark acquisition, including updates on due diligence, synergies, financing and integration. The JP Morgan representatives then reviewed the status of negotiations and developments.

On January 19, 2007, Cahill contacted Latham & Watkins and stated that, in light of the many comments made by Pathmark on the draft merger agreement that were unacceptable to A&P, A&P had directed Cahill to cease further work on the draft until progress was made on the substantive issues.

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On January 23, 2007, the Pathmark board of directors held a regularly scheduled meeting at which all directors were present in person or by telephone. At this meeting, the board discussed the status of negotiations with A&P, the draft merger agreement that had been presented by A&P, and the antitrust approval process that would be required in connection with the transaction, including the likely timing and uncertainties of obtaining approval.

The board noted that the proposed transaction with A&P would result in a termination of Yucaipa Companies' existing Management Services Agreement with Pathmark, requiring a termination payment to Yucaipa Companies under that agreement in the amount of \$10 million. In addition, under the stockholders agreement entered into between the Yucaipa Investors and Pathmark in June 2005, a change of control transaction such as that proposed by A&P would require the affirmative vote of at least two directors who were independent under NASDAQ listing standards, as well as the affirmative consent of the Yucaipa Investors. These approvals would be in addition to any other approvals that would be required under applicable law or Pathmark's charter or bylaws.

Representatives of Citigroup joined the meeting and presented Citigroup's qualifications to act as financial advisor to the Pathmark board in connection with the proposed transaction with A&P.

The board discussed the amendments that would be required to the existing warrant agreement with the Yucaipa Investors in order to provide for the rollover of the Series A and B Warrants into A&P warrants, as contemplated by the December 2006 term sheet. Under the existing warrant agreement, in the cash and stock merger proposed by A&P, the Series A and B Warrants would have been converted into the right to acquire, upon exercise, the merger consideration of \$9.00 in cash and a fixed number of shares of A&P stock. Under the warrant agreement amendment, in essence the right to acquire \$9.00 in cash would be converted into a right to acquire a fixed number of shares of A&P stock. The board discussed the advisability of forming a committee of independent, disinterested directors to review the terms of any amendments to the Yucaipa Investors' Series A and B Warrants to effect the warrant rollover. Sarah Nash, Daniel Fitzgerald, Larry Katzen, Bruce Hartman and John Zillmer, each directors of Pathmark who were considered to be independent of the Yucaipa Investors for the purpose of reviewing the proposed warrant agreement amendment (the *Independent Directors*), met separately with counsel from Shearman & Sterling LLP (*Shearman & Sterling*). The board then authorized the creation of a special committee, composed of the Independent Directors, which was empowered to review, in connection with any proposed business combination, any proposal that would provide for the treatment of the Yucaipa Investors' Series A and B Warrants in a manner that would be different from that provided under the existing warrant agreement. The special committee was given the power to evaluate any such warrant proposal, to negotiate directly with Yucaipa Companies, the Yucaipa Investors and their advisors, and to make a recommendation to the full Pathmark board as to what action, if any, Pathmark should take with respect to any such warrant proposal, as well as the power and resources to retain any advisors that the special committee deemed necessary or desirable to conduct its review. The board resolved that it would not recommend any acquisition transaction that included a warrant proposal without the prior favorable recommendation of the special committee. In addition, the special committee was empowered to review any acquisition proposal, for the purpose of assisting the Independent Directors in their decisions under the existing stockholders agreement between Pathmark and the Yucaipa Investors as to whether they would vote in favor of an acquisition transaction.

The directors also were presented with a draft of an engagement letter between Pathmark and Yucaipa Advisors (an affiliate of Yucaipa Companies), pursuant to which Yucaipa Advisors would be engaged to act as a consultant to Pathmark in connection with the negotiation of the A&P transaction, but the board deferred a decision pending further review. The directors then voted to retain Citigroup as financial advisor to Pathmark in connection with the proposed A&P transaction. In addition, the board re-

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quested that management, Yucaipa Advisors and Citigroup provide weekly updates to the board regarding the status of the transaction and negotiations.

Later that same day, a meeting of the Pathmark special committee was held to preliminarily discuss process and the issues the Pathmark special committee had been charged with by the board to consider. At the meeting, the Pathmark special committee also appointed Ms. Nash as its Chairperson and engaged Shearman & Sterling as its independent legal counsel.

On January 25, 2007, Latham & Watkins and Cahill held a conference call and discussed a number of the most significant outstanding items on the draft merger agreement.

On January 28, 2007, a special telephonic meeting of the Pathmark board of directors was held, at which the board considered the proposed engagement letter with Yucaipa Advisors to act as a consultant to Pathmark in connection with the proposed A&P transaction. After a discussion of the amount of the fees proposed to be paid to Yucaipa Advisors, and a separate meeting of the Independent Directors, the Independent Directors indicated that they had determined to support the engagement of Yucaipa Advisors as a consultant on the terms specified in the existing Management Services Agreement. The board of directors then approved the Yucaipa Advisors engagement letter.

Also on that day, the Pathmark special committee engaged Perella Weinberg Partners LP ( *PWP* ) as its independent financial advisor for the purpose of assisting the Pathmark special committee assess the value of the Series A and B Warrants and the impact of the proposed amendments to the warrant agreements.

On January 30, 2007, the parties held a meeting in New York City. In attendance were representatives from Pathmark and A&P and their respective counsel and financial advisors, as well as representatives from Tengemann and Yucaipa Companies. At this meeting, the parties discussed at a general level the guiding principles for further negotiations, including the parties' sharing of any antitrust risk arising out of the proposed transaction, the relative level of reciprocity in the representations, covenants and conditions of Pathmark and A&P, certainty and speed of closing, and the treatment of outstanding employee stock options.

On January 30, 2007, the independent members of the A&P board held a special telephonic meeting. Also participating by telephone at the meeting were representatives of McGuireWoods and PJSC. The independent directors discussed the status of the Pathmark transaction, including the proposed timeline. Representatives of PJSC then presented their analysis with respect to the Tengemann advisory fee request based upon information they had considered in connection with their analysis. Representatives of McGuireWoods then reviewed the December 2006 draft Tengemann stockholder agreement term sheet with the independent directors. The independent directors then directed McGuireWoods to prepare a revised Tengemann stockholder agreement term sheet reflecting the comments of the independent directors. The independent directors and McGuireWoods decided not to provide comments on the actual draft Tengemann stockholder agreement distributed by Cravath on January 15, 2007 until progress had been made on the principal provisions reflected in the term sheet.

A telephonic meeting of the Pathmark special committee was held on February 1, 2007. At the meeting, a representative from PWP presented to the Pathmark special committee on various financial issues relating to the proposed warrant agreement amendment to be entered into among the Yucaipa Investors and A&P in connection with the proposed transaction. The members of the Pathmark special committee discussed among themselves as well as with representatives of PWP various financial and other considerations relating to the proposed transaction, including that: (i) the current warrant agreement

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between the Yucaipa Investors and Pathmark already sets forth the manner in which the Series A and B Warrants were to be treated in a business combination transaction such as the proposed A&P transaction; (ii) additional value would accrue to the Yucaipa Investors as a result of the proposed warrant agreement amendment but not to the other stockholders of Pathmark; and (iii) the Yucaipa Investors would be able to participate to a greater degree than the other stockholders of Pathmark in any future appreciation in the A&P share price. The members of the Pathmark special committee also discussed certain additional considerations regarding the proposed transaction, including (i) the proposed transaction value represented a significant premium to the market price of Pathmark's common stock; (ii) there currently were no other transaction proposals offering the same or greater consideration; (iii) without the Yucaipa Investors' support for the A&P transaction, Pathmark risked losing the proposed transaction and the value it could provide to Pathmark's stockholders; and (iv) it was unlikely that the Yucaipa Investors or A&P would be prepared to make additional value available to Pathmark's other stockholders.

On February 2, 2007, the Pathmark board held an update call in which management, Yucaipa Companies and Citigroup advised the directors of the status of the proposed transaction.

On February 5, 2007, the parties held a meeting in New York City. In attendance were representatives from Pathmark and A&P and their respective counsel, as well as representatives from Tengelmann, Yucaipa Companies, and A&P's financial advisor. The principal issue under discussion at this meeting related to a review of the risks raised by the proposed transaction from an antitrust standpoint, including both the risk of nonconsummation, and the risk that store divestitures would be required in order to obtain antitrust approval. The parties discussed in detail a number of alternatives to allocate these risks. A&P proposed that, in the event that divestitures were required over a certain store level cash flow threshold, a downward adjustment to the merger consideration would be made. Pathmark objected to this concept as overly complex and risky for the Pathmark stockholders. After discussion, the parties agreed in principle to the following terms. If, at a date that is six months after execution of the merger agreement, A&P reasonably determined that it was reasonably likely that it would be required to divest stores that have store level cash flow in excess of \$33 million, then A&P would have the right to terminate the merger agreement and reimburse Pathmark for its out-of-pocket legal expenses. If, at a date that is nine months after execution of the merger agreement, A&P reasonably determined that it was reasonably likely that it would be required to divest stores that have store level cash flow in excess of \$33 million, then A&P would have the right to terminate the merger agreement and pay Pathmark a termination fee of \$25 million. If, thereafter, the merger were to fail to close for reasons related to failure to obtain antitrust approval, A&P would pay Pathmark a termination fee of \$50 million.

Shortly thereafter, Messrs. Burkle and Haub had a telephone call regarding a disagreement over how store level cash flow would be calculated. After further discussion, they agreed on a calculation methodology, and the threshold was increased from \$33 million to \$36 million.

Also that day, a telephonic meeting of the Pathmark special committee was held. At the meeting, a representative from PWP presented to the Pathmark special committee additional material that PWP had been asked by the Pathmark special committee to prepare on warrant valuation sensitivities relating to the proposed warrant agreement amendment.

Additionally on February 5, 2007, the independent members of the A&P board held a special telephonic meeting. Also participating by telephone at the meeting were representatives of McGuireWoods, Cahill and PJSC. The independent directors discussed the status of the Pathmark transaction. Representatives of PJSC reported on corporate governance rights typically granted to controlling or significant stockholders in the context of private equity and other investments. The independent directors then reviewed the December 2006 Tengelmann term sheet as proposed by Tengelmann and as revised by

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McGuireWoods. The independent directors directed representatives of McGuireWoods to propose certain revisions to the term sheet to Cravath.

On February 6, 2007, McGuireWoods sent to Cravath a revised version of the Tengelmann stockholder agreement term sheet which reflected the comments of A&P's independent directors. The revised version required that Tengelmann would vote all its shares in the same proportion as A&P's other stockholders in the election of directors that were not nominated by Tengelmann, which voting mechanism was referred to as mirror voting. In addition, among other things, the comments sought to modify and reduce the scope of Tengelmann's approval rights and eliminate Tengelmann's right to demand registration rights and addressed the termination of Tengelmann's various rights under the proposed Tengelmann stockholder agreement and the method of calculating Tengelmann's ownership percentage for that purpose.

On February 7, 2007, the Pathmark board held an update call in which management, Yucaipa Companies and Citigroup advised the directors of the status of the proposed transaction.

On February 9, 2007, Mr. Duckworth, on behalf of the Yucaipa Investors, met with the Pathmark special committee to review the warrant rollover proposal. He made a presentation that began with the history of the negotiation process and the treatment of the Series A and B Warrants under various transaction structures that had been considered. The presentation also illustrated the Yucaipa Investors' view that the A&P common stock that the Yucaipa Investors would receive in the proposed transaction would be worth significantly less than the A&P common stock received by other common stockholders of Pathmark, due to the transfer and standstill restrictions that A&P imposed upon the Yucaipa Investors. In addition, he described the terms of the Series A and B Warrants, both as presently existing and as proposed to be amended, as well as the Yucaipa Investors' views as to the benefits to the Yucaipa Investors from the rollover of the warrants and detriments to the Yucaipa Investors resulting from the terms and restrictions that A&P would put on the rollover warrants, which terms and restrictions did not currently apply to the Series A and B Warrants.

During the period from February 9 through February 12, 2007, the parties held meetings in New York City. In attendance were representatives from Pathmark and A&P and their respective counsel and financial advisors, as well as representatives from Tengelmann and Yucaipa Companies. At these meetings, the parties discussed many significant open issues on the draft merger agreement, including many of the items in dispute under A&P's original draft of the merger agreement from January 11. In addition, during this period, Cahill transmitted a draft voting agreement to the Yucaipa Investors, which required the Yucaipa Investors to vote all shares owned or acquired by the Yucaipa Investors in favor of the proposed transaction with A&P and against all alternative transactions. The Yucaipa Investors owned approximately 40% of the outstanding Pathmark common stock at that time. In response, Pathmark proposed that the Yucaipa Investors would only be required to vote shares representing 33% of the outstanding stock in favor of the transaction, and that the remainder of their shares would be voted for or against the transaction in proportion to the votes cast by other stockholders. Pathmark also objected to A&P's proposal that a termination fee be payable in the event that the Pathmark stockholders failed to approve the merger at a time when no competing transaction had been proposed. A&P did agree to a nonsolicitation covenant which would allow Pathmark to have discussions with another potential purchaser if that person were to submit a bona fide proposal that the board determined to be reasonably likely to lead to a proposal that was superior to the terms of the A&P transaction.

On February 11, 2007, Cahill distributed a draft stockholders agreement relating to the Yucaipa Investors' ownership of A&P common stock after completion of the merger. The draft provided for a prohibition on purchases of shares of A&P common stock over 9.9%, and other standstill provisions that



would restrict the Yucaipa Investors from taking any action to propose any extraordinary corporate transaction, participate in a proxy contest, form a group with other A&P stockholders, or take any action (whether through communication with management or public statements) to seek to influence A&P. The draft also included restrictions on the transferability of the A&P common stock owned by the Yucaipa Investors, as well as a noncompetition agreement with respect to A&P.

On February 8 and 12, 2007, McGuireWoods and Cravath had telephone conferences to discuss and negotiate the February 6 comments to the Tengelmann stockholder agreement term sheet. Cravath indicated in those discussions that Tengelmann was not willing to support the proposed acquisition of Pathmark by A&P without proportional board representation and approval rights substantially as provided in the Tengelmann stockholder agreement term sheet, but that Tengelmann was willing to enter into a mirror vote provision, if Tengelmann's obligation was conditioned upon A&P honoring Tengelmann's proposed rights to proportional board representation, and to negotiate the other aspects of the term sheet. On February 13, 2007, McGuireWoods sent Cravath additional comments on the Tengelmann stockholder agreement term sheet relating to the points described above as well as others.

On February 13, 2007, A&P management and representatives of Pathmark and Yucaipa discussed potential synergies and integration plans as well as the financing of the proposed transaction. Also on February 13, 2007, Cahill and Latham & Watkins held a teleconference. They discussed and agreed that in the event that Pathmark's stockholders failed to approve the merger at a time when no competing transaction had been proposed, no termination fee would be payable, but Pathmark would reimburse A&P for its out-of-pocket legal expenses. They also discussed the size of the termination fee, as well as the percentage of the Yucaipa Investors' stock to be subject to the proposed voting agreement.

On the same day, the independent members of the A&P board held a special telephonic meeting. Also participating by telephone at the meeting were representatives of McGuireWoods. The independent directors discussed several open issues on the Tengelmann stockholder agreement term sheet. The independent members of the board were informed of Tengelmann's unwillingness to support the proposed acquisition of Pathmark by A&P without proportional board representation and approval rights substantially as provided in the Tengelmann term sheet but that Tengelmann was willing to enter into a mirror vote provision and negotiate other aspects of the term sheet.

On February 14, 2007, Cahill and Latham & Watkins held a conference call to discuss the proposed voting agreement and the termination fees. Specifically, Cahill requested that, in addition to the Yucaipa Investors agreeing to vote their full ownership position (amounting to approximately 40% of the outstanding Pathmark common stock) in favor of the proposed transaction, the Yucaipa Investors agree that they would vote their shares against any other acquisition proposal within the two-year period following termination of the merger agreement.

A telephonic meeting of the Pathmark special committee was held that day. At the meeting, a representative of PWP discussed with members of the Pathmark special committee the differences PWP believed existed between the Yucaipa Investors' and PWP's analyses of the proposed warrant agreement amendment. The members of the Pathmark special committee discussed these differences, as well as the question of whether either the Yucaipa Investors or A&P would be prepared to share any of the value represented by the proposed warrant agreement amendment with Pathmark's other stockholders. Members of the Pathmark special committee decided that Ms. Nash should call Mr. Duckworth and voice the Pathmark special committee's concerns with the Yucaipa Investors' analysis of the proposed warrant agreement amendment. In addition, the Pathmark special committee considered a draft letter to Yucaipa Companies to such effect, which the Pathmark special committee agreed Ms. Nash should send following her call with Mr. Duckworth.

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Later that day, Ms. Nash had a discussion with Mr. Duckworth, during which she conveyed the special committee's concerns. Mr. Duckworth told Ms. Nash that he would like to have a discussion with PWP and provide the special committee with further information on these issues. Thereafter, on behalf of the special committee, Ms. Nash sent a letter to Yucaipa Companies, in which she stated that, taking into account advice from the special committee's financial advisor regarding the additional value that would accrue to the Yucaipa Investors as a result of the proposed amendments to the terms of the Series A and B Warrants, as well as the special committee's fiduciary duties and its understanding of the situation, the special committee did not see how it could approve the proposed warrant agreement amendment in its then-current form. Ms. Nash also stated that the special committee would be happy to consider any alternatives Yucaipa Companies might wish to propose.

On February 14, 2007, the independent members of the A&P board held a special telephonic meeting. Also participating by telephone at the meeting were representatives of McGuireWoods and PJSC. Representatives of McGuireWoods reviewed with the directors the status of negotiations with Cravath regarding the Tengelmann stockholder agreement term sheet as well as the proposed Tengelmann advisory fee. The directors discussed the proposed advisory fee and considered PJSC's related advice.

Also on February 14, 2007, McGuireWoods sent to Cravath a revised version of the Tengelmann stockholder agreement that Cravath had distributed on January 15, 2007, which reflected comments of the independent directors on the outstanding open issues on the term sheet and in addition deleted Tengelmann's right to require A&P to file a shelf registration statement for the sale of A&P shares owned by Tengelmann, as well as indicated that the provision relating to an advisory fee for Tengelmann remained an open issue.

On February 15, 2007, Mr. Duckworth, on behalf of Yucaipa Companies, sent a letter to the Pathmark special committee. In the letter, Mr. Duckworth stated that Yucaipa Companies believed that the concessions that the Yucaipa Investors had agreed to in limiting their rights as A&P stockholders and significantly reducing the liquidity of their securities had the effect of greatly diminishing the value of any consideration to be received by them in the proposed transaction. He stated that Yucaipa Companies did not believe that a transaction without the proposed amendments to the Series A and B Warrants represented compelling enough value for them to support.

A telephonic meeting of the Pathmark special committee was held on February 16, 2007. At the meeting, representatives of Shearman & Sterling and PWP shared their views on the letter received by the Pathmark special committee from Mr. Duckworth. After discussing the letter, the Pathmark special committee discussed the message that Ms. Nash should convey to the full board at the board meeting to be held later that day.

Later that day, the Pathmark board of directors held a telephonic board meeting. Mr. Burkle, as a representative of the Yucaipa Investors, was in attendance on the call. At this meeting, management of Pathmark updated the board on the status of the due diligence process with A&P, and the status of A&P's financing for the transaction, particularly as it related to the sale of Metro stock to fund a portion of the cash merger consideration. Representatives of Citigroup provided the board with Citigroup's preliminary financial analysis of the proposed merger, including the proposed merger consideration.

Also at this meeting, Mr. Burkle, on behalf of the Yucaipa Investors, addressed the special committee's preliminary concerns about the treatment of the Series A and B Warrants in the proposed transaction. Mr. Burkle explained to the board that the Series A and B Warrants had been purchased by the Yucaipa Investors in 2005 as part of a package of securities of Pathmark, in exchange for \$150 million in cash. He also explained that, in the proposed transaction with A&P, A&P was requiring that the Yucaipa Investors agree to numerous standstill and transferability restrictions on the Yucaipa Investors' rights with

regard to the A&P common stock and warrants that the Yucaipa Investors would own after the merger, which were significant detriments to the value of the Yucaipa Investors' rights, which the Yucaipa Investors were under no obligation to agree to, and which the other common stockholders of Pathmark would not be subject to. He also noted that the terms of the rollover warrants were significantly less advantageous to the Yucaipa Investors than the terms of the Series A and B Warrants. Mr. Burkle indicated, however, that the Yucaipa Investors would agree to these various terms and restrictions as part of facilitating an overall transaction with A&P for the benefit of all stockholders which, at the same time, would preserve the option value of the Series A and B Warrants. He also noted that several other transactions with A&P had been previously discussed with the board, including a merger of equals and an acquisition of A&P by Pathmark, and in these transactions the option value of the Series A and B Warrants would have been preserved. Mr. Burkle indicated that, if the Series A and B Warrants could not be rolled over into A&P warrants and therefore the existing option value of the Series A and B Warrants could not be preserved, then the Yucaipa Investors would not be willing to agree to the standstill and transferability restrictions on the Yucaipa Investors' common stock and warrants, and the other amendments to the terms of the Series A and B Warrants, that had been demanded by A&P, and the Yucaipa Investors would not be willing to support the transaction as stockholders of Pathmark.

Ms. Nash, on behalf of the special committee, informed the board that the Pathmark special committee could not respond to Mr. Duckworth's February 15 letter until (i) Citigroup had presented its views to the board regarding the fairness, from a financial point of view, to the stockholders of Pathmark of the consideration to be received by such stockholders in the proposed transaction and (ii) the documentation relating to the proposed transaction, including the proposed warrant agreement amendment to be entered into among the Yucaipa Investors and A&P, had been substantially finalized. Ms. Nash also indicated that the special committee was open to receiving additional information from the Yucaipa Investors, so that the special committee could better understand the views and analyses of the Yucaipa Investors and the terms of the restrictions imposed by A&P.

Following the board meeting, the Pathmark special committee reconvened and the members discussed the information obtained at the board meeting and further discussed the proposed warrant agreement amendment.

From February 16 through March 3, 2007, McGuireWoods and Cravath continued to exchange drafts of and discuss and negotiate the terms of the Tengelmann stockholder agreement.

On February 18, 2007, the independent members of the A&P board, held a special telephonic meeting to review the status of negotiations between McGuireWoods and Cravath. Also participating by telephone at the meeting were representatives of Cahill and PJSC.

During the period from February 18 through February 26, representatives of Pathmark, Yucaipa Companies, A&P and Tengelmann and their respective counsel and advisors held a number of meetings and teleconferences to discuss the terms of the proposed merger agreement. A&P agreed that the Yucaipa Investors would be required to vote their shares representing only 33% of the outstanding Pathmark common stock in favor of the merger and against alternative transactions, and that the voting agreement would expire upon termination of the merger agreement. The remainder of the Yucaipa Investors' shares in excess of 33% of the outstanding shares could be voted in the Yucaipa Investors' sole discretion. A&P also agreed to a reduced termination fee of \$25 million. The parties also agreed that, if the merger agreement were terminated after the nine-month anniversary, or the one-year anniversary, of execution of the merger agreement, due to failure to receive antitrust approval (regardless of the level of store level cash flow that is required to be divested), the termination fee payable by A&P to Pathmark would be \$50 million, and \$75 million, respectively.

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Also during this period, A&P provided to Pathmark the drafts of its financing commitment letters. The financing commitment letters were expressly conditioned on the receipt by A&P of proceeds of \$190 million from the sale of Metro shares that it owned, and there was no commitment by any third party to ensure that those proceeds would be obtained. Even though the transaction was not conditioned on receipt of financing, Pathmark required that all the financing be fully committed at the time of signing of the merger agreement. Pathmark discussed with A&P the fact that, because the receipt of proceeds from the sale of Metro shares was not assured, it was possible that the transaction would not close because of A&P's failure to obtain financing.

Pathmark also proposed to A&P a retention pay plan, enhanced severance plans, and transaction bonuses for four key executives, in order to better provide stability in the workforce prior to closing, which would increase the likelihood that the transaction closed and facilitate the post-closing integration of the companies.

On February 18, 2007, Mr. Duckworth spoke by telephone with representatives of PWP in order to describe the Yucaipa Investors' warrant valuation methodology.

A telephonic meeting of the Pathmark special committee was held on February 20, 2007. At the meeting, Mr. Duckworth presented the Pathmark special committee with the Yucaipa Investors' views regarding the Yucaipa Investors' valuations (and the underlying assumptions used in those valuations) with respect to the consideration the Yucaipa Investors would be entitled to receive under the terms of the proposed transaction, including the proposed warrant agreement amendment. Following Mr. Duckworth's presentation, the members of the Pathmark special committee discussed Mr. Duckworth's presentation among themselves as well as with their advisors.

On February 20, 2007, the A&P board held a regularly scheduled meeting to review the status of the Pathmark transaction. Also in attendance were representatives of A&P management, JPMorgan, Axinn Veltrop & Harkrider LLP ( *Axinn* ), special antitrust counsel to A&P, and Cahill. Representatives of Axinn reviewed for the board the antitrust clearance process, including anticipated timing, historical context, the current competitive market setting, possible issues to address, and the range of possible outcomes. Members of management then reviewed with the board the status of the diligence effort, including the status of obtaining information from Pathmark, the status of evaluating anticipated synergies from the transaction, financial and operational evaluations and integration matters. Management also reviewed with the board the status of the financing. The JPMorgan representatives then reviewed with the board their views of the transactions and reviewed and discussed with the board various factors, analyses, projections and valuation methodologies which would be part of their fairness analysis.

Later on February 20, 2007, the independent members of the A&P board, together, for a portion of the meeting, with an A&P director affiliated with Tengelmann, held a special telephonic meeting, at which representatives of McGuireWoods, PJSC and Cahill were present, to review the status of discussions with Cravath regarding Tengelmann's requested board representation and governance and other stockholder rights. Following the departure from the meeting of non-independent A&P director, the independent directors discussed appropriate responses to the remaining open issues with Tengelmann. Following the discussion, the independent directors indicated that McGuireWoods should seek to resolve the issues.

On February 23, 2007, the Pathmark board held an update call in which management, Yucaipa Companies and Citigroup advised the directors of the status of the proposed transaction.

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As discussed by the parties in mid-December 2006, the merger consideration offered by A&P was \$9.00 in cash and \$3.50 in A&P stock, with the exchange ratio for the stock portion expected to be calculated based upon \$3.50 divided by the average closing price of the A&P common stock for the twenty trading days prior to the date of execution of the merger agreement. In mid-December, the parties targeted signing a merger agreement by mid-January, 2007, but had not met that target.

As a result, on or about February 24, 2007, Mr. Burkle discussed with Mr. Haub the possibility of revising the exchange ratio, because during the course of the previous weeks the market trading price of A&P common stock had moved substantially higher, and the agreements had not been finalized by mid-January as had been initially anticipated. Pathmark believed that the exchange ratio calculated under the 20-trading-day average formula no longer accurately reflected the business understanding and was not acceptable. Messrs. Burkle and Haub agreed to continue discussion of the issue.

On February 25, 2007, the independent members of the A&P board held a special telephonic meeting. Cahill updated the independent directors on the status of discussions with Pathmark's representatives regarding the proposed transaction.

On February 26, 2007, the compensation committee of the Pathmark board held a telephonic meeting at which the committee approved a retention bonus plan, change of control severance plans for employees, and transaction bonuses for four executives who would each play a key role in consummating the proposed transaction.

Later that day, A&P proposed to Pathmark a new merger consideration structure. Under this structure, A&P would agree to sell up to 7.1 million shares of Metro stock within ninety days after execution of the merger agreement. In the event that the sale yielded less than \$190 million, then the aggregate cash portion of the merger consideration would be adjusted downward by the difference between \$190 million and the sale proceeds, and the aggregate amount of the stock portion of the merger consideration would be adjusted upward by the same amount.

On February 27, in response to market activity, A&P and Pathmark each issued press releases disclosing the fact that the parties were engaged in negotiations for A&P to acquire Pathmark for a possible purchase price of \$12.50 in cash and A&P common stock.

Later that day, the Pathmark board of directors held a special telephonic meeting at which all directors were present. Management described for the board the change that A&P had proposed regarding altering the cash/stock mix of the merger consideration based on the results of the sale of Metro stock by A&P. They noted that this was a change in a fundamental term and required further discussion with A&P before any recommendation could be made to the board.

Citigroup then presented a detailed preliminary financial analysis of the proposed transaction, including financial analyses of Pathmark, A&P and the proposed merger consideration of \$12.50 per share in cash and A&P common stock. Citigroup noted that, as a result of A&P's proposal to change the cash/stock mix of the merger consideration, Citigroup would need to conduct further analysis when the terms of that proposal were further defined.

The directors discussed whether there was any likelihood that another purchaser would be interested in acquiring Pathmark at a higher valuation. The directors noted the publicly announced auction process in 2004 and 2005, which had failed to generate any attractive offers to acquire Pathmark. In addition, publicly available analyst commentary about Pathmark had repeatedly referred to Pathmark as a likely and most advantageous merger partner with A&P. Notwithstanding this commentary, Pathmark had not received any credible acquisition proposals from any person other than A&P.

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Also at this board meeting, the board reviewed in detail the draft transaction documents, including the terms of the merger consideration, treatment of employee stock options and warrants, nonsolicitation covenant, termination fees, voting agreements, and antitrust provisions. They also reviewed the proposed stockholders agreement between A&P and the Yucaipa Investors, noting the restrictions that the agreement placed on the Yucaipa Investors' ability to exercise many of the rights normally attendant to the ownership of stock in a public company, including the right to influence the management and control of A&P, make proposals to the board of A&P, solicit other stockholders, and freely acquire or dispose of A&P shares and warrants.

On February 28, 2007, the A&P board held a special telephonic meeting to review the status of the Pathmark transaction. Also in attendance were representatives of A&P management, Tengelmann, JPMorgan, Cahill, Cravath and McGuireWoods. Mr. Haub updated the board on the process regarding the Pathmark acquisition. He reported that, in response to a call from the NYSE, A&P had issued a February 28 press release acknowledging negotiations for A&P's acquisition of Pathmark. Mr. Haub stated the transaction agreements were essentially complete with the main open issues regarding financing terms, the A&P stock price to be used to determine the Pathmark equity conversion and antitrust-related matters. The board then discussed these matters and authorized management to continue negotiations.

A meeting of the representatives of all parties was held in New York City on March 1, 2007. By that time, A&P had abandoned its proposal to adjust the cash/stock mix of the merger consideration depending on the future results of its sale of Metro stock. At this meeting, A&P agreed to a termination right by Pathmark, and a \$50 million termination fee, in the event that A&P failed to generate at least \$190 million of proceeds from the sale of Metro stock within ninety days following the execution of the merger agreement. A&P also agreed that if the proposed transaction failed to close due to the failure to obtain financing for the cash portion of the merger consideration, then A&P would pay Pathmark a termination fee of \$50 million, which amount would increase to \$75 million if the closing were delayed beyond one year for antitrust reasons. This termination fee would be in addition to breach of contract damages that Pathmark might have against A&P, because the proposed transaction was not conditioned upon the receipt of financing. A&P also agreed to reimburse Pathmark for its legal fees and expenses if the transaction was not approved by the stockholders of A&P.

Also as part of these meetings, Mr. Burkle proposed that the exchange ratio for the stock portion of the merger consideration would be determined by valuing A&P common stock at \$27 per share rather than the then-current 20-trading-day average of \$29.56. Mr. Haub agreed to consider the proposal. This change would have the effect of increasing the exchange ratio from 0.11840 to 0.12963 A&P shares for each share of Pathmark stock.

On March 2, 2007, the A&P board held a special telephonic meeting, to review the status of the Pathmark transaction. Also in attendance were representatives of A&P management, Tengelmann, JPMorgan, Cahill, Cravath and McGuireWoods. Mr. Haub reviewed with the board the status of negotiations regarding the acquisition of Pathmark. He reported that he and Mr. Burkle had met the previous day. The open issues continued to be financing certainty, exchange ratio and price. He reported that, as part of reaching agreement on such terms, they had also tentatively agreed to a revision of exchange value of each Company share from the twenty day formula earlier discussed to a fixed exchange ratio.

Representatives from JPMorgan then reviewed with the board the price activity of the stock of A&P and of Pathmark for various time periods, and various metrics relating to the adjusted A&P stock value to be utilized in the merger, as well as various strategic and governance issues. JPMorgan representatives reviewed the financial implications of the increase on the terms of the merger, including the potential value of the warrants.

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The board then discussed these matters and Mr. Haub summarized the advantages and disadvantages of the transaction and indicated his belief that it was advisable to proceed with the transaction. The board also discussed financing options, including the sale of Metro stock. The board then determined that the value adjustment was acceptable, that the transaction continued to have the potential to deliver significant value to A&P stockholders and that management should seek to reach agreement on the remaining terms and present its recommendation to the board on Sunday, March 4, 2007.

On the evening of March 2, 2007, Mr. Haub and Mr. Burkle spoke by telephone and agreed to recommend a final fixed exchange ratio for the stock portion of the merger consideration based on a price of \$27 per share of A&P common stock instead of the 20-trading-day average. Based on the closing market price of A&P common stock on March 2, 2007 of approximately \$30.86, the change in the exchange ratio formulation resulted in an increase of approximately \$25 million in aggregate value to Pathmark stockholders, or an increase of approximately \$0.50 per share of Pathmark common stock.

On March 3 and 4, 2007, A&P, Pathmark, Latham & Watkins and Cahill exchanged numerous drafts and finalized the agreements.

By March 3, 2007, A&P and Tengelmänn had reached agreement on the open issues on the Tengelmänn stockholder agreement. As a result of this negotiation, Tengelmänn agreed that, if A&P nominates and recommends the election of a number of Tengelmänn nominees proportional to its ownership of A&P common stock, then Tengelmänn will vote all its shares of A&P common stock in a manner identical to the manner in which the non-Tengelmänn affiliated stockholders vote their shares in the election of directors other than the Tengelmänn nominees, unless a person other than Tengelmänn has initiated a proxy contest. Tengelmänn also agreed to certain modifications of its proposed approval rights as reflected in the Tengelmänn stockholder agreement term sheet, including that certain significant transactions would be subject to the approval of a majority of the A&P directors nominated by Tengelmänn, but a more limited group of significant transactions would require Tengelmänn's approval. Tengelmänn also agreed to more narrow approval rights in a number of instances, including by agreeing to apply a liquidity test to its approval rights over the settlement with A&P stock of warrants exercised by the Yucaipa Investors, Tengelmänn also agreed that it would not require A&P to file a shelf registration statement for the sale of A&P shares owned by Tengelmänn. The parties agreed that while the calculation of Tengelmänn's ownership percentage of A&P would protect Tengelmänn from dilution from most share issuances, Tengelmänn would lose its board representation, approval and most other stockholder rights if its actual ownership percentage of A&P were to fall below 10%. Tengelmänn also agreed to forgo an advisory fee in exchange for A&P's agreement that it would negotiate in good faith with Tengelmänn to enter a services agreement under which Tengelmänn would agree to provide transactional and other services to A&P for reasonable compensation.

On March 4, 2007, the independent members of the A&P board held a meeting to discuss and consider whether to recommend to the full board of directors that the board authorize A&P to enter into a stockholder agreement with Tengelmänn in connection with the contemplated acquisition by A&P of Pathmark. Also participating by telephone at the meeting were representatives from Cahill, McGuireWoods and PJSC. At this meeting, representatives of McGuireWoods reviewed with the directors the terms of the Tengelmänn stockholder agreement and the draft of that agreement.

The independent directors noted that the Tengelmänn stockholder agreement requires A&P and Tengelmänn to negotiate in good faith an advisory services agreement whereby Tengelmänn would provide certain services to A&P for compensation to be agreed upon. Representatives of PJSC noted that no fee would be paid to Tengelmänn in connection with the Pathmark acquisition and, in their view, the rights being granted to Tengelmänn under the Tengelmänn stockholder agreement were reasonable given

the size of its ownership in A&P. Representatives of McGuireWoods then reviewed the standard of care required of directors of a Maryland corporation applicable to these decisions. The independent directors then deliberated on these matters and unanimously resolved to recommend to the A&P board of directors that it approve the Tengelmann stockholder agreement and the transactions contemplated thereby.

Immediately thereafter, on March 4, 2007, the A&P board held a special meeting. Also in attendance were representatives of A&P management, Tengelmann, JPMorgan, Cahill, Axinn, PJSC, and McGuireWoods. Mr. Haub reported to the board that agreement had been reached on all terms regarding A&P's proposed acquisition of Pathmark. Representatives of Cahill then reviewed with the board the terms of the transaction, including the closing conditions, the terms and effect on the combined company of the financing arrangements, the fees payable to Yucaipa in connection with the Management Services Agreement, the merger consideration and the treatment of outstanding options and warrants for Pathmark shares (including the Yucaipa Investors' warrants) and provisions for payment of cash for certain Pathmark stock options and conversion of others into A&P stock options.

Representatives of Cahill then reviewed with the board the requirements of seeking regulatory approval of the acquisition and the terms of the merger agreement permitting A&P to terminate the merger agreement for antitrust-related reasons and representatives of Axinn and Cahill described antitrust issues. Cahill representatives also reviewed with the board the circumstances under which Pathmark would be permitted under the merger agreement to consider alternative transactions to A&P's acquisition. The board also considered provisions for employment benefits for retained Pathmark employees, the termination fee provisions of the merger agreement, and the provisions for Mr. Mays to become a new director of A&P unless he is an employee or director of a competitor, in which case Pathmark would be able to nominate another director to the A&P board and the covenants in the merger agreement governing conduct of the parties business prior to closing of the merger. Representatives of Cahill also reviewed with the board the proposed financing for the acquisition, including the debt commitment letters received by A&P, the timing of the shareholder meetings of A&P and Pathmark and the required votes, as well as the matters on which the shareholders would be requested to vote at such meetings. Cahill also described the provisions in the merger agreement permitting a change in board recommendation in connection with observance of fiduciary duties applicable to Pathmark. Cahill also described Yucaipa's and Tengelmann's voting obligations under the voting agreements and their rights under the stockholder agreements. McGuireWoods reviewed with the board the required standard of conduct of directors of a Maryland corporation.

Representatives of JPMorgan then presented to the A&P board their analysis regarding the fairness of the transaction, from a financial point of view, to A&P and delivered JPMorgan's fairness opinion to the board, that as of the date of the opinion, and based on and subject to the qualifications, assumptions and limitations set forth therein, the merger consideration to be paid by A&P was fair, from a financial point of view, to A&P. After consideration, the A&P board resolved unanimously to approve the merger agreement and the transactions contemplated thereby and the independent members of the A&P board, with the non-independent members abstaining, unanimously approved the Tengelmann stockholder agreement.

A telephonic meeting of the Pathmark special committee was held on March 4, 2007. At the meeting, a representative of PWP updated the Pathmark special committee on the potential value attributable to the proposed warrant agreement amendment in light of the increase in merger consideration payable to Pathmark's stockholders in connection with the proposed transaction. The members of the Pathmark special committee discussed this revised valuation. A representative from Shearman & Sterling reviewed with the Pathmark special committee a draft resolution for adoption should a majority of its mem-



bers determine to give a favorable recommendation to the full board with respect to the proposed warrant agreement amendment.

Later that day, the Pathmark board of directors convened a special telephonic meeting at which all directors were present, as well as representatives of management, Yucaipa Companies, Citigroup, Latham & Watkins, and Shearman & Sterling. Mr. Standley noted that, since the announcement five days earlier that Pathmark was considering a sale of Pathmark to A&P and the extensive media and analyst commentary on that announcement, Pathmark had not received any contacts or inquiries from any potential interested purchasers. Mr. Duckworth informed the board that Yucaipa Companies had received one contact from a potential interested party, which was determined by Yucaipa Companies and the board to be not credible. In addition, the management of Pathmark and Yucaipa Companies indicated that they were not aware of any market rumors that any other person was interested in making a bid for Pathmark. The board reviewed the most recent changes in the terms of the proposed transaction since the previous board meeting, including the increase in the exchange ratio referenced above. Representatives of Citigroup reviewed its financial analysis of the proposed transaction, as revised in light of the increased exchange ratio of 0.12963. Citigroup then rendered its oral opinion, confirmed in writing on March 4, 2007, to the Pathmark board of directors that, as of the date of its written opinion and based upon and subject to the considerations and limitations described in the opinion, the merger consideration was fair, from a financial point of view, to the holders of Pathmark common stock (other than the Yucaipa Group). The special committee of the board then met in a separate session, where it determined to give a favorable recommendation to the board with respect to the proposed warrant amendment.

When the board meeting reconvened, Ms. Nash delivered the report and determination of the special committee to the full board with respect to the proposal to amend the terms of the Yucaipa Investors Series A and B Warrants as part of the proposed transaction. In a letter to the board, she stated that, following her letter to Mr. Duckworth on February 14, 2007, the special committee had received additional information with respect to the warrant agreement amendment proposal and related matters. Having considered that information as well as other factors, the special committee had adopted resolutions which constituted its favorable recommendation to the board with respect to the proposed warrant agreement amendment. In the special committee resolutions attached to the letter, the special committee noted that it recognized that: (i) the special committee had reviewed the terms and conditions of the proposed warrant agreement amendment, as well as the terms and conditions of the proposed transaction with A&P; (ii) the special committee had received advice from PWP, the special committee's independent financial advisor, and Shearman & Sterling, in connection with the special committee's review of the proposed warrant agreement amendment; (iii) additional value could potentially accrue to the Yucaipa Investors as a result of the warrant agreement amendment but not to the other stockholders of Pathmark; (iv) the Series A and B Warrants held by the Yucaipa Investors would, in the absence of the warrant agreement amendment, suffer a significant reduction in value upon consummation of the proposed transaction compared with their then-current value; (v) the warrants and shares of A&P which the Yucaipa Investors would be entitled to receive in the proposed transaction would be subject to various transfer and other restrictions that adversely affect the value of such warrants and shares; (vi) the Yucaipa Investors had agreed, as part of the proposed transaction, to not dispose of their Pathmark shares or warrants pending completion of the proposed transaction; (vii) it was possible that alternative transaction structures to the proposed transaction existed that, if used, could have resulted in the same treatment of the Series A and B Warrants as the proposed warrant agreement amendments but without requiring any amendments to their terms; (viii) the Yucaipa Investors had informed the special committee that they were not prepared to support the proposed transaction unless it included the proposed warrant agreement amendment without modification; (ix) Citigroup had rendered an opinion to the Board that, as of March 4, 2007, the merger consideration to be received by holders of Pathmark's common stock pursuant to the proposed transaction was fair, from a financial point of view, to such holders (other than the Yucaipa Group); (x) neither Pathmark nor Yucaipa

Companies had received proposals for any transaction that would offer consideration for the Pathmark stockholders (other than the Yucaipa Investors) that would be greater than that contemplated by the proposed transaction; (xi) there was the risk that, in the absence of an announcement of a transaction such as the proposed transaction, the trading price of Pathmark's common stock would decline significantly; (xii) without the support of the Yucaipa Investors, Pathmark would be unable to proceed with the proposed transaction and the value it could provide to Pathmark's stockholders; and (xiii) the special committee believed that it was in the best interests of Pathmark's stockholders (other than the Yucaipa Investors) to facilitate consummation of the proposed transaction by giving a favorable recommendation with respect to the proposed warrant agreement amendment.

Thereafter, representatives of the Yucaipa Investors confirmed that the Yucaipa Investors consented to the proposed transaction with A&P, and would enter into the proposed Yucaipa Voting Agreement, the proposed Yucaipa Stockholder Agreement, and the proposed Warrant Agreement Amendment. The directors then voted unanimously to approve the proposed merger agreement with A&P and the related transaction documents, and authorized management to execute the agreements.

Thereafter, Pathmark, A&P, the Yucaipa Investors and Tengelmann executed and delivered the transaction documents. The transaction was announced by press release on the morning of March 5, 2007.

#### **Pathmark's Reasons for the Merger; Recommendation of the Pathmark Board of Directors**

After careful consideration, the Pathmark board of directors has unanimously approved the merger agreement, has determined that the merger is fair to, advisable, and in the best interests of, Pathmark and Pathmark stockholders and has unanimously recommended that Pathmark stockholders vote FOR the proposal to approve and adopt the merger agreement and the transactions contemplated thereby, including the merger.

In the course of reaching its decision to unanimously recommend that Pathmark stockholders vote FOR the proposal to approve and adopt the merger agreement and the transactions contemplated thereby, including the merger, the Pathmark board of directors consulted with its financial and legal advisors, and reviewed a significant amount of information and considered a number of factors, including the following:

historical, current and projected information concerning Pathmark's business, financial performance and condition, capital requirements, operations and competitive position, including the sensitivities and uncertainties related thereto, and current industry, economic and market conditions, including Pathmark's prospects if Pathmark were to remain an independent company and competitive conditions affecting Pathmark's stores;

Pathmark's board of directors' past consideration of the possible alternatives to the merger, including continuing to operate Pathmark on an independent basis and/or engaging in other acquisition transactions, and the risks associated with these alternatives, each of which the Pathmark board of directors determined not to pursue in light of its belief that the entry into the merger agreement was in the best interest of Pathmark stockholders and that the merger was more favorable to Pathmark stockholders than any other alternative reasonably available to Pathmark;

Pathmark's board of directors' belief that, based on consultation with Pathmark's management team, the proposed merger with A&P would likely allow Pathmark to more effectively

implement its long-term plan to grow its business, meet its cost challenges and make Pathmark's stores even more competitive and attractive to its customers;

the value of the consideration to be received by Pathmark stockholders pursuant to the merger agreement, as well as the fact that Pathmark stockholders will receive a portion of the consideration in cash, which provides certainty of value;

the fact that Pathmark stockholders will receive a portion of the consideration in A&P common stock, which will allow Pathmark stockholders to share in growth or other opportunities of A&P after the merger;

the fact that the fixed number of shares of A&P common stock that Pathmark stockholders will receive in the merger will allow Pathmark stockholders to benefit from any increase in the trading price of A&P common stock between the announcement of the merger agreement and the completion of the merger;

historical, current and projected information concerning A&P's business, financial performance and condition, capital requirements, operations, management and competitive position, including the sensitivities and uncertainties related thereto, and current industry, economic and market conditions;

the per share merger consideration of \$9.00 in cash and \$4.00 in A&P common stock to be paid to Pathmark stockholders, based upon an exchange ratio of 0.12963 and A&P's closing stock price of \$30.86 on March 2, 2007 (the last trading day prior to the announcement of the execution of the merger agreement), represents a premium of approximately:

15.6% over the closing price of Pathmark common stock on March 2, 2007,

12.5% over the average closing price of Pathmark common stock for the 30-day period ended March 2, 2007,

11.8% over the highest closing price of Pathmark common stock during the 52-week period ended February 16, 2007, and

71.1% over the lowest closing price of Pathmark common stock during the 52-week period ended February 16, 2007;

the fact that financial analysts and others had commented for many years that Pathmark and A&P were likely merger partners;

the fact that, despite Pathmark's and A&P's announcement on February 26, 2007 that they were in merger negotiations, no bona fide acquisition proposals were received by Pathmark prior to announcement of the execution of a merger agreement on March 4, 2007;

the financial presentation of Citigroup (including the assumptions and methodologies underlying its analysis undertaken in connection therewith) and the written opinion of Citigroup, which is attached to this proxy statement as Annex G and which you should read carefully in its entirety, to the effect that, as of March 4, 2007, and based upon and subject to the considerations and limitations set forth therein, the per share merger consideration to be received

by the holders of Pathmark common stock was fair, from a financial point of view, to such stockholders (other than the Yucaipa Group);

the historical market prices of Pathmark common stock, including the possibility that if Pathmark remained as a publicly traded company, in the event of a decline in the market price of Pathmark common stock or the stock market in general, the price that might be received by holders of Pathmark common stock in the open market or in a future transaction might be less than the consideration to be paid to Pathmark stockholders in the merger;

the financial and other terms and conditions of the merger agreement, as reviewed by Pathmark's board of directors with Pathmark's financial and legal advisors, and the fact that they were the product of arm's-length negotiations between the parties;

Pathmark's board of directors' belief, in light of the provisions of the merger agreement requiring A&P to divest itself of certain assets in connection with obtaining antitrust approval and other factors, that the merger does not present an unacceptable level of nonconsummation risk and that the conditions to the merger are reasonable and can be reasonably expected to be satisfied;

the fact that, pursuant to the terms of the Tengelmann Voting Agreement, Tengelmann has agreed to vote shares of A&P common stock, representing approximately 53% of the outstanding shares of A&P common stock, in favor of the issuance of A&P common stock to Pathmark stockholders in connection with the merger and the amendment of certain preemptive rights provisions in A&P's charter;

the fact that Pathmark stockholders will be entitled to exercise dissenters' rights under Delaware law, as described under "The Merger Dissenters' Rights";

the fact that the merger agreement affords Pathmark's board of directors flexibility to consider and evaluate alternative acquisition proposals in the period after signing and prior to adoption of the merger agreement by Pathmark stockholders, as follows:

subject to compliance with the merger agreement, Pathmark's board of directors is permitted to participate in negotiations or discussions with, and furnish nonpublic information to, any person or group in response to an acquisition proposal that is more favorable to Pathmark stockholders than the merger or that Pathmark's board of directors determines in good faith, after consultation with financial advisors and outside legal counsel, that such acquisition proposal would reasonably be expected to result in an acquisition proposal that is more favorable to Pathmark stockholders than the merger and that Pathmark's board of directors determines in good faith, after consultation with outside legal counsel, that failure to do so would be inconsistent with the Pathmark board of directors' fiduciary duties under applicable law;

subject to compliance with the merger agreement, Pathmark's board of directors is permitted to change its recommendation to stockholders with respect to an alternative transaction if the Pathmark board of directors determines in good faith, after consultation with outside legal counsel, that failure to take such action would be inconsistent with its fiduciary duties under applicable law and has given A&P five business days' prior notice of its intention to take such action, subject to A&P's right to terminate the merger agreement and require Pathmark to pay a termination fee of \$25 million; and

although they currently own approximately 38% of the outstanding Pathmark shares, the Yucaipa Investors are only obligated to vote 33% of the outstanding Pathmark shares for the adoption of the merger agreement and against alternative transactions, and the balance may be voted by the Yucaipa Investors in their sole discretion;

the fact that the Pathmark board of directors formed a special committee, composed entirely of independent directors, none of whom were nominated by the Yucaipa Investors to serve on the Pathmark board of directors, to review any proposed amendment to the existing Yucaipa Investors warrant agreement (including the Yucaipa Warrant Agreement), and the fact that the special committee, after receiving advice from its own financial and legal advisors, unanimously delivered a favorable recommendation to Pathmark's board of directors with respect to the Yucaipa Warrant Agreement;

the fact that A&P's obligation to complete the merger is not subject to any financing condition;

the fact that A&P obtained and delivered a debt commitment letter from its lenders, pursuant to which A&P's lenders committed, subject to the conditions provided therein, to provide A&P with a senior secured revolving credit facility in the amount of \$615 million and up to \$780 million of senior secured loans in order to complete the merger and pay the cash portion of the consideration to be paid to Pathmark stockholders;

the fact that A&P would be obligated to pay a termination fee and/or expense reimbursement, up to a maximum amount of \$75 million, to Pathmark under certain circumstances relating to A&P's failure to obtain antitrust approval or financing for the transaction; and

the provision for one member of the Pathmark board of directors to be appointed to the A&P board of directors, which the Pathmark board of directors believes will provide a degree of continuity and oversight in the integration of the two companies.

In the course of its deliberations, the Pathmark board of directors also considered a variety of risks and other countervailing factors concerning the merger agreement and the merger, including the following:

the risks and costs to Pathmark if the merger does not close, including the diversion of management and employee attention, employee attrition and the effect on Pathmark's business relationships;

the fact that the fixed number of shares of A&P common stock that Pathmark stockholders will receive in the merger exposes Pathmark stockholders to the risk of a decrease in the trading price of A&P common stock between the announcement of the merger agreement and the completion of the merger, and the fact that the merger agreement does not provide Pathmark with a price-based termination right or similar protection in relation to such a decrease;

the fact that the completion of the merger is subject to a number of conditions, including antitrust approval;

the restrictions on the conduct of Pathmark's business prior to the completion of the merger, requiring Pathmark to use commercially reasonable efforts to conduct its business in the or-

dinary course generally consistent with past practice and to refrain from taking certain actions, which may delay or prevent Pathmark from undertaking business opportunities that may arise pending completion of the merger;

the fact that Pathmark would no longer exist as an independent, publicly traded company and Pathmark stockholders would no longer participate in the future earnings or growth, and would not benefit from any appreciation in the value, of Pathmark as an independent company;

the restrictions that the merger agreement imposes on Pathmark's ability to actively solicit competing bids, and the fact that Pathmark would be obligated to pay a termination fee and/or expense reimbursement, up to a maximum amount of \$25 million, to A&P under certain circumstances, which could raise the cost for a third party to make a competing bid for Pathmark;

the fact that the decision not to engage in an auction process or to actively solicit alternative acquisition proposals may have prevented Pathmark from receiving and evaluating such proposals;

Pathmark's obligation to call and hold a meeting of its stockholders to adopt the merger agreement regardless of whether Pathmark's board of directors has changed its recommendation to Pathmark stockholders with respect to the merger or Pathmark has received an alternative acquisition proposal that is a superior proposal as defined in the merger agreement;

the fact that, pursuant to the terms of the Yucaipa Voting Agreement, the Yucaipa Investors have agreed to vote shares of Pathmark common stock owned by the Yucaipa Investors, representing up to 33% of the outstanding shares of Pathmark common stock, in favor of the adoption of the merger agreement and against any action, proposal, transaction or agreement that would constitute an alternative acquisition proposal or that would compete with or would delay, discourage, adversely affect or inhibit the timely consummation of the merger;

the fact that gains from the transaction would be taxable to Pathmark stockholders for U.S. federal income tax purposes; and

the interests of the Yucaipa Investors and Pathmark's directors and officers in the merger described under "The Merger - Interests of Certain Persons in the Merger."

The foregoing discussion of the factors considered by the Pathmark board of directors is not intended to be exhaustive, but does set forth the principal factors considered by them. The Pathmark board of directors collectively reached the unanimous conclusion to recommend that the stockholders adopt the merger agreement in light of the various factors described above and other factors that each member of the board of directors believed were appropriate. In view of the wide variety of factors considered by Pathmark's board of directors in connection with their respective evaluation of the merger and the complexity of these matters, the Pathmark board of directors did not consider it practical to, and did not attempt to, quantify, rank or otherwise assign relative weights to the specific factors considered in reaching its decision, and the Pathmark board of directors did not undertake to make any specific determination as to whether any particular factor, or any aspect of any particular factor, was favorable or unfavorable to its ultimate determination. Rather, the Pathmark board of directors made its recommendations based on the totality of information presented to its members and the investigation conducted by them. In considering the factors discussed above, individual directors may have given different weights to different factors.

**A&P's Reasons for the Merger; Recommendation of the A&P Board of Directors**

The A&P board of directors has unanimously approved and declared the advisability of the merger agreement, has determined that the merger agreement is in the best interests of A&P and the holders of A&P common stock and unanimously recommends that A&P stockholders vote FOR the proposal to approve the issuance of shares of A&P common stock pursuant to the merger agreement and FOR the proposal to approve the amendment to A&P's charter regarding preemptive rights.

In reaching its determination to authorize and declare the advisability of the merger agreement and unanimously recommend the A&P stockholders vote FOR the proposal to approve the share issuance of A&P common stock pursuant to the merger agreement and FOR the proposal to approve the amendment to A&P's charter regarding preemptive rights, the A&P board of directors consulted with senior management and A&P's legal and financial advisors and considered various factors, including:

Pathmark's financial condition, results of operations, business, competitive position, reputation and business prospects, as well as current industry, economic, government, regulatory and market conditions and trends.

The recommendations and determinations of the A&P independent directors.

An assessment of the following:

The complementary strengths of each company.

A&P's integration capabilities.

The combined company's potential to better serve customers in the New York, New Jersey and Philadelphia metro areas.

Benefits that would accrue to customers through the breadth of offerings available from the combined entity, including the continuation of community outreach.

The convenience and reassurance of choice that retention of the Pathmark banner would provide.

Anticipated annual integration synergies of approximately \$150 million within two years following the closing of the merger. In this regard, A&P expects the transaction to generate \$150 million of annual pretax cost savings within two years, over half of which are expected to be realized within six months, from reduced administrative expenses, including the consolidation of the combined companies' headquarters and the integration of Pathmark stores with A&P's existing, state of the art information technology systems. The remainder of the synergies are expected to be achieved through reductions in costs of goods sold and are expected to be achieved within 18 to 24 months from the date of closing and are the result of larger scale in purchasing, sharing of best practices within merchandising, merging of the A&P and Pathmark private label brands, and logistical cost savings as a result of the combined companies.

Efficiencies and customer knowledge benefits that the integration of A&P's modern systems technology platform will provide.

The regulatory risks relating to the merger, which the A&P board of directors analyzed with the assistance of its outside antitrust advisors.

The opinion dated as of March 4, 2007 delivered to A&P by JPMorgan to the effect that, as of that date, and subject to and based on the qualifications, assumptions and limitations set forth in the opinion, the merger consideration was fair, from a financial point of view, to A&P, as described under Opinion of A&P's Financial Advisor.

The judgment, advice and analyses of A&P's senior management, including their favorable recommendation of the merger and their analyses of conditions in the supermarket industry and the strategic options available to A&P.

Tengelmann's commitment to vote in favor of the merger after independently evaluating the merger's benefits and risks.

The fact that, because the exchange ratio under the merger agreement is fixed (i.e., will not be adjusted for fluctuations in the market price of A&P common stock or Pathmark common stock), the per share value of the merger consideration to be paid to Pathmark stockholders on completion of the merger could be significantly more or less than its implied value immediately prior to the announcement of the merger agreement.

The terms and conditions of A&P's debt financing commitment letters and the level of effort that A&P must use under the merger agreement to obtain the proceeds of the financing on the terms and conditions described in the commitment letters.

The terms and conditions of the merger agreement, the stockholder agreements and the voting agreements, including the form and amount of the consideration and the representations, warranties, covenants, conditions to closing and termination rights contained in those agreements.

That the Tengelmann Stockholder Agreement was negotiated by independent directors not affiliated with Tengelmann with the assistance of legal counsel and financial advisors.

The matters discussed under Risk Factors in this joint proxy statement/prospectus.

The A&P board of directors considered all of the foregoing factors as a whole and, on balance, concluded that they supported a favorable determination to authorize the merger agreement and declare its advisability.

The foregoing discussion of the information and factors considered by the A&P board of directors is not exhaustive, but A&P believes it includes all the material factors considered by the A&P board of directors. In view of the wide variety of factors considered in connection with its evaluation of the merger and the complexity of these matters, the A&P board of directors did not consider it practicable to, and did not attempt to, quantify or otherwise assign relative or specific weight or values to any of these factors. In addition, individual directors may have given different weights to different factors.



**Opinion of Pathmark's Financial Advisor**

Pathmark retained Citigroup as its financial advisor in connection with the merger. Pursuant to Citigroup's engagement letter with Pathmark, dated February 6, 2007, Citigroup rendered its oral opinion on March 4, 2007, confirmed in writing on March 4, 2007, to the Pathmark board of directors to the effect that, as of the date of its written opinion and based upon and subject to the considerations and limitations set forth in its written opinion, its work described below and other factors it deemed relevant, the merger consideration was fair, from a financial point of view, to the holders of Pathmark common stock (other than Yucaipa Companies and the Yucaipa Investors and their affiliates, which we refer to collectively as the *Yucaipa Group* ).

**The full text of Citigroup's written opinion dated March 4, 2007, which sets forth the assumptions made, procedures followed, matters considered and limitations on the review undertaken in connection with the opinion, is included as Annex G to this proxy statement/prospectus and is incorporated herein by reference. Citigroup's opinion was limited solely to the fairness of the merger consideration from a financial point of view as of the date of the opinion. Neither Citigroup's opinion nor the related analyses constituted a recommendation of the proposed merger to the Pathmark board of directors. Citigroup makes no recommendation to any stockholder regarding how such stockholder should vote or act with respect to the merger or any other matter described herein. Citigroup was not requested to consider, and its opinion does not address, the relative merits of the merger compared to any alternative business strategies that might exist for A&P or Pathmark or the effect of any other transaction in which A&P or Pathmark might engage. This summary of Citigroup's opinion is qualified in its entirety by reference to the full text of the opinion. Stockholders are urged to read Citigroup's opinion carefully and in its entirety.**

In arriving at its opinion, Citigroup:

reviewed a draft, dated March 4, 2007, of the merger agreement;

held discussions with certain senior officers, directors and other representatives and advisors of Pathmark and certain senior officers and other representatives and advisors of A&P concerning the businesses, operations and prospects of Pathmark and A&P;

examined certain publicly available business and financial information relating to Pathmark and A&P;

examined certain financial forecasts and other information and data relating to Pathmark and A&P, including projections for the fiscal years 2006 through 2011, which were provided to or discussed with Citigroup by the management of each of Pathmark and A&P, including information relating to the potential strategic implications and operational benefits (including the amount, timing and achievability thereof) anticipated by the management of each of Pathmark and A&P to result from the merger;

reviewed the financial terms of the merger as set forth in the merger agreement in relation to, among other things: current and historical market prices of Pathmark common stock and A&P common stock; the historical and projected earnings and other operating data of Pathmark and A&P; and the capitalization and financial condition of Pathmark and A&P;

considered, to the extent publicly available, the financial terms of certain other transactions that Citigroup considered relevant in evaluating the merger and analyzed certain financial,

stock market and other publicly available information relating to the businesses of other companies whose operations Citigroup considered relevant in evaluating those of Pathmark and A&P;

evaluated certain potential pro forma financial effects of the merger on A&P; and

conducted such other analyses and examinations and considered such other information and financial, economic and market criteria as it deemed appropriate in arriving at its opinion.

In rendering its opinion, Citigroup assumed and relied, without assuming any responsibility for independent verification, upon the accuracy and completeness of all financial and other information and data publicly available or provided to or otherwise reviewed by or discussed with Citigroup (including, without limitation, the projections referred to above) and upon the assurances of the management of each of Pathmark and A&P that they were not aware of any relevant information that has been omitted or that remains undisclosed to Citigroup. With respect to financial forecasts (including, without limitation, the projections referred to above) and other information and data relating to Pathmark or A&P provided to or otherwise reviewed by or discussed with Citigroup, Citigroup was advised by the respective management of each of Pathmark and A&P that such forecasts and other information and data were reasonably prepared on bases reflecting the best currently available estimates and judgments of the management of each of Pathmark and A&P as to the future financial performance of Pathmark and A&P, the potential strategic implications and operational benefits anticipated to result from the merger, and the other matters covered thereby Citigroup assumed, with the Pathmark board of directors' consent, that the financial results (including the potential strategic implications and operational benefits anticipated to result from the merger) reflected in such forecasts and other information and data will be realized in the amounts and at the times projected.

Citigroup assumed, with the consent of the Pathmark board of directors, that the merger will be consummated in accordance with its terms, without waiver, modification or amendment of any material term, condition or agreement and that, in the course of obtaining the necessary regulatory or third party approvals, consents and releases for the merger, no delay, limitation, restriction or condition will be imposed that would have an adverse effect on Pathmark, A&P or the contemplated benefits of the merger. Representatives of Pathmark advised Citigroup, and Citigroup further assumed, that the final terms of the merger agreement will not vary materially from those set forth in the draft of the merger agreement dated March 4, 2007 reviewed by Citigroup. Citigroup did not express any opinion as to what the value of the A&P common stock actually will be when issued pursuant to the merger or the price at which the A&P common stock will trade at any time. Citigroup did not make and was not provided with an independent evaluation or appraisal of the assets or liabilities (contingent or otherwise) of Pathmark or A&P, nor did Citigroup make any physical inspection of the properties or assets of Pathmark or A&P.

Citigroup was not requested to, and it did not, solicit third party indications of interest in the possible acquisition of all or part of Pathmark, nor was Citigroup requested to consider, and Citigroup's opinion does not address, the relative merits of the merger as compared to any alternative business strategies that might exist for Pathmark or the effect of any other transaction in which Pathmark might engage. Further, Citigroup expressed no view as to, and its opinion does not address, the relative impact on the holders of Pathmark common stock of any payments (other than the payment of the merger consideration in respect of shares of Pathmark common stock) to be made by Pathmark or A&P in connection with the merger to, or any arrangements entered into by Pathmark or A&P in connection with the merger with, the Yucaipa Group or any affiliate of the Yucaipa Group (other than Pathmark), including the Yucaipa Warrant Agreement and the Yucaipa Stockholder Agreement. Citigroup's opinion was necessarily based upon information available to it, and financial, stock market and other conditions and circumstances exist-

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ing, as of the date of the opinion. Except as described above, Pathmark imposed no other instructions or limitations on Citigroup with respect to the investigations made or procedures followed by Citigroup in rendering its opinion.

A description of the material financial analyses performed by Citigroup in connection with the preparation of its fairness opinion is set forth below. The following summary does not, however, purport to be a complete description of all the financial analyses performed by Citigroup in connection with its fairness opinion. The preparation of a fairness opinion is a complex analytical process involving various determinations as to the most appropriate and relevant methods of financial analysis and the application of those methods to the particular circumstances and is not necessarily susceptible to partial analysis or summary description. In arriving at its fairness determination, Citigroup considered the results of all of its analyses and did not attribute any particular weight to any factor or analysis considered by it. Rather, Citigroup made its determination as to fairness on the basis of its experience and professional judgment after considering the results of all of its analyses. Accordingly, Citigroup believes that the analyses and factors described below must be considered as a whole and that selecting portions of such analyses and factors or focusing on information presented in tabular format, without considering all analyses and factors or the narrative description of its analyses, could create a misleading or incomplete view of the processes underlying its analyses and opinion.

In its analyses, Citigroup made numerous assumptions with respect to industry performance, regulatory, general business, economic, market and financial conditions and other matters, many of which are beyond the control of Pathmark and A&P. No company, business or transaction used in Citigroup's analyses as a comparison is identical or directly comparable to Pathmark or A&P, and an evaluation of those analyses is not entirely mathematical. Rather, the analyses involve complex considerations and judgments concerning financial and operating characteristics and other factors that could affect the acquisition, public trading, or other values of the companies, business segments or transactions analyzed.

Analyses based upon forecasts of future results are not necessarily indicative of actual future results, which may be significantly more or less favorable than suggested by those analyses. The analyses do not purport to be appraisals or to reflect the prices at which businesses or securities actually may be sold. Because these analyses are inherently subject to uncertainty, being based upon numerous factors or events beyond the control of the parties or their respective advisors, none of Pathmark, A&P, Citigroup, their respective affiliates or any other person assumes responsibility if future results are materially different from those forecast.

The order of the analyses described does not represent relative importance or weight given to those analyses by Citigroup. Some of the summaries of the financial analyses include information presented in tabular format. To the extent the following quantitative information reflects market data, except as otherwise indicated, Citigroup based this information on market data existing on or before March 2, 2007, the last trading day before public announcement of the proposed merger. Accordingly, this information does not necessarily reflect current or future market conditions.

The merger consideration was determined by arms-length negotiations between Pathmark and A&P, in consultation with their respective financial advisors and other representatives, and was not established by such financial advisors.

The following is a summary of the material financial analyses presented to the Pathmark board of directors in connection with Citigroup's opinion. **Citigroup believes that the analyses and factors described below must be considered as a whole and that selecting portions of such analyses and factors or focusing on information presented in tabular format, without considering all analyses and**

factors or the narrative description of its analyses, could create a misleading or incomplete view of the processes underlying its analyses and opinion.

*Transaction Overview*

Citigroup reviewed with the Pathmark board of directors the basic terms of the merger, including the following:

consideration per share of Pathmark common stock to consist of \$9.00 in cash and 0.12963 shares of A&P common stock;

implied value for the merger consideration of \$13.00 per share of Pathmark common stock (based on the closing price of A&P common stock of \$30.86 on March 2, 2007), representing total equity value of \$742 million; and

pro forma percentage ownership by current Pathmark stockholders of approximately 14% of the combined company, based on basic shares outstanding; and approximately 16% on a fully diluted basis per the treasury stock method.

Citigroup calculated for the Pathmark board of directors the implied percentage premium of the merger consideration over the closing price of Pathmark common stock on March 2, 2007, the last trading day prior to announcement of the merger, the highest and lowest closing stock prices of the Pathmark common stock for the 52-week period ended on February 16, 2007 (which based on the increase in trading price from February 16, 2007 to February 20, 2007, Citigroup believed to be the last trading day unaffected by rumors of the proposed merger) and the average closing stock prices for the Pathmark common stock for the 30-day, 60-day, and 90-day periods ended on March 2, 2007. These calculations were based on historical information and public filings. The results of this analysis are set forth in the following table:

<b>Premium to:*</b>	
Share Price at March 2, 2007	15.6%
52 Week High	11.8
52 Week Low	71.1
30 Day Average	12.5
60 Day Average	14.8
90 Day Average	15.8

\* Based on merger consideration valued at \$13.00 per share, consisting of \$9.00 in cash and \$4.00 in shares of A&P common stock to be paid to Pathmark stockholders, based upon an exchange ratio of 0.12963 and A&P's closing stock price of \$30.86 on March 2, 2007.

*Selected Companies Analysis Pathmark*

Citigroup reviewed certain financial and stock market information and forecasted financial information of Pathmark and of seven selected publicly held companies that operate in the multiregional and regional supermarket retail sectors. The selected companies considered by Citigroup were:

<u>Multiregional</u>	<u>Regional</u>
The Kroger Co.	Ruddick Corporation
Safeway Inc.	A&P
SUPERVALU Inc.	Weis Markets, Inc.
	Ingles Markets, Incorporated

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For Pathmark and each of the selected companies for which information was available, Citigroup derived multiples of firm value to, among other things, estimated calendar year 2007 earnings before interest, taxes, depreciation and amortization, excluding extraordinary items and stock-based compensation expense, where applicable ( *Adjusted EBITDA* ). Citigroup calculated firm value as (a) equity value, based on the per share closing stock price on March 2, 2007 and fully diluted shares outstanding less any option proceeds, as reflected in each company's latest publicly available information, assuming exercise of all in-the-money options, warrants and convertible securities outstanding, less the proceeds from such exercise, plus (b) non-convertible indebtedness including capital leases, plus (c) minority interests, plus (d) non-convertible preferred stock, plus (e) all out-of-the-money convertible securities, plus (f) closed store reserves, minus (g) investments in unconsolidated affiliates (which, in the case of A&P, included A&P's interest in Metro at market value as of March 2, 2007) and cash and cash equivalents. Historical financial information for the selected companies was obtained from public filings. Estimated financial information for the selected companies and Pathmark was based on publicly available FirstCall consensus estimates.

Company	Firm Value* / CY2007E Adjusted EBITDA
The Kroger Co.	7.1x
Safeway Inc	7.6
SUPERVALU Inc	6.7
Ruddick Corporation	6.0
A&P	9.0
Weis Markets, Inc	8.0
Ingles Markets, Incorporated	NA
Pathmark	8.6

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\* Firm values for Pathmark and the selected companies were based on closing stock prices on March 2, 2007 (which, in the case of Pathmark, was \$11.25).

Based upon the selected companies analysis and taking into consideration other performance metrics, Citigroup selected a reference range of 6.5x to 8.0x, and applied this range to Pathmark's estimated fiscal year ( *FY* ) 2007 Adjusted EBITDA contained in the financial projections prepared by Pathmark's management, more fully described in *The Merger Pathmark Projected Financial Information*. Using Pathmark's estimated balance sheet data as of January 28, 2007 as provided by Pathmark's management, this analysis indicated the following approximate implied per share equity value reference range for Pathmark, as compared to the per share merger consideration:

Implied Per Share Equity Value Reference Range for Pathmark	Per Share Merger Consideration*
\$7.37 \$11.10	\$13.00

\* Based on merger consideration valued at \$13.00 per share, consisting of \$9.00 in cash and \$4.00 in shares of A&P common stock to be paid to Pathmark stockholders, based upon an exchange ratio of 0.12963 and A&P's closing stock price of \$30.86 on March 2, 2007.  
*Selected Companies Analysis A&P*

Citigroup reviewed certain financial and stock market information and forecasted financial information of A&P and of seven selected publicly held companies that operate in the multiregional and regional supermarket retail sectors. The selected companies considered by Citigroup were:

<u>Multiregional</u>	<u>Regional</u>
The Kroger Co.	Ruddick Corporation
Safeway Inc.	Pathmark
SUPERVALU Inc.	Weis Markets, Inc.
	Ingles Markets, Incorporated

For A&P and each of the selected companies for which information was available, Citigroup derived multiples of firm value to, among other things, estimated calendar year 2007 Adjusted EBITDA. Historical financial information for the selected companies was obtained from public filings. Estimated financial information for the selected companies and A&P was based on publicly available FirstCall consensus estimates.

<u>Company</u>	<u>Firm Value* / CY2007E Adjusted EBITDA</u>
The Kroger Co.	7.1x
Safeway Inc	7.6
SUPERVALU Inc	6.7
Ruddick Corporation	6.0
Pathmark	8.6
Weis Markets, Inc	8.0
Ingles Markets, Incorporated	NA
A&P	9.0

\* Firm values for A&P and the selected companies were based on closing stock prices on March 2, 2007 (which, in the case of A&P, was \$30.86).

Based upon the selected companies analysis and taking into consideration other performance metrics, Citigroup selected a reference range of 6.5x to 8.0x, and applied this range to A&P's estimated FY 2007 Adjusted EBITDA contained in the financial projections prepared by A&P's management. Using A&P's estimated balance sheet data as of February 28, 2007 as provided by A&P's management, this analysis indicated the following approximate implied per share equity value reference range for A&P, as compared to the closing price of the A&P common stock on March 2, 2007, the last trading day prior to announcement of the merger:

<u>Implied Per Share Equity Value Reference Range for A&amp;P</u>	<u>A&amp;P Stock Closing Price on March 2, 2007</u>
\$24.55 \$31.06	\$30.86

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### Precedent Transactions Analysis Pathmark

Citigroup reviewed publicly available information for nine selected merger and acquisition transactions in the supermarket retail sector publicly announced from November 2000 through April 2006. For each selected precedent transaction, Citigroup derived the ratio of firm value of the acquired company, based on the consideration paid in the transaction, to Adjusted EBITDA for the last twelve-month period prior to the announcement of the transaction for which financial results were available ( *LTM EBITDA* ):

<u>Date Announced</u>	<u>Acquiror</u>	<u>Target</u>	<u>Firm Value / LTM EBITDA</u>
April 20, 2006	Sun Capital Partners, Inc.	Marsh Supermarkets, Inc.	8.5x
January 23, 2006	SUPERVALU Inc.	Albertson's, Inc.	7.0 <sup>(1)</sup>
July 19, 2005	Metro Inc.	A&P Canada Co	9.0
December 23, 2004	Lone Star Funds	Bruno's Supermarkets Inc/ BI-LO, LLC	4.3 <sup>(2)</sup>
March 26, 2004	Albertson's, Inc.	JS USA Holdings, Inc. (Shaw's and Star Markets)	7.0
April 9, 2002	Willis Stein & Partners	Roundy's Inc.	6.2
September 4, 2001	Ahold USA, Inc.	Bruno's Supermarkets, Inc	8.3
December 5, 2000	Safeway Inc.	Genuardi's Family Markets, Inc.	7.0 <sup>(3)</sup>
November 16, 2000	Delhaize Group	Delhaize America Inc.	7.2 <sup>(4)</sup>

<sup>(1)</sup> Albertson's was acquired by SUPERVALU Inc., CVS Corporation and an investor group led by Cerberus Capital Management. LTM EBITDA was calculated for the portion of the business acquired by SUPERVALU Inc., which consisted of core grocery store assets.

<sup>(2)</sup> LTM EBITDA multiple based on FY 2004 (ended January 2, 2005).

<sup>(3)</sup> Value of Genuardi's is net of a \$100 million cash tax benefit received by Safeway as a result of deductible goodwill amortization created through the asset sale of Genuardi's.

<sup>(4)</sup> LTM EBITDA is pro forma for a full year of operations of Hannaford Brothers, which was acquired by Delhaize America in July of 2000.

With respect to the financial information for the companies involved in the selected precedent transactions, Citigroup relied on information available in public documents, company press releases and information published by Wall Street research. For purposes of this analysis, firm value is based on the aggregate consideration paid for the enterprise value of the target in the respective transaction and is otherwise calculated on the same basis as described above with respect to firm value under Selected Companies Analysis Pathmark, using latest balance sheet data as of the announcement date of the respective transaction, where available.

Based upon the precedent transactions analysis and taking into consideration other performance metrics, Citigroup selected a reference range of 7.0x to 9.0x LTM EBITDA and applied this range to Pathmark estimated FY 2006 Adjusted EBITDA contained in the financial projections prepared by Pathmark's management, more fully described in The Merger Pathmark Projected Financial Information. Using Pathmark's estimated balance sheet data as of January 28, 2007 as provided by Pathmark's man-

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agement, this analysis indicated the following approximate implied per share equity value reference range for Pathmark, as compared to the per share merger consideration:

Implied Per Share Equity Value Reference Range for Pathmark	Implied Per Share Merger Consideration*
\$6.00 \$10.51	\$13.00

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\* Based on merger consideration valued at \$13.00 per share, consisting of \$9.00 in cash and \$4.00 in shares of A&P common stock to be paid to Pathmark stockholders, based upon an exchange ratio of 0.12963 and A&P's closing stock price of \$30.86 on March 2, 2007.

*Discounted Cash Flow Analysis Pathmark*

Citigroup performed a discounted cash flow analysis of Pathmark to calculate the estimated present value, as of the projected closing date of July 31, 2007, of the standalone unlevered, after-tax free cash flows that Pathmark could generate over Pathmark's projected fiscal years 2007 through 2011, based on the projections prepared by Pathmark management. This discounted cash flow analysis excludes the value of any synergies that might result from the merger with A&P.

Citigroup calculated a range of estimated terminal values by applying a range of Adjusted EBITDA terminal value multiples of 6.4x to 8.0x to Pathmark's estimated FY 2011 Adjusted EBITDA contained in the financial projections prepared by Pathmark's management, more fully described in The Merger Pathmark Projected Financial Information. The unlevered, after-tax free cash flows and terminal values were discounted to present value as of July 31, 2007 using discount rates ranging from 8.0% to 9.0%, which range was derived taking into consideration, among other things, the estimated weighted average cost of capital for Pathmark using selected public company market data and Pathmark's cost of debt as of March 2, 2007. The terminal value multiples were determined based upon an assessment of public company trading values. Using Pathmark's estimated balance sheet data as of July 31, 2007 as provided by Pathmark's management, this analysis indicated the following approximate implied per share equity value reference range for Pathmark, as compared to the implied per share merger consideration:

Implied Per Share Equity Value Reference Range for Pathmark	Implied Per Share Merger Consideration*
\$10.91 \$15.77	\$13.00

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\* Based on merger consideration valued at \$13.00 per share, consisting of \$9.00 in cash and \$4.00 in shares of A&P common stock to be paid to Pathmark stockholders, based upon an exchange ratio of 0.12963 and A&P's closing stock price of \$30.86 on March 2, 2007.

*Discounted Cash Flow Analysis A&P*

Citigroup performed a discounted cash flow analysis of A&P to calculate the estimated present value, as of February 28, 2007, of the standalone unlevered, after-tax free cash flows that A&P could generate over A&P's projected fiscal years 2007 through 2011, based on the projections prepared by A&P's management. This discounted cash flow analysis excludes the value of any synergies that might result from the merger with Pathmark.

Citigroup calculated a range of estimated terminal values by applying a range of Adjusted EBITDA terminal value multiples of 6.4x to 8.0x to A&P's estimated FY 2011 Adjusted EBITDA. The unlevered, after-tax free cash flows and terminal values were discounted to present value as of February



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28, 2007 using discount rates ranging from 8.0% to 9.0%, which range was derived taking into consideration, among other things, the estimated weighted average cost of capital for A&P using selected public company market data and A&P's cost of debt as of March 2, 2007. The terminal value multiples were determined based upon an assessment of public company trading values. Using A&P's estimated balance sheet data as of February 28, 2007 as provided by A&P's management, this analysis indicated the following approximate implied per share equity value reference range for A&P, as compared to the closing price of the A&P common stock on March 2, 2007, the last trading day prior to announcement of the merger:

Implied Per Share Equity Value Reference Range for A&P	A&P Stock Closing Price on March 2, 2007
\$33.72 \$44.46	\$30.86

### *Other Factors*

In rendering its opinion, Citigroup also reviewed and considered other factors, including:

the relationship between movements in Pathmark common stock, movements in A&P common stock, and movements in the common stock of selected companies in the supermarket retail sector; and

publicly available research analysts' reports for Pathmark and A&P.

### *Miscellaneous*

Citigroup acted as financial advisor to Pathmark in connection with the transaction. Pursuant to Citigroup's engagement letter, Pathmark agreed to pay Citigroup the following fees for its services: (1) \$1,000,000 upon delivery of Citigroup's opinion; and (2) an additional \$2,500,000, payable upon either the consummation of the merger with A&P or the consummation of an alternative transaction which allows Pathmark to terminate a definitive agreement for the merger with A&P and accept such alternative transaction. In the event that Citigroup's engagement letter is terminated or expires prior to the consummation of the merger, the foregoing fees will be payable by Pathmark if the merger with A&P or any such alternative transaction is consummated, or if a definitive agreement is entered into with respect to any of the foregoing, at any time prior to the twelve-month anniversary of the termination or expiration of Citigroup's engagement letter. In addition, the Citigroup engagement letter provided that, solely to the extent that Pathmark had elected to pursue an alternative transaction following the public announcement of discussions involving the merger with A&P but prior to the execution of the merger agreement, Pathmark would have been required to pay the same fees outlined above to Citigroup with respect to such an alternative transaction as Citigroup would have received in connection with the merger.

Pathmark also has agreed, subject to certain limitations, to reimburse Citigroup for its reasonable expenses incurred in connection with its engagement, including the reasonable fees and expenses of its counsel. Pathmark has also agreed to indemnify Citigroup and related persons against certain liabilities and expenses relating to or arising out of its engagement, including liabilities under the federal securities laws.

Citigroup and its affiliates in the past have provided services to Pathmark, A&P and the Yucaipa Group and its affiliates unrelated to the merger, for which services Citigroup and such affiliates have received customary compensation. In the ordinary course of business, Citigroup and its affiliates may actively trade or hold the securities of Pathmark and A&P for their own account or for the account of their customers and, accordingly, may at any time hold a long or short position in such securities. In that re-

gard, as of March 2, 2007, the last trading day prior to the date Citigroup rendered its opinion to the board of directors of Pathmark, Citigroup and its affiliates held shares of Pathmark common stock representing approximately 1.0% of the outstanding Pathmark common stock (based on basic shares outstanding) and shares of A&P common stock representing approximately 0.7% of the outstanding A&P common stock (based on basic shares outstanding). In addition, Citigroup and its affiliates (including Citigroup Inc. and its affiliates) may maintain relationships with Pathmark, A&P and their respective affiliates, including providing financing and related services to A&P following the transaction.

Citigroup is an internationally recognized investment banking firm engaged in, among other things, the valuation of businesses and their securities in connection with mergers and acquisitions, restructurings, leveraged buyouts, negotiated underwritings, competitive biddings, secondary distributions of listed and unlisted securities, private placements and valuations for estate, corporate and other purposes. Pathmark selected Citigroup to act as its financial advisor on the basis of Citigroup's international reputation and Citigroup's familiarity with Pathmark.

As described above, Citigroup's opinion to Pathmark's board of directors was one of many factors taken into consideration by Pathmark's board of directors in making its determination to approve the merger and the merger agreement and the merger consideration was determined by arms-length negotiations between Pathmark and A&P, in consultation with their respective financial advisors and other representatives, and was not established by such financial advisors.

### **Pathmark Projected Financial Information**

Pathmark does not as a matter of course make public projections as to future sales, earnings, or other results. However, Pathmark's senior management prepared certain financial forecasts for internal use and for the use of Pathmark's board of directors and its advisors, and A&P and its advisors, in connection with the potential transaction. The accompanying financial forecasts were not prepared with a view toward public disclosure or with a view toward complying with the guidelines established by the American Institute of Certified Public Accountants with respect to prospective financial information, but, in the view of Pathmark's management, were prepared on a reasonable basis, reflect the best currently available estimates and judgments, and present to the best of management's knowledge and belief, the expected course of action and the expected future financial performance of Pathmark. However, this information is not fact and should not be relied upon as being necessarily indicative of future results, and readers of this joint proxy statement/prospectus are cautioned not to place undue reliance on the prospective financial information.

Neither Pathmark's independent auditors, nor any other independent accountants, have compiled, examined, or performed any procedures with respect to the prospective financial information contained herein, nor have they expressed any opinion or any other form of assurance on such information or its achievability, and assume no responsibility for, and disclaim any association with, the prospective financial information.

The accompanying financial forecasts were made available to the board of directors of Pathmark, to A&P and to Citigroup. We have included a subset of these projections to give stockholders of Pathmark access to certain nonpublic information considered by the Pathmark board of directors for purposes of considering and evaluating the merger. The inclusion of this information should not be regarded as an indication that the Pathmark board of directors, Citigroup, A&P or any other person considered, or now considers, it to be predictive of actual future results.

Pathmark advised the recipients of the projections that its internal financial forecasts, upon which the projections were based, are subjective in many respects. The projections reflect numerous estimates

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and assumptions with respect to industry performance, general business, economic, regulatory, market and financial conditions, as well as matters specific to Pathmark's business, all of which are difficult to predict and beyond Pathmark's or A&P's control. As a result, there can be no assurance that the projected results will be realized or that actual results will not be significantly higher or lower than projected.

Since the projections cover multiple years, such information by its nature becomes less predictive with each successive year. The financial projections were prepared solely for internal use and for the use of Pathmark's board of directors and its advisors and A&P and its advisors in connection with the potential transaction and not with a view toward public disclosure or toward complying with generally accepted accounting principles (GAAP), the published guidelines of the SEC regarding projections. The projections included in this proxy statement/prospectus were prepared by, and are the responsibility of, Pathmark's management. Furthermore, the financial projections do not take into account any circumstances or events occurring after the date the projections were prepared and, in particular, do not take into account or give effect to the merger or the proposed financing of the merger.

Pathmark has made publicly available its actual results of operations for fiscal year 2006. You should review Pathmark's Annual Report on Form 10-K, as amended, for the fiscal year ended February 3, 2007 to obtain this information. See [Where You Can Find More Information](#). Readers of this proxy statement/prospectus are cautioned not to place undue reliance on the projections set forth below. No one has made or makes any representation to any stockholder regarding the information included in these projections.

For the foregoing reasons, as well as the bases and assumptions on which the financial projections were compiled, the inclusion of specific portions of the financial projections in this proxy statement/prospectus should not be regarded as an indication that such projections will be predictive of actual future events, and they should not be relied on as such. Except as required by applicable securities laws, Pathmark and A&P do not intend to update or otherwise revise the financial projections or the specific portions presented to reflect circumstances existing after the date when made or to reflect the occurrence of future events, even in the event that any or all of the assumptions underlying the projections are shown to be in error.

### *Management Projections Pathmark*

(Dollars in millions)	Fiscal Years					
	2006	2007	2008	2009	2010	2011
<i>Total Revenues</i>	\$ 3,982.2	\$ 4,022.7	\$ 4,102.5	\$ 4,270.6	\$ 4,484.6	\$ 4,793.3
<i>Gross Profit</i>	\$ 1,162.0	\$ 1,200.9	\$ 1,239.7	\$ 1,306.1	\$ 1,386.2	\$ 1,496.0
<i>Adjusted EBITDA</i> <sup>(1)(2)</sup>	\$ 131.4	\$ 152.8	\$ 175.5	\$ 202.8	\$ 229.4	\$ 258.5
<i>EBIT</i>	\$ 35.9	\$ 45.6	\$ 68.4	\$ 85.9	\$ 107.2	\$ 128.5
<i>Capital Expenditures</i>	\$ 70.4	\$ 90.0	\$ 167.2	\$ 160.6	\$ 145.0	\$ 145.0

(1) Represents earnings before interest, taxes, depreciation, amortization, excluding extraordinary items and stock compensation expense. Adjusted EBITDA and EBIT are non-U.S. GAAP financial measures.

(2) 2006 Adjusted EBITDA excludes 53rd week earnings. 2007 Adjusted EBITDA was determined without giving effect to labor buyout charges.

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### *Key Assumptions for the Projected Financial Information for Years 2006 Through 2011*

The Total Revenues, Gross Profit, Adjusted EBITDA, EBIT and Capital Expenditures as reflected in the above table were prepared taking into account the following assumptions:

Revenue growth, through increased offerings and additional breadth of products, particularly as a result of new store openings and the renovation of existing stores, at a compounded annual rate of under 4.0% from 2006 through 2011.

Gross profit margin of 29.2% in 2006, increasing to 31.2% in 2011, driven by an improvement in the sales mix with a greater emphasis on perishable departments and an emphasis on improving Private Label penetration.

Selling, general and administrative costs, as a percentage of sales, from 25.9% in 2006 to 25.8% in 2011 as a result continued emphasis on labor management, online auctions and higher revenues driving improved economies of scale.

Effective aggregate tax rate averaging 40%.

Capital expenditures, the majority of which relate to new stores and the renovation of existing stores, as well as additional expenditures on management information systems, in each case to help drive revenue and profits, with the expectation that depreciation and amortization will trend in line with capital expenditures.

The Yucaipa Investors Series A Warrants are exercised in 2008 resulting in proceeds of approximately \$85 million.

### **Opinion of A&P's Financial Advisor**

Pursuant to an engagement letter dated November 16, 2006, A&P retained JPMorgan as its financial advisor in connection with the proposed merger.

At the meeting of the A&P board of directors on March 4, 2007, JPMorgan rendered its oral opinion, subsequently confirmed in writing, to the A&P board of directors that, as of such date and based upon and subject to the factors and assumptions set forth in its opinion, the consideration to be paid by A&P in the proposed merger was fair, from a financial point of view, to A&P. No limitations were imposed by the A&P board of directors upon JPMorgan with respect to the investigations made or procedures followed by it in rendering its opinions.

The full text of the written opinion of JPMorgan, dated March 4, 2007, which sets forth, among other things, the assumptions made, procedures followed, matters considered and limits on the review undertaken, is attached as Annex F to this joint proxy statement/prospectus and is incorporated herein by reference. A&P stockholders are urged to read the opinion in its entirety. JPMorgan's written opinion is addressed to the A&P board of directors, is directed only to the consideration to be paid in the merger and does not constitute a recommendation to any stockholder of A&P as to how such stockholder should vote with respect to the proposed merger or any other matter, including the share issuance or charter amendment. The summary of the opinion of JPMorgan set forth in this joint proxy statement/prospectus is qualified in its entirety by reference to the full text of such opinion.

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In arriving at its opinions, JPMorgan, among other things:

reviewed the merger agreement and certain other related agreements dated March 4, 2007;

reviewed certain publicly available business and financial information concerning A&P and Pathmark and the industries in which they operate;

compared the proposed financial terms of the merger with the publicly available financial terms of certain transactions involving companies JPMorgan deemed relevant and the consideration received for such companies;

compared the financial and operating performance of A&P and Pathmark with publicly available information concerning certain other companies JPMorgan deemed relevant and reviewed the current and historical market prices of A&P common stock and Pathmark common stock and certain publicly traded securities of such other companies;

reviewed certain internal financial analyses and forecasts prepared by the managements of A&P and Pathmark relating to their respective businesses, as well as the estimated amount and timing of cost savings and related expenses and synergies expected to result from the merger (the *Synergies* );

reviewed certain forecasts prepared by management of A&P giving effect to certain divestitures contemplated by the merger agreement (the *Divestiture Case* ); and

performed such other financial studies and analyses and considered such other information as JPMorgan deemed appropriate for the purposes of its opinion.

JPMorgan also held discussions with certain members of the management of A&P and Pathmark with respect to certain aspects of the merger, and the past and current business operations of A&P and Pathmark, the financial condition and future prospects and operations of A&P and Pathmark, the effects of the merger on the financial condition and future prospects of A&P and Pathmark, and certain other matters JPMorgan believed necessary or appropriate to its inquiry.

In giving its opinion, JPMorgan relied upon and assumed, without assuming responsibility or liability for independent verification, the accuracy and completeness of all information that was publicly available or was furnished to or discussed with JPMorgan by A&P and Pathmark or otherwise reviewed by or for JPMorgan. JPMorgan did not conduct or was not provided with any valuation or appraisal of any assets or liabilities, nor did JPMorgan evaluate the solvency of A&P or Pathmark under any state or federal laws relating to bankruptcy, insolvency or similar matters. In addition, JPMorgan was not provided with any forecasts or other nonpublic information with respect to Metro, a Canadian supermarket chain in which A&P owns an equity stake, and at A&P's direction valued such equity stake on an after-tax basis based upon publicly available information and assuming a liquid market for Metro's shares. In relying on analyses and forecasts provided to it, including the Synergies, JPMorgan assumed that such analyses and forecasts were reasonably prepared based on assumptions reflecting the best currently available estimates and judgments by management as to the expected future results of operations and financial condition of A&P and Pathmark to which such analyses or forecasts related. JPMorgan expressed no view as to such analyses or forecasts, including the Synergies and the Divestiture Case, or the assumptions on which they were based. JPMorgan also assumed that the representations and warranties made by A&P and Pathmark in the merger agreement and the related agreements were and will be true in all ways material to its analysis. JPMorgan also assumed that the merger will have the tax consequences described

in discussions with, and materials furnished to JPMorgan by, representatives of A&P, and that the other transactions contemplated by the merger agreement will be consummated as described in the merger agreement. JPMorgan relied as to all legal matters relevant to the rendering of its opinion upon the advice of counsel. JPMorgan further assumed that all material governmental, regulatory or other consents and approvals necessary for the closing of the merger would be obtained without any adverse effect on A&P or Pathmark or on the contemplated benefits of the merger, except as provided in JPMorgan's analysis of the Divestiture Case.

The projections furnished to JPMorgan for A&P and Pathmark were prepared by the respective management of each company. Neither A&P nor Pathmark publicly discloses internal management projections of the type provided to JPMorgan in connection with JPMorgan's analysis of the merger, and such projections were not prepared with a view toward public disclosure. These projections were based on numerous variables and assumptions that are inherently uncertain and may be beyond the control of management, including, without limitation, factors related to general economic and competitive conditions and prevailing interest rates. Accordingly, actual results could vary significantly from those set forth in such projections.

JPMorgan's opinion and financial analyses were only one of the many factors considered by A&P in its evaluation of the proposed merger and should not be viewed as determinative of the views of the A&P board of directors or its management with respect to the proposed merger or the merger consideration. The consideration was determined through negotiation between A&P and Pathmark.

JPMorgan's opinion is based on economic, market and other conditions as in effect on, and the information made available to JPMorgan as of, the date of such opinion. Subsequent developments may affect JPMorgan's opinion, and JPMorgan does not have any obligation to update, revise or reaffirm such opinion. JPMorgan's opinion is limited to the fairness, from a financial point of view, of the consideration to be paid by A&P in the proposed merger, and JPMorgan has expressed no opinion as to the fairness of the merger to, or any consideration of, the holders of any other class of securities, creditors or other constituencies of A&P or the underlying decision by A&P to engage in the merger. JPMorgan expressed no opinion as to the price at which shares of A&P common stock or Pathmark common stock will trade at any future time, whether before or after the closing of the merger.

In accordance with customary investment banking practice, JPMorgan employed generally accepted valuation methods in reaching its opinion. The following is a summary of the material financial analyses utilized by JPMorgan in connection with providing its opinion.

#### ***Pathmark Analyses***

***Public Trading Multiples.*** Using publicly available information, JPMorgan compared selected financial data of Pathmark with similar data for selected publicly traded companies engaged in businesses which JPMorgan judged to be analogous to Pathmark. The companies selected by JPMorgan were A&P and the following seven publicly held companies, five of which are large food retailers with national scale and two of which are regionally focused food retailers operating primarily in the northeastern United States.

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### Large/National Food Retailers

Koninklijke Ahold N.V. (Royal Ahold)  
Safeway, Inc.  
Delhaize Group  
The Kroger Co.  
Supervalu, Inc.

### Regional Northeastern Food Retailers

Weis Markets, Inc.  
Ruddick Corporation

JPMorgan compared, among other things, implied firm values on March 2, 2007 as multiples of estimated earnings before interest, taxes, depreciation and amortization, commonly and hereinafter referred to as EBITDA, for fiscal year 2007. JPMorgan then applied ranges of selected multiples of estimated EBITDA for fiscal year 2007 derived from the selected companies to corresponding financial data of Pathmark on a stand-alone basis and on a pro forma basis taking into account the Synergies and the Divestiture Case and other effects that were anticipated by management of A&P to potentially result from the merger. Financial data for the selected companies were based on equity research estimates produced by reputable brokerages, public filings and other publicly available information. Financial data for Pathmark is based on internal estimates of Pathmark's management and internal estimates of A&P management. This analysis resulted in the following implied valuation range of equity values for Pathmark common stock, as compared to the value as of March 2, 2007, of the consideration to be paid:

	Implied Valuation Reference Range	Implied Offer Value
Pathmark Management Case	\$ 8.75 \$14.40	\$ 13.00
A&P Base Case	\$ 7.60 \$12.90	\$ 13.00
A&P Base Case with the Divestiture Case	\$ 4.80 \$8.80	\$ 13.00

*Selected Transaction Analysis.* Using publicly available information, JPMorgan examined selected food retail industry transactions with respect to transaction values as multiples of the targets' sales and EBITDA for the twelve months prior to announcement of the transactions. Specifically, JPMorgan reviewed the following transactions:

Acquirer	Target
Delhaize Group	Hannaford Bros. Co.
The Kroger Co.	Fred Meyers Stores, Inc.
Safeway, Inc.	Dominick's Finer Foods, LLC
Safeway, Inc.	Randall's Food & Drugs, LP
Koninklijke Ahold N.V. (Royal Ahold)	Giant Food Inc.
Albertsons, Inc.	American Stores Co.
Whole Foods Market, Inc.	Wild Oats Markets, Inc.
Albertsons, Inc.	Shaw's Supermarkets, Inc.
Supervalu, Inc.	Albertsons, Inc. (Core Assets)
Safeway, Inc.	Genuardi's Family Markets, Inc.
J Sainsbury plc	Star Markets
Metro, Inc.	A&P Canada
Loblaw Companies Ltd.	Provigo, Inc.
Koninklijke Ahold N.V. (Royal Ahold)	Bruno's Supermarkets, Inc.





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JPMorgan applied a range of multiples derived from such analysis to the Pathmark's EBITDA and sales for the twelve months prior to the announcement of the transactions, both with and without the Divestiture Case, and arrived at the following implied valuation range of equity values for Pathmark common stock, as compared to the value as of March 2, 2007, of the consideration to be paid:

	<u>Implied Valuation Reference Range</u>	<u>Implied Offer Value</u>
EBITDA	\$ 8.60 \$12.95	\$ 13.00
Sales	\$ 15.60 \$19.40	\$ 13.00
EBITDA with the Divestiture Case	\$ 4.45 \$7.45	\$ 13.00
Sales with the Divestiture Case	\$ 12.25 \$15.30	\$ 13.00

Note: EBITDA and sales are for the twelve months prior to the announcement of the transaction.

*Discounted Cash Flow Analysis.* JPMorgan conducted a discounted cash flow analysis for the purpose of determining the fully diluted equity value per share for Pathmark common stock. JPMorgan calculated the unlevered free cash flows that Pathmark is expected to generate during fiscal years 2007 through 2011 based upon financial projections prepared by the management of Pathmark through the fiscal year 2009 and upon A&P's projections adjusted to reflect more moderate growth in revenues and lower operating margins during the full five-year period. JPMorgan also calculated a range of terminal asset values of Pathmark at the end of the five-year period ending 2011 by applying a perpetual growth rate ranging from 2.5% to 3.5% of the unlevered free cash flow of Pathmark during the final year of the five-year period. The unlevered free cash flows and the range of terminal asset values were then discounted to present values using a range of discount rates from 8.0% to 8.5%, which were chosen by JPMorgan based upon an analysis of the weighted average cost of capital of Pathmark. The present value of the unlevered free cash flows and the range of terminal asset values were then adjusted for Pathmark's fiscal year 2006 third quarter excess cash, option exercise proceeds and total debt. Taking into account the Synergies and the Divestiture Case and other effects that were anticipated by management of A&P to potentially result from the merger, the discounted cash flow analysis indicated the following range of equity values for Pathmark common stock:

	<u>Implied Valuation Reference Range</u>	<u>Implied Offer Value</u>
Pathmark Management Case	\$ 7.30 \$14.15	\$ 13.00
Pathmark Management Case with 100% Synergies	\$ 19.75 \$27.25	\$ 13.00
A&P Base Case	\$ 9.20 \$15.65	\$ 13.00
A&P Base Case with 100% Synergies	\$ 21.65 \$28.75	\$ 13.00
A&P Base Case with the Divestiture Case	\$ 7.00 \$12.40	\$ 13.00
A&P Base Case with the Divestiture Case and 100% Synergies	\$ 19.45 \$25.50	\$ 13.00

**A&P Analyses**

**Public Trading Multiples.** Using publicly available information, JPMorgan compared selected financial data of A&P with similar data for selected publicly traded companies engaged in businesses which JPMorgan judged to be analogous to A&P. The companies selected by JPMorgan were Pathmark and the following seven publicly held companies, five of which are large food retailers with national scale and two of which are regionally focused food retailers operating primarily in the northeastern United States.

Large/National Food Retailers

Koninklijke Ahold N.V. (Royal Ahold)  
Safeway, Inc.  
Delhaize Group  
The Kroger Co.  
Supervalu, Inc.

Regional Northeastern Food Retailers

Weis Markets, Inc.  
Ruddick Corporation

JPMorgan compared, among other things, implied firm values on March 2, 2007 as multiples of estimated EBITDA, for fiscal year 2007. JPMorgan then applied ranges of selected multiples of estimated EBITDA for fiscal year 2007 derived from the selected companies to corresponding financial data of A&P on a stand-alone basis. Financial data for the selected companies were based on equity research estimates produced by reputable brokerages, public filings and other publicly available information. Financial data for A&P are based on internal estimates of A&P management.

As of the date of JPMorgan's opinion, A&P owned 15.7% of Metro, a Canadian food retailer to whom it sold its Canadian operations in July 2005. JPMorgan independently valued A&P's stake in Metro on an after-tax basis based upon publicly available information, assuming a liquid market for the shares of Metro and using relevant multiples of firm value to EBITDA and stock price to earnings per share, both for fiscal year 2007. Adding the value of the Metro equity investment to the implied value of A&P common stock resulted in the following implied valuation range of equity values for A&P common stock, as compared to the reference price for the transaction exchange ratio:

	<b>Implied Valuation Reference Range</b>	<b>Reference Price for Exchange Ratio</b>
A&P Management Case	\$ 16.35 \$25.25	
Value of Stake in Metro, Inc.	\$ 8.35 \$10.70	
<hr/>		
Total Value of A&P	\$ 24.70 \$35.95	\$ 27.00

**Discounted Cash Flow Analysis.** JPMorgan conducted a discounted cash flow analysis for the purpose of determining the fully diluted equity value per share for A&P common stock. JPMorgan calculated the unlevered free cash flows that A&P is expected to generate during the five-year period ending 2011 based upon financial projections prepared by the management of A&P. JPMorgan also calculated a range of terminal asset values of A&P at the end of the five-year period ending 2011 by applying a perpetual growth rate ranging from 2.5% to 3.5% of the unlevered free cash flow of A&P during the final year of the five-year period. The unlevered free cash flows and the range of terminal asset values were then discounted to present values using a range of discount rates from 8.0% to 8.5%, which were chosen by JPMorgan based upon an analysis of the weighted average cost of capital of A&P. The present value of the unlevered free cash flows and the range of terminal asset values were then adjusted for A&P's fiscal year 2006 third quarter excess cash, option exercise proceeds and total debt.

A&P currently has \$479 million of net operating losses ( *NOLs* ), commonly and hereinafter referred to as NOLs, which can be used, subject to certain limitations, to offset future tax payments. JPMorgan independently conducted a discounted cash flow valuation of A&P's NOLs assuming their unlevered impact to cash flows over a ten-year period. This incremental impact on unlevered cash flow was then discounted to present value using a range of discount rates from 5.0% to 5.5%, which were chosen by JPMorgan based upon the risk associated with U.S. government issued notes with ten-year maturities.

Combining the stand alone A&P discounted cash flow value, the value of A&P's Metro stake (as described above) and the discounted cash flow value of A&P's NOLs indicated the following range of equity values for Pathmark common stock, as compared to the reference price for the transaction exchange ratio:

	<b>Implied Valuation Reference Range</b>	<b>Reference Price for Exchange Ratio</b>
A&P Management Case	\$ 10.75 \$19.95	
Value of Stake in Metro	\$ 8.35 \$10.70	
Value of A&P NOLs	\$ 2.80 \$2.90	
<hr/>		
Total Value of A&P	\$ 21.90 \$33.55	\$ 27.00

The foregoing summary of certain material financial analyses does not purport to be a complete description of the analyses or data presented by JPMorgan. The preparation of a fairness opinion is a complex process and is not necessarily susceptible to partial analysis or summary description. JPMorgan believes that the foregoing summary and its analyses must be considered as a whole and that selecting

portions of the foregoing summary and these analyses, without considering all of its analyses as a whole, could create an incomplete view of the processes underlying the analyses and its opinion. In arriving at its opinion, JPMorgan did not attribute any particular weight to any analyses or factors considered by it and did not form an opinion as to whether any individual analysis or factor (positive or negative), considered in isolation, supported or failed to support its opinion. Rather, JPMorgan considered the totality of the factors and analyses performed in determining its opinion. Analyses based upon forecasts of future results are inherently uncertain, as they are subject to numerous factors or events beyond the control of the parties and their advisors. Accordingly, forecasts and analyses used or made by JPMorgan are not necessarily indicative of actual future results, which may be significantly more or less favorable than suggested by those analyses. Moreover, JPMorgan's analyses are not and do not purport to be appraisals or otherwise reflective of the prices at which businesses actually could be bought or sold. None of the selected companies reviewed as described in the above summary is identical to A&P, and none of the selected transactions reviewed was identical to the merger. However, the companies selected were chosen because they are publicly traded companies with operations and businesses that, for purposes of JPMorgan's analysis, may be considered similar to those of A&P. The transactions selected were similarly chosen because their participants, size and other factors, for purposes of JPMorgan's analysis, may be considered similar to the merger. The analyses necessarily involve complex considerations and judgments concerning differences in financial and operational characteristics of the companies involved and other factors that could affect the companies compared to A&P and the transactions compared to the merger.

As a part of its investment banking business, JPMorgan and its affiliates are continually engaged in the valuation of businesses and their securities in connection with mergers and acquisitions, investments for passive and control purposes, negotiated underwritings, secondary distributions of listed and unlisted securities, private placements and valuations for estate, corporate and other purposes. JPMorgan was selected to deliver an opinion to the A&P board of directors with respect to the merger on the basis of such experience and its familiarity with A&P.

For services rendered in connection with the merger and the delivery of its opinion, A&P has agreed to pay JPMorgan fees of up to \$12 million in the aggregate. While a customary portion of the fees was paid upon announcement of the merger, a significant portion of JPMorgan's fees is contingent upon the completion of the merger. In addition, A&P has agreed to reimburse JPMorgan for its expenses incurred in connection with its services, including the fees of counsel, and indemnify JPMorgan against certain liabilities arising out of its engagement. Moreover, in the event Pathmark pays a break-up fee to A&P, A&P shall pay to JPMorgan a certain percentage of such fee.

JPMorgan has provided financial advisory, commercial or investment banking services to A&P in the past, including advising on A&P's July 2005 sale of its Canadian assets. In addition, JPMorgan and its affiliates maintain banking and other business relationships with A&P and its affiliates, for which it receives customary fees. In the ordinary course of their businesses, JPMorgan and its affiliates may actively trade the debt and equity securities of A&P or Pathmark for their own accounts or for the accounts of customers and, accordingly, they may at any time hold long or short positions in such securities.

#### **Interests of Certain Persons in the Merger**

In considering the recommendations of the A&P and Pathmark boards of directors, you should be aware that the directors and executive officers of Pathmark and A&P, the Yucaipa Investors, Pathmark's largest stockholder, and Tengelmann, A&P's largest stockholder, each have interests in the merger agreement and the merger that are different from, or in addition to, your interests as a stockholder. These interests may present them with actual or potential conflicts of interest, and these interests, to the extent material, are described below. The A&P and Pathmark boards of directors were aware of these potential

conflicts of interest and considered them, among other matters, in reaching their decision to unanimously authorize and declare the advisability of the merger agreement and the transactions contemplated by the merger agreement.

***Treatment of Stock Options and Other Equity-Based Awards Held by Pathmark's Executive Officers and Directors***

*Stock Options.* As of the record date, there were approximately [\_\_\_\_\_] shares of Pathmark common stock issuable pursuant to stock options granted under Pathmark's equity incentive plans to certain Pathmark executive officers and directors. Under the terms of the merger agreement, each outstanding stock option held by any person, including Pathmark executive officers and directors, will become fully vested and exercisable no later than fifteen days prior to the closing of the merger and, at the effective time of the merger, will be treated as described in the following paragraphs.

Each such outstanding stock option granted under Pathmark's equity incentive plans (other than any Pre-Amendment Option described in the following paragraph) will be canceled in exchange for the right to receive a lump sum cash payment to be paid (net of applicable withholding taxes) as soon as practicable after the completion of the merger. The lump sum cash payment will equal the product of (i) the number of shares of Pathmark common stock that such executive officer or director could have purchased had he or she exercised such stock option in full immediately prior to the closing, and (ii) the excess, if any, of (x) the per share closing price of Pathmark common stock, as such price is quoted on the last trading day immediately prior to the closing date (the *Pathmark Closing Price*), over (y) the exercise price per share of such stock option. Any such stock options (other than Pre-Amendment Options) with exercise prices equal to or greater than the Pathmark Closing Price will be canceled for no consideration.

With respect to each such outstanding stock option that was granted under Pathmark's equity incentive plans prior to June 9, 2005 (a *Pre-Amendment Option*), Pathmark is obligated to use its commercially reasonable efforts to obtain any consents required to cancel any Pre-Amendment Options with an exercise price less than the Pathmark Closing Price, in exchange for a lump sum cash payment as provided in the preceding paragraph. Pathmark has already obtained such consents from John Derderian, Robert Joyce, Marc Strassler and Frank Vitrano,

Any Pre-Amendment Option that is not canceled and cashed out, or that has an exercise price equal to or greater than the Pathmark Closing Price, will be converted into a stock option (a *Rollover Option*) to purchase, on the same terms and conditions as were applicable under such Pre-Amendment Option, taking into account vesting and other changes resulting from the merger, (i) the number of shares of A&P common stock equal to the product of (x) the number of shares of Pathmark common stock such executive officer or director could have purchased had he or she exercised such Pre-Amendment Option in full immediately prior to the closing, and (y) the Option Exchange Ratio (as defined in the following sentence), at (ii) a price per share equal to (x) the exercise price per share of such Pre-Amendment Option, divided by (y) the Option Exchange Ratio. The *Option Exchange Ratio* means (x) the Pathmark Closing Price, divided by (y) \$27.00.

The following table identifies, for certain Pathmark directors and executive officers, as of April 25, 2007 (the most recent practicable date prior to filing), with respect to stock options that will be cashed out in connection with the merger (excluding stock options set forth in Note 1 to such table that would be Rollover Options assuming the Pathmark Closing Price were determined as of April 25, 2007): the aggregate number of shares of Pathmark common stock subject to outstanding vested and unvested stock options, the number of shares of Pathmark common stock subject to such unvested stock options that will become fully vested in connection with the merger, the weighted average exercise price and the value of such unvested stock options, and the weighted average exercise price and the value of all such

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stock options. The information in the table assumes that all such stock options remain outstanding as of the closing of the merger.

Name	Aggregate Shares Subject to Options <sup>(1)</sup>	Number of Shares Underlying Unvested Options	Weighted Average Exercise Price of Unvested Options	Value of Unvested Options <sup>(2)</sup>	Weighted Average Exercise Price of Vested and Unvested Options	Value of Vested and Unvested Options <sup>(3)</sup>
Joseph Adelhardt <sup>(4)</sup>	20,000		\$ 0.00		\$ 11.70	\$ 20,800
Kevin Darrington <sup>(4)</sup>	42,000	42,000	\$ 10.35	\$ 100,380	\$ 10.35	\$ 100,380
John Derderian <sup>(4)</sup>	151,900	78,775	\$ 9.78	\$ 233,174	\$ 8.32	\$ 671,398
Michael R. Duckworth <sup>(5)</sup>						
Daniel H. Fitzgerald <sup>(5)</sup>	20,000	8,333	\$ 9.50	\$ 26,999	\$ 8.36	\$ 87,600
Harvey Gutman <sup>(4)</sup>	23,000		\$ 0.00		\$ 11.30	\$ 33,120
Bruce Hartman <sup>(5)</sup>	25,000	8,333	\$ 9.50	\$ 26,999	\$ 7.92	\$ 120,500
David R. Jessick <sup>(5)</sup>	21,667	16,111	\$ 9.97	\$ 44,627	\$ 10.10	\$ 57,201
Robert J. Joyce <sup>(4)</sup>	99,900	78,775	\$ 9.78	\$ 233,174	\$ 8.82	\$ 391,608
Larry R. Katzen <sup>(5)</sup>	20,000	15,000	\$ 9.93	\$ 42,150	\$ 10.07	\$ 53,400
Mark C. Kramer <sup>(4)</sup>	101,900	78,775	\$ 9.78	\$ 233,174	\$ 10.12	\$ 266,978
Kenneth Martindale <sup>(4)</sup>	500,000	333,333	\$ 9.99	\$ 916,666	\$ 9.99	\$ 1,375,000
Gregory Mays <sup>(5)</sup>	22,500	16,666	\$ 9.99	\$ 45,831	\$ 10.11	\$ 59,175
Sarah E. Nash <sup>(5)</sup>	20,000	15,000	\$ 9.93	\$ 42,150	\$ 10.07	\$ 53,400
John T. Standley <sup>(4)(5)</sup>	1,500,000	1,000,000	\$ 10.39	\$ 2,350,000	\$ 10.39	\$ 3,525,000
Marc Strassler <sup>(4)</sup>	62,500	41,000	\$ 9.79	\$ 120,950	\$ 10.37	\$ 148,125
Ira Tochner <sup>(5)</sup>						
Frank G. Vitrano <sup>(4)</sup>	1,025,000	418,750	\$ 10.06	\$ 1,122,250	\$ 7.99	\$ 4,868,750
John J. Zillmer <sup>(5)</sup>	20,000	15,000	\$ 9.93	\$ 42,150	\$ 10.07	\$ 53,400

(1) Does not include the following stock options held by Pathmark directors and executive officers, which would be Rollover Options, assuming the Pathmark Closing Price were determined as of April 25, 2007: 350,000 (Frank G. Vitrano), 325,000 (Robert J. Joyce), 76,000 (John Derderian), 76,000 (Marc Strassler), 74,215 (Harvey Gutman), 62,300 (Joseph Adelhardt), 52,000 (Mark C. Kramer), and 5,000 (Daniel H. Fitzgerald).

(2) Illustrates the economic value of all unvested stock options that will become fully vested and cashed out in connection with the merger. Calculated for each individual by multiplying the number of shares underlying unvested stock options by the difference, if any, between \$12.74, which was the per share closing price of Pathmark common stock on April 25, 2007, and the weighted average exercise price of the unvested stock options.

(3) Illustrates the economic value of all stock options to be canceled and cashed out in connection with the merger. Calculated for each individual by multiplying the aggregate number of shares subject to stock options by the difference between the per share closing price of Pathmark common stock and the weighted average exercise price of all such stock options.

(4) Executive officer.

(5) Director.

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*Restricted Stock Units.* As of the record date, there were approximately [\_\_] restricted stock units granted under Pathmark's equity incentive plans to Pathmark's current executive officers and directors. Under the terms of the merger agreement, upon the closing of the merger, each award of restricted stock units held by an executive officer or director will become fully vested and converted into the right to receive a single lump sum cash payment (net of applicable withholding taxes) equal to the product of (i) the number of shares of Pathmark common stock applicable to such award immediately prior to the closing, and (ii) the Pathmark Closing Price.

The following table identifies, for certain Pathmark directors and executive officers, as of April 25, 2007, the aggregate number of shares of common stock subject to outstanding unvested restricted stock units, and the value of the unvested restricted stock units. The information in the table assumes that all such unvested restricted stock units remain outstanding as of the closing date of the merger.

Name	Aggregate Number of Shares Underlying Restricted Stock Units	Value of Restricted Stock Units <sup>(1)</sup>
Joseph Adelhardt <sup>(2)</sup>		
Kevin Darrington <sup>(2)</sup>	9,000	\$ 114,660
John Derderian <sup>(2)</sup>	11,375	\$ 144,918
Michael R. Duckworth <sup>(3)</sup>		
Daniel H. Fitzgerald <sup>(3)</sup>	3,600	\$ 45,864
Bruce Hartman <sup>(3)</sup>	3,600	\$ 45,864
Harvey Gutman <sup>(2)</sup>		
David R. Jessick <sup>(3)</sup>	3,600	\$ 45,864
Robert J. Joyce <sup>(2)</sup>	11,375	\$ 144,918
Larry R. Katzen <sup>(3)</sup>	3,600	\$ 45,864
Mark C. Kramer <sup>(2)</sup>	11,375	\$ 144,918
Kenneth Martindale <sup>(2)</sup>		
Gregory Mays <sup>(3)</sup>	3,600	\$ 45,864
Sarah E. Nash <sup>(3)</sup>	3,600	\$ 45,864
John T. Standley <sup>(2)(3)</sup>		
Marc Strassler <sup>(2)</sup>	9,500	\$ 121,030
Ira Tochner <sup>(3)</sup>		
Frank G. Vitrano <sup>(2)</sup>	3,750	\$ 47,775
John J. Zillmer <sup>(3)</sup>	3,600	\$ 45,864

<sup>(1)</sup> Illustrates the economic value of all restricted stock units that will become fully vested and cashed out in connection with the merger. Calculated for each individual by multiplying the aggregate number of shares underlying unvested restricted stock units by \$12.74, which was the per share closing price of Pathmark common stock on April 25, 2007.

<sup>(2)</sup> Executive officer.

<sup>(3)</sup> Director.

*Restricted Stock.* As of the record date, Messrs. Standley, Vitrano and Martindale were the only executive officers or directors to hold shares of Pathmark common stock subject to transfer restrictions and/or forfeiture under Pathmark's equity incentive plans, and they held approximately [\_\_] such shares.

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Under the terms of the merger agreement, upon the closing of the merger, each outstanding award of restricted stock held by an executive officer or director will become fully vested and converted into the right to receive a single lump sum cash payment (net of applicable withholding taxes) equal to the product of (i) the number of shares of Pathmark common stock subject to such award immediately prior to the closing of the merger, and (ii) the Pathmark Closing Price.

The following table identifies, for Messrs. Standley, Vitrano and Martindale, the aggregate number of unvested restricted shares of Pathmark common stock outstanding as of April 25, 2007, and the value of such unvested restricted shares that will become fully vested in connection with the merger. The information in the table assumes that all such unvested restricted shares remain outstanding as of the closing of the merger.

Name	Aggregate Number of Restricted Shares	Value of Restricted Shares <sup>(1)</sup>
John T. Standley	249,900	\$ 3,183,726
Frank G. Vitrano	58,100	\$ 740,194
Kenneth Martindale	116,662	\$ 1,486,274

<sup>(1)</sup> Illustrates the economic value of all restricted shares that will become fully vested and cashed out in connection with the merger. Calculated for each individual by multiplying the aggregate number of restricted shares by \$12.74, which was the per share closing price of Pathmark common stock on April 25, 2007.

### ***Employment Agreements***

*John T. Standley Employment Agreement.* Pursuant to the terms of an employment agreement entered into between Pathmark and Mr. Standley as of August 23, 2005, the merger will constitute a change of control, and therefore, immediately prior to the merger:

the stock options and restricted stock granted to Mr. Standley on August 23, 2005, will vest in full (to the extent not otherwise vested in connection with the merger); and

Mr. Standley's deferred compensation account balance will vest and become nonforfeitable.

In addition, Mr. Standley is entitled to receive certain severance payments and benefits in the event that his employment is terminated by Pathmark without cause (as such term is defined in his employment agreement) or by his resignation for good reason (which term is defined to include a material and adverse change in Mr. Standley's duties or reporting responsibilities, or the failure to re-elect Mr. Standley as the Chief Executive Officer and most senior officer of Pathmark or any successor thereto or if the company becomes a subsidiary of another public company, such public company), including the following:

payment of his salary and target bonus for a period of two years following the date of such termination, subject to acceleration in certain circumstances in connection with a change of control ;

continued health and insurance coverage for a period of one year following the date of such termination; and



payment of a tax gross-up payment, in the event that he becomes subject to the excise tax on golden parachute payments under the Internal Revenue Code.

*Frank G. Vitrano Employment Agreement.* Pursuant to the terms of an employment agreement entered into between Pathmark and Mr. Vitrano, as amended in December 2005, the merger will constitute a change of control, and therefore, the stock options and restricted stock granted to him on December 22, 2005, will vest in full immediately prior to the merger (to the extent not otherwise vested in connection with the merger).

In addition, Mr. Vitrano is entitled to receive certain severance payments and benefits in the event that his employment is terminated by Pathmark without cause (as such term is defined in his employment agreement) or by his resignation for good reason (which term is defined to include a material adverse reduction or diminution in Mr. Vitrano's title, duties, positions or responsibilities), including the following:

payment of his salary and target bonus for a period of two years following the date of such termination, subject to acceleration in certain circumstances in connection with a change of control; and

continued health and insurance coverage for a period of two years following the date of such termination.

*Kenneth Martindale Employment Agreement.* Pursuant to the terms of an employment agreement entered into between Pathmark and Mr. Martindale, as of December 14, 2005, the merger will constitute a change of control, and therefore, the stock options and restricted stock granted to him on January 1, 2006 will vest in full immediately prior to the merger (to the extent not otherwise vested in connection with the merger). In addition, Mr. Martindale will be entitled to receive certain severance payments and benefits in the event that his employment is terminated by Pathmark without cause (as such term is defined in his employment agreement), due to Pathmark's nonrenewal of the term within six months prior to the merger, or by Mr. Martindale's resignation for good reason (which term is defined to include a material and adverse change in Mr. Martindale's duties or reporting responsibilities or the failure to reelect Mr. Martindale as the Co-President and Chief Marketing and Merchandising Officer of Pathmark or any successor thereto or if the company becomes a subsidiary of another public company, such public company), including the following:

payment of his salary and target bonus for a period of two years following the date of such termination, subject to acceleration in certain circumstances in connection with a change of control; and

continued health and insurance coverage for a period of one year following the date of such termination.

*Other Employment Agreements.* Pathmark has entered into employment agreements with each of Messrs. Darrington, Derderian, Joyce, Kramer and Strassler, pursuant to which the executive will be entitled to receive certain severance payments and benefits in the event that his employment is terminated by Pathmark without cause (as such term is defined in the applicable employment agreement) or by his resignation for good reason (which term is generally defined to include a material and adverse reduction or diminution in the executive's title, duties, positions or responsibilities), including the following:

payment of his base salary for a period of up to two years following the date of such termination;

in the case of Mr. Darrington, payment of a supplemental amount of \$45,000; and

continued health and insurance coverage for a period of up to two years following the date of such termination.

Assuming that the employment of each current executive officer of Pathmark is terminated by Pathmark without cause (as defined in the applicable employment agreement) or by such executive officer's resignation for good reason (as defined in the applicable employment agreement) immediately following the merger, the approximate amount of cash severance benefits that would be payable is:

Name	Potential Cash Severance Benefits <sup>(1)</sup>
John T. Standley	3,600,000
Frank G. Vitrano	2,256,400
Kenneth Martindale	2,000,000
Robert J. Joyce	639,080
John Derderian	500,000
Mark C. Kramer	520,000
Kevin Darrington	525,000
Marc Strassler	535,704

<sup>(1)</sup> The amounts in the table are based on estimated base salaries as of April 25, 2007 and, if applicable, bonuses that will be paid to each executive officer in 2007. The amounts in the table exclude any prorated bonus awards for the year in which such termination occurs and the value of any continued health and insurance coverage or other noncash severance benefits. The amounts in the table also exclude the value of any unexercised stock options and/or unvested restricted stock units or restricted stock that would accelerate and vest in the event of a termination of employment in connection with the merger. Such amounts are separately disclosed in the tables under

Treatment of Stock Options and Other Equity-Based Awards Held by Pathmark's Executive Officers and Directors.

***Transaction Bonus Agreements***

In connection with the execution of the merger agreement, Pathmark entered into transaction bonus agreements with each of Messrs. Darrington, Derderian, Joyce and Strassler. Pursuant to the transaction bonus agreements, each executive will be entitled to receive a bonus payment of \$50,000 (\$100,000, in the case of Mr. Strassler) in the event that (i) such executive remains continuously employed with Pathmark through the closing of the merger, (ii) such executive terminates his employment before the closing of the merger for good reason (as defined in his employment agreement), or (iii) Pathmark terminates such executive's employment before the closing of the merger for any reason that does not constitute cause (as defined in his employment agreement).

***Retention Pay Plan***

In connection with the execution of the merger agreement, the Pathmark board of directors adopted a Retention Pay Plan for certain office associates, including assistant vice presidents, vice presidents and senior vice presidents, who were employed by Pathmark as of the date on which the merger agreement was signed. As senior vice president, Messrs. Darrington and Strassler are participants in the plan. Pursuant to the plan and subject to certain conditions, including each participant's continued employment with Pathmark up to the payment dates specified below, Messrs. Darrington and Strassler will be entitled to receive a retention payment equal to 20% of their respective base salary rate as each is in effect immediately prior to the closing date of the merger or February 23, 2007 (whichever is higher),

paid in three installments on each of (i) September 4, 2007, subject to his continued employment up to such date; (ii) the date two weeks after the closing date of the merger, subject to his continued employment up to the closing date of the merger; and (iii) the date that is the earlier of 180 days after the closing date of the merger or a termination event (defined in the plan as the termination of the participant's employment by Pathmark for any reason (other than cause, as such term is defined in the plan), death or disability of the participant or resignation by the participant for good reason (as such term is defined in the plan), in each case on or after the closing date of the merger). Messrs. Darrington and Strassler are the only Pathmark executive officers participating in the Retention Pay Plan.

***Continued Benefits***

To the extent that any of Pathmark's executive officers remains employed by the surviving corporation following completion of the merger, each will be entitled to receive certain compensation and benefits following the merger. For a period of twelve months and one day following completion of the merger, A&P has agreed to provide the continuing employees of Pathmark with employee benefits that, in the aggregate, are no less favorable than the employee benefits received by those employees prior to the merger.

Subject to certain exceptions, A&P will, or will cause the surviving corporation in the merger to, (i) give continuing Pathmark employees full credit for purposes of eligibility to participate, vesting and benefit accrual (other than with respect to any defined benefit plan) under the employee benefit plans or arrangements maintained by A&P, the surviving corporation in the merger, or their subsidiaries, to the same extent recognized by Pathmark or its subsidiaries under the corresponding Pathmark benefit plans immediately prior to the closing of the merger; and (ii) with respect to certain welfare benefit plans maintained for the benefit of continuing Pathmark employees following the closing of the merger, (x) waive eligibility requirements or preexisting condition limitations, to the same extent waived under comparable Pathmark plans immediately prior to the closing of the merger, and (y) recognize deductible amounts paid by such continuing Pathmark employees under the corresponding Pathmark benefit plans immediately prior to the closing of the merger.

***Indemnification Arrangements and Directors and Officers Liability Insurance Policy***

A&P has agreed to maintain in effect after completion of the merger, for the benefit of current and former Pathmark directors and officers, the existing rights to indemnification and limitations on liability for acts or omissions occurring prior to the closing of the merger under the Pathmark certificate of incorporation, bylaws or disclosed agreements of Pathmark. In addition, the merger agreement provides that A&P will maintain, at its expense, directors and officers liability insurance policies with a claims period of at least six years from the effective time of the merger. For further details on these indemnification and insurance arrangements, please see Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Agreement Covenants and Agreements Indemnification; Insurance; Certain Benefit Plans, beginning on page 129.

***Guarantee of Supplemental Retirement and Excess Benefit Arrangements***

Under the terms of the merger agreement, A&P has agreed to pay, or cause to be paid, all of the benefits to which any employee (or his or her beneficiaries), including Pathmark's executive officers, is entitled under the terms of certain supplemental retirement and excess benefit plans, as in effect immediately prior to the closing of the merger.

***Election of Pathmark Director to A&P Board of Directors***

Upon the closing of the merger, Gregory Mays, a Pathmark director, will be elected to the A&P board of directors by the existing A&P directors, in accordance with the bylaws of A&P and Maryland law, unless at the closing he serves as an employee or director of a competitor, in which case another director from the Pathmark board deemed independent by the A&P independent directors will be elected to the A&P board.

***Yucaipa Fees***

Upon the closing of the merger, Yucaipa Companies or Pathmark will terminate the Management Services Agreement and as a result, Yucaipa Companies will receive a termination fee of \$10 million, pursuant to the terms of the Management Services Agreement. In addition, effective January 23, 2007, Pathmark engaged Yucaipa Advisors to act as a consultant in connection with the merger agreement in accordance with Section 5 of the Management Services Agreement. Pursuant to Yucaipa Advisors' engagement letter, Pathmark agreed to (1) reimburse Yucaipa Advisors' fees and expenses in connection with the provision of such consulting services (whether or not the merger is consummated), and (2) pay Yucaipa Advisors a fee equal to 1.0% of the transaction value (as defined in the engagement letter), payable upon either the consummation of the merger or the consummation of an alternative transaction which allows Pathmark to terminate a definitive agreement for the merger and accept such alternative transaction, in each case, subject to certain conditions, including that, so long as the provision of Section 4.07 of the indenture relating to Pathmark's 8.75% Senior Subordinated Notes due 2012 continues to apply, no amount in excess of \$10.0 million shall be payable to Yucaipa Advisors. Subject to the foregoing, in the event that Yucaipa Advisors' engagement is terminated or expires prior to the consummation of the merger, the foregoing fees will be payable by Pathmark if the merger is consummated, or if a definitive agreement is entered into with respect to any of the foregoing, at any time prior to the eighteen-month anniversary of the termination or expiration of Yucaipa Advisors' engagement letter. In addition, Yucaipa Advisors' engagement letter provided that, solely to the extent that Pathmark had elected to pursue an alternative transaction following the public announcement of discussions involving the merger but prior to the execution of the merger agreement, Pathmark would have been required to pay the same fees outlined above to Yucaipa Advisors with respect to such an alternative transaction as Yucaipa Advisors would have received in connection with the merger.

***Stockholder, Voting and Warrant Agreements***

***Yucaipa Stockholder Agreement***

Concurrently with the execution and delivery of the merger agreement, the Yucaipa Investors entered into the Yucaipa Stockholder Agreement with A&P. The Yucaipa Stockholder Agreement provides the Yucaipa Investors with certain demand and piggyback registration rights. The Yucaipa Investors have agreed to certain restrictions on their ownership, acquisition and disposition of A&P common stock and warrants to purchase A&P common stock that they will own and may acquire after the merger. In addition, the Yucaipa Investors have agreed not to take certain actions that would interfere with the governance of A&P. For further details of the Yucaipa Stockholder Agreement, see Adoption of the Merger Agreement (Pathmark Proposal 1) Yucaipa Stockholder Agreement.

***Tengelmann Stockholder Agreement***

Concurrently with the execution and delivery of the merger agreement, Tengelmänn entered into the Tengelmänn Stockholder Agreement with A&P. The Tengelmänn Stockholder Agreement provides Tengelmänn with certain nomination, approval, registration and other rights. In addition, Tengelmänn

will be entitled to antidilution protection, access to A&P information and expense reimbursement upon the closing of the merger. A&P's bylaws will be amended as provided in Annex I to this joint proxy statement/prospectus in order to give effect to certain of these rights. For further details of the Tengelmann Stockholder Agreement, see Adoption of the Merger Agreement (Pathmark Proposal 1) Tengelmann Stockholder Agreement.

#### ***Yucaipa Warrant Agreement***

Pursuant to the existing warrant agreement, the Series A and Series B Warrants would have been converted into the right to acquire, upon exercise, the merger consideration of \$9.00 in cash and a fixed number of shares of A&P stock. In connection with the merger agreement, the Yucaipa Investors and A&P have entered into an Amended and Restated Warrant Agreement (the *Yucaipa Warrant Agreement*), pursuant to which the Yucaipa Investors will exchange their existing Series A and Series B Warrants to purchase Pathmark common stock for Series A and Series B Warrants to purchase A&P common stock, which we refer to as rollover warrants. Accordingly, the Yucaipa Investors will be entitled to receive the rollover warrants upon the closing of the merger, and no part of the consideration for the Yucaipa Investors' existing warrants will consist of cash to be paid at the time of the merger. Notwithstanding that the terms of the Yucaipa Warrant Agreement require that all exercises of the rollover warrants be on a cashless basis and permit A&P to settle the in-the-money amount of the rollover warrants for cash, the rollover warrants may enable the Yucaipa Investors to participate in the future earnings and growth, as well as benefit from any appreciation in the value, of the combined company to a greater extent than the cash and shares of A&P common stock to be received by Pathmark stockholders in the merger. The A&P Series A Warrants will represent the right to purchase an aggregate of 4,657,378 shares of A&P common stock at an exercise price of \$18.36 per share, and the A&P Series B Warrants will represent the right to purchase an aggregate of 6,965,858 shares of A&P common stock at an exercise price of \$32.40 per share.

#### **Financing**

A&P estimates that the total amount of funds necessary to pay the cash portion of the merger consideration will be approximately \$485.5 million. A&P expects that this amount will be provided through a combination of (a) \$190.0 million of net cash proceeds from the sale of shares of Metro common stock, which A&P received in connection with the August 2005 sale of its Canadian operations to Metro and (b) up to \$780 million in senior secured notes (or, if the offering of senior secured notes is not completed on or prior to the closing of the merger, up to \$780 million under a senior secured bridge credit facility). On March 13, 2007, A&P sold 6,350,000 shares of its holdings in Metro for proceeds of approximately \$203.5 million. A&P continues to hold approximately 11.7 million Metro shares. The merger is not conditioned on receipt of financing by A&P.

#### ***Debt Financing***

A&P has received a debt financing commitment letter, dated as of March 4, 2007, from Bank of America, Banc of America Bridge, BAS, LBCB, Lehman and LCPI (the *Commitment Letter*). In the Commitment Letter, and subject to the terms and conditions set forth therein:

Bank of America has committed to provide a \$615 million secured revolving credit facility (the *ABL Facility*) to finance the working capital of A&P and certain of its subsidiaries upon consummation of the merger; and

Banc of America Bridge and LBCB have severally committed to provide in the aggregate up to \$780 million of senior secured loans (the *Bridge Facility* and together with the ABL Facility, the *Facilities* ) as bridge or interim financing to senior secured notes (the *Senior Secured Notes* ) which may be issued by A&P and/or certain of its subsidiaries after the date of the initial funding of the Facilities for the purpose of refinancing all or a portion of the advances made under the Bridge Facility.

The commitments under the Commitment Letter will expire on the earliest of (i) March 4, 2008 (unless the closing of the Facilities has occurred prior thereto), (ii) the closing of the merger (a) in the case of the ABL Facility, without a funding under the ABL Facility, and (b) in the case of the Bridge Facility, without a funding under the Bridge Facility and (iii) the acceptance by Pathmark of an offer for all or any substantial part of the capital stock or property and assets of Pathmark other than as pursuant to the merger. The documentation governing the Facilities has not been finalized and, accordingly, the actual terms of such Facilities may differ from those described in this joint proxy statement/prospectus.

#### ***Conditions Precedent***

Under the terms of the debt financing commitment letter, the availability of the ABL Facility and the Bridge Facility are subject to various conditions precedent, including, but not limited to:

Prior to and during the syndication of the Facilities and the offering of the Senior Secured Notes, there shall be no offering, placement or arrangement of any equity securities, debt securities or bank financing by or on behalf of A&P, Pathmark or their respective affiliates that could reasonably be expected to, in the discretion of BAS and Lehman (the *Lead Arrangers* ), disrupt or materially interfere with the orderly syndication of the Facilities and the offering of the Senior Secured Notes, other than:

the Senior Secured Notes,

pursuant to Pathmark's existing credit facility (including the accordion feature thereof), or

as an alternative to the accordion feature of Pathmark's existing credit facility, up to \$40 million of mortgage financing;

Since March 4, 2007, no change, event or circumstance has occurred that has had a material adverse effect on Pathmark that is continuing, and no change, event or circumstance has occurred and is continuing that would reasonably be expected to have a material adverse effect on Pathmark;

The merger has been consummated in accordance with the merger agreement and no provision of the merger agreement has been waived, amended or otherwise modified in a manner materially adverse to the lenders without the prior written consent of the Lead Arrangers;

No agreement, order or decree has been entered into or issued requiring A&P, Pathmark or their respective subsidiaries to divest, dispose of or sell of any of their respective businesses or assets representing in excess of \$36.0 million of aggregate scheduled store level cashflow;

In the case of the Bridge Facility, all conditions to drawing on the ABL Facility on the closing date of the financing shall have been satisfied, and in the case of the ABL Facility, A&P shall have received \$780 million in gross proceeds from the sale of the Senior Secured Notes or the advance of the Bridge Facility;

A&P shall use its commercially reasonable efforts to obtain a rating for the Senior Secured Notes from each of Moody's and S&P;

the Lead Arrangers and the lenders under the Facilities shall have received certain historical and pro forma financial information and projections;

A&P and Pathmark shall have made available to (i) the Lead Arrangers and the lenders under the Facilities information memoranda to be used in connection with the syndication of the Facilities by the Lead Arrangers, and (ii) the Lead Arrangers and potential investors one or more offering memoranda for the Senior Secured Notes;

A&P and Pathmark shall have cooperated in marketing the Senior Secured Notes and the syndication of the ABL Facility and the Bridge Facility;

satisfactory definitive documentation with respect to the Facilities shall have been executed and delivered providing for valid and perfected (subject to certain exceptions) liens and security interests in the collateral securing the ABL Facility and the Bridge Facility, respectively; and

the representations and warranties of A&P and Pathmark specified in the Commitment Letter shall be true and correct on the closing date of the Facilities.

***The ABL Facility***

*General.* The borrower under the ABL Facility will be A&P and certain of its subsidiaries. The ABL Facility will be comprised of a \$615 million revolving credit facility. Extensions of credit under the ABL Facility will be subject to a borrowing base calculated periodically based on specific percentages of the value of certain assets, and subject to certain reserves and other adjustments. The ABL Facility will have a sublimit of \$300 million for the issuance of standby and documentary letters of credit. The ABL Facility may be increased by an amount up to \$100 million, at the borrower's request, provided that no default or event of default exists or would arise from the increase. The ABL Facility will have a term of five years. The ABL Facility may be prepaid without penalty.

BAS has been appointed the lead arranger and book running manager. Bank of America has been appointed the administrative agent and collateral agent.

*Mandatory Prepayments.* The ABL Facility shall be subject to mandatory prepayment requirements in amounts equal to (i) the amount by which outstanding extensions of credit thereunder exceed the lesser of the borrowing base and the commitments then in effect, (ii) the net proceeds of certain asset sales and equity issuances, and (iii) the proceeds from the collateral securing the ABL Facility if the availability under the ABL Facility is below a specified amount or if there is an event of default.

*Interest Rate.* Loans under the ABL Facility are expected to bear interest, at the borrower's option at a rate equal to the adjusted London interbank offer rate or an alternative base rate, in each case plus a specified margin.

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*Fees.* The borrower shall pay (i) fees on the unutilized portion of commitments under the ABL Facility, which are expected to vary depending on utilization level, (ii) a letter of credit fee on the stated amount of issued and undrawn letters of credit and a fronting fee to the issuing lender, and (iii) other customary fees, including an underwriting fee and an agent's fee.

*Guarantors.* All obligations under the ABL Facility will be guaranteed by A&P's material domestic subsidiaries.

*Security.* The obligations of the borrower and guarantors under the ABL Facility will be secured, subject to agreed upon exceptions, by a first priority perfected security position on all real and personal property of the borrower and guarantors, including all inventory, accounts, prescription lists, owned real property, material leased real properties of A&P and Pathmark, investment property (including the capital stock of subsidiaries, subject to certain exceptions), contract rights, documents, supporting obligations, letter-of-credit rights, instruments, money, cash, cash equivalents, securities and other property of any kind, deposit accounts, credits, and balances with any financial institution where A&P and certain subsidiaries maintain deposits, commercial tort claims, all books and records and other property related to or referring to any of the foregoing, proceeds from insurance policies, and claims against third parties, but excluding A&P's class A subordinate shares of Metro. Additionally, the ABL Facility will be secured by a second priority perfected security position on all of the collateral securing the Bridge Facility on a first priority basis, other than voting stock in the A&P subsidiary that owns the Metro shares.

If certain security is not provided at the closing of the financing despite the use of commercially reasonable efforts to do so, the delivery of such security will not be a condition precedent to the availability of ABL Facility on the closing date, but instead will be required to be delivered following the closing date.

*Covenants.* The ABL Facility shall contain covenants that, among other things, and subject to exceptions, will limit or restrict the ability of the borrowers to make acquisitions, mergers, consolidations, recapitalizations, dividends, distributions and stock repurchases, to create additional indebtedness, liens and investments, to sell assets, enter into hedging agreements and sale and leaseback transactions. The ABL Facility shall also contain certain affirmative and negative covenants, including a covenant that excess availability under the ABL Facility may not fall below 10% of the borrowing base, certain reporting covenants, and upon certain events, a covenant requiring the borrower to maintain a minimum EBITDA (to be defined in the definitive documentation for the ABL Facility).

*Events of Default.* The ABL Facility is expected to provide for customary events of default, including nonpayment of principal, interest or fees, violations of covenants, material inaccuracy of representations and warranties, specified cross defaults to other material indebtedness, certain bankruptcy events, certain ERISA events, material invalidity of guarantees or security interest, material judgments or change of control (to be defined in the definitive documentation for the ABL Facility).

### ***The Bridge Facility***

*General.* The borrower is expected to issue up to \$780 million of Senior Secured Notes. If the offering of the Senior Secured Notes by the borrower is not completed on or prior to the closing of the merger, Banc of America Bridge and LBCB have severally committed to provide in the aggregate up to \$780 million of senior secured bridge loans which will mature twelve months from the initial advance. The borrower under the Bridge Facility will be A&P and certain of its subsidiaries. BAS and Lehman are appointed as joint lead arrangers and joint book running managers. Banc of America Bridge is appointed as administrative agent and collateral agent. LCPI is appointed as syndication agent.



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*Mandatory Prepayments.* The Bridge Facility shall be subject to mandatory prepayment requirements in amounts equal to (i) the net proceeds from the issuance of any debt securities or equity securities of the borrower or any of its subsidiaries, (ii) the proceeds from any other indebtedness to the extent the proceeds of such indebtedness are not required to be paid to the lenders under the ABL Facility, and (iii) the net proceeds from asset sales to the extent such proceeds are not required to be paid to the lenders under the ABL Facility or, in the case of certain assets, have not been reinvested (up to a specified reinvestment limit). The Bridge Facility is also subject to mandatory prepayment in full at the election of the lenders under the Bridge Facility upon a change in control of the borrower.

*Interest Rate.* Loans under the Bridge Facility shall bear interest at a rate equal to the three month London interbank offer rate plus a specified margin that will be increased at the end of each quarter for so long as the bridge loans are outstanding, subject to a specified cap.

*Guarantors.* All obligations under the Bridge Facility will be guaranteed by borrower's material domestic subsidiaries.

*Security.* The obligations of the borrower and guarantors under the Bridge Facility will be secured, subject to agreed upon exceptions, by a first priority perfected lien and security interest in general intangibles and 65% of the voting stock in an A&P subsidiary, A&P Bermuda Limited, which owns a required number of shares of Metro capital stock (the *Metro Shares*). In the event of certain events of default, the Bridge Facility shall also be secured by a direct pledge of the Metro Shares. Additionally, the Bridge Facility will be secured by a second priority perfected security position on all of the collateral securing the ABL Facility on a first priority basis.

*Covenants.* The Bridge Facility is expected to contain covenants including a negative pledge of the Metro Shares and the stock of A&P Bermuda Limited and A&P Luxembourg S.à.r.l., affirmative covenants similar to those contained in the ABL Facility, as well as customary high yield negative covenants.

*Events of Default.* The events of default are expected to be similar to those contained in the ABL Facility (to be defined in the definitive documentation for the Bridge Facility).

*Rollover.* If the Bridge Facility is not repaid in full on or prior to the maturity date, the principal amount of the Bridge Facility may be refinanced by a senior secured loan with a term of seven years.

*Exchange Notes.* At any time after the Bridge Facility is rolled over into senior secured loans, the bridge lenders may exchange the principal amount of the rollover loans for exchange notes of A&P and certain subsidiaries. These exchange notes will have certain registration rights, entitling holders to exchange the notes for publicly registered securities.

### **Governmental and Regulatory Approvals**

*U.S. Antitrust Filing.* Under the HSR Act and related regulations, the merger may not be completed unless the parties to the transaction file all Premerger Notification and Report Forms with the Antitrust Division of the Department of Justice and the Federal Trade Commission that may be required and the applicable waiting periods have either expired or been earlier terminated and there can be no assurances that such expiration or termination will be obtained. On March 19, 2007, A&P (with Tengelmann, its largest stockholder) and Pathmark filed all required premerger reporting forms. On April 18, 2007, A&P and Pathmark each received a Second Request from the Federal Trade Commission, requesting additional information and documentary materials. As a result of the Second Request, A&P cannot complete the merger under the HSR Act until the earlier of (i) 30 days after both parties substantially comply

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with the Second Request (or on the next regular business day if the 30th day falls on a Saturday, Sunday or legal public holiday), unless that waiting period is extended by agreement between A&P and the Federal Trade Commission, or (ii) when the Federal Trade Commission terminates its review of the merger. On May 21, 2007, A&P announced that it had entered into a timing agreement with the Federal Trade Commission, pursuant to which A&P agreed, subject to certain conditions, to not (i) certify that they have substantially complied with the Second Requests prior to June 30, 2007, or (ii) consummate the merger for at least 60 days following the date that A&P and Pathmark substantially comply with the Second Requests. A&P and Pathmark will cooperate in this and any other agency reviews and work to resolve any objections to the merger asserted on antitrust grounds. There can be no assurance, however, that a challenge to the merger on antitrust grounds will not be made or, if such a challenge is made, that it would not be successful.

*Other Regulatory Approvals.* Other than the filings described above, neither A&P nor Pathmark is aware of any regulatory notifications that must be filed, approvals that must be obtained, or waiting periods that must be observed, in order to complete the merger. If the parties discover that other notifications, approvals or waiting periods are necessary, they will seek to observe or obtain them. If any such approval or action is needed, however, A&P and Pathmark may not be able to obtain it or any of the other necessary approvals.

*General.* It is possible that any of the governmental entities with which filings have been made may seek additional regulatory concessions or impose additional conditions on the merger (including certain divestitures) or such governmental entities or states or private parties may commence litigation to prevent the completion of the merger. There can be no assurance that:

A&P or Pathmark will be able to satisfy or comply with any such conditions imposed;

compliance or noncompliance with any such conditions will not have adverse consequences on A&P after completion of the merger; or

litigation, if any, will be resolved favorably by A&P and Pathmark.

Even if the parties obtain all necessary approvals and the merger agreement is adopted by Pathmark stockholders and the A&P proposals are approved by the A&P stockholders, conditions may be placed on the merger, or the merger could be delayed in a manner, that could cause A&P to abandon it. See Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Agreement Covenants and Agreements, beginning on page 120, and Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Agreement Termination beginning on page 133.

### **Merger Expenses, Fees and Costs**

Generally, all fees and expenses incurred in connection with the merger agreement and the transactions contemplated by the merger agreement will be paid by the party incurring those expenses, subject to the specific exceptions discussed in this document. Upon termination of the merger agreement under specified circumstances, A&P or Pathmark may be required to pay the other party a termination fee and reimburse expenses. See Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Agreement Termination Fees and Expenses beginning on page 135 for a discussion of the circumstances under which termination fees will be paid and expenses will be reimbursed.

### Accounting Treatment

The merger will be accounted for by A&P using the purchase method of accounting. Under this method of accounting, the purchase price paid by A&P, together with the direct costs of the merger, will be allocated in accordance with generally accepted accounting principles to Pathmark's tangible and intangible assets and liabilities based on their fair market values, with any excess being treated as goodwill. The assets, liabilities and results of operations of Pathmark will be consolidated into the assets, liabilities and results of operations of A&P as of the closing date of the merger.

### Structure of the Merger

Subject to the terms and conditions of the merger agreement and in accordance with Delaware law, at the effective time of the merger, Merger Sub (a newly formed and wholly owned subsidiary of A&P established to facilitate the acquisition of Pathmark) will be merged with and into Pathmark. Pathmark will survive the merger as a wholly owned subsidiary of A&P and will continue its corporate existence under Delaware law under the name Pathmark Stores, Inc.

### Certain Material United States Federal Income Tax Consequences

The following is a summary of certain material United States federal income tax consequences of the merger to U.S. Holders (as defined below) of Pathmark common stock. This summary is based on the Internal Revenue Code of 1986, as amended (the *Code*), applicable Treasury regulations, and administrative and judicial interpretations thereof, each as in effect as of the date hereof, all of which are subject to change or different interpretations, possibly with retroactive effect. The parties have not requested, and do not plan to request, any rulings from the Internal Revenue Service (the *IRS*) concerning the tax consequences of the merger to holders of Pathmark common stock, and the statements in this proxy are not binding on the IRS or any court. There is no assurance that the tax consequences contained in this discussion will not be challenged by the IRS, or if challenged, will be sustained by a court.

This summary assumes that Pathmark common stock is held as a capital asset within the meaning of Section 1221 of the Code. This summary does not address all aspects of taxation that may be relevant to particular holders in light of their personal investment or tax circumstances. In addition, this summary does not address the tax treatment of special classes of holders of Pathmark common stock, including, for example:

banks and other financial institutions;

insurance companies;

tax-exempt entities;

mutual funds and real estate investment trusts;

subchapter S corporations;

dealers in securities or currencies;

traders in securities that elect to use a mark-to-market method of accounting for their securities holdings;

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U.S. Holders whose functional currency is not the United States dollar;

persons holding shares of Pathmark common stock as part of a hedging or conversion transaction or as part of a straddle or a constructive sale;

U.S. expatriates;

persons subject to the alternative minimum tax;

holders who acquired Pathmark common stock through the exercise of employee stock options or warrants or otherwise as compensation;

holders that are properly classified as a partnership or otherwise as a pass-through entity under the Code or investors in such entities; and

individuals, corporations, estates and trusts that are not U.S. Holders.

This summary also does not address any U.S. federal estate or gift tax consequences, nor any state, local or foreign tax consequences, of the merger.

If any entity that is treated as a partnership for United States federal income tax purposes holds shares of Pathmark common stock, the tax treatment of its partners or members generally will depend upon the status of the partner or member and the activities of the entity. If you are a partner of a partnership or a member of a limited liability company or other entity classified as a partnership for United States federal tax purposes and that entity is holding Pathmark common stock, you should consult your tax advisor regarding the consequences of the merger to you.

**This discussion of certain material United States federal income tax consequences relating to the merger is not a complete analysis or description of all potential tax consequences of the merger and does not address any state, local or non-U.S. tax consequences of the merger. Therefore, holders are strongly urged to consult their tax advisors as to the specific tax consequences to them, including the applicability and effect of United States federal, state, local, foreign and other tax laws in their particular circumstances.**

For purposes of this discussion, a *U.S. Holder* means a beneficial owner of shares of Pathmark common stock that is for United States federal income tax purposes one of the following:

an individual who is a citizen or resident of the United States;

a corporation (or other entity treated as a corporation for United States federal income tax purposes) created or organized in or under the laws of the United States or any state thereof, or the District of Columbia;

a trust (A) the administration of which is subject to the primary supervision of a United States court and which has one or more United States persons who have the authority to control all substantial decisions of the trust, or (B) that has a valid election in effect under applicable United States Treasury regulations to be treated as a United States person; or

an estate the income of which is subject to United States federal income taxation regardless of its source.

*Consequences of the Transaction to U.S. Holders*

The receipt of the merger consideration, or cash pursuant to the exercise of dissenters' rights of appraisal, by a U.S. Holder in exchange for Pathmark common shares will be a taxable transaction for United States federal income tax purposes. In general, a U.S. Holder will recognize capital gain or loss for United States federal income tax purposes equal to the difference, if any, between (i) the cash received (other than any cash received by dissenters that is treated as actual or imputed interest, which will be taxable as ordinary income) and/or the fair market value (as of the effective time of the merger) of the A&P common stock received and (ii) the U.S. Holder's adjusted tax basis in the Pathmark common shares exchanged therefor. Any such gain or loss would be long-term capital gain or loss if the holding period for the Pathmark common shares as of the effective time of the merger exceeded one year. Long-term capital gains of a non-corporate U.S. Holder generally are taxable at a maximum rate of 15%. Capital gains of a corporate U.S. Holder generally are taxable at the regular tax rates applicable to corporations. The deductibility of capital losses is subject to limitations.

A U.S. Holder's aggregate tax basis in any A&P common stock received pursuant to the merger will equal the fair market value of such stock as of the effective time of the merger. The holding period of such stock received in the transaction will begin on the day after the merger is consummated.

*Information Reporting and Backup Withholding.* Information reporting and backup withholding, presently at a rate of 28%, may apply to the merger consideration and any payments made to dissenters. Backup withholding will not apply, however, to a U.S. Holder (i) who furnishes a correct taxpayer identification number and certifies that it is not subject to backup withholding on the substitute IRS Form W-9 or successor form or (ii) is otherwise exempt from backup withholding and complies with other applicable rules and certification requirements. Backup withholding is not an additional tax, and any amount withheld under these rules may be credited against the holder's United States federal income tax liability and may entitle the holder to a refund if required information is timely furnished to the IRS.

**Appraisal Rights**

In connection with the merger, record holders of Pathmark common stock who comply with the procedures summarized below will be entitled to appraisal rights if the merger is completed. Under Section 262 of the DGCL ( *Section 262* ), as a result of completion of the merger, holders of shares of Pathmark common stock with respect to which appraisal rights are properly demanded and perfected and not withdrawn or lost are entitled, in lieu of receiving the merger consideration, to have the fair value of their shares at the effective time of the merger (exclusive of any element of value arising from the accomplishment or expectation of the merger), together with a fair rate of interest, if any, to be paid on the amount determined to be the fair value, judicially determined and paid to them in cash by complying with the provisions of Section 262. Pathmark is required to send a notice to that effect to each stockholder not less than twenty days prior to the special meeting. This joint proxy statement/prospectus constitutes such notice to Pathmark's stockholders.

The following is a brief summary of Section 262, which sets forth the procedures for demanding statutory appraisal rights. This summary is qualified in its entirety by reference to Section 262, a copy of the text of which is attached to this joint proxy statement/prospectus as Annex J.

*Stockholders of record of Pathmark who desire to exercise their appraisal rights must satisfy all of the following conditions.*

A Pathmark stockholder who desires to exercise appraisal rights must (a) not vote in favor of adoption of the merger agreement and (b) deliver in the manner set forth below a written demand for ap-

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praisal of the stockholder's shares to Pathmark before the vote on the merger at the Pathmark special meeting.

A demand for appraisal must be executed by or for the stockholder of record, fully and correctly, as the stockholder's name appears on the certificates representing shares. If shares are owned of record in a fiduciary capacity, such as by a trustee, guardian or custodian, such demand must be executed by the fiduciary. If shares are owned of record by more than one person, as in a joint tenancy or tenancy in common, the demand must be executed by all joint owners. An authorized agent, including an agent of two or more joint owners, may execute the demand for appraisal for a stockholder of record; however, the agent must identify the record owner and expressly disclose that, in exercising the demand, the agent is acting as agent for the record owner. In addition, the stockholder must continuously hold the shares of record from the date of making the demand through the effective time of the merger.

A record owner, such as a broker, who holds shares as a nominee for others may exercise appraisal rights with respect to the shares held for all or less than all beneficial owners of shares as to which the holder is the record owner. In that case, the written demand must set forth the number of shares covered by the demand. Where the number of shares is not expressly stated, the demand will be presumed to cover all shares outstanding in the name of the record owner.

Beneficial owners who are not record owners and who intend to exercise appraisal rights should instruct the record owner to comply strictly with the statutory requirements with respect to the exercise of appraisal rights before the vote on the adoption of the merger agreement at the special meeting. A beneficial owner of shares held in street name who desires to assert appraisal rights with respect to those shares must take such actions as may be necessary to ensure that a timely and proper demand for appraisal is made by the record owner of the shares. Shares held through banks, brokerage firms, banks and other financial institutions are frequently deposited with and held of record in the name of a nominee of a central security depository, such as Cede & Co., The Depository Trust Company's nominee. Any holder of shares desiring to assert appraisal rights with respect to such shares who held such shares through a brokerage firm, bank or other financial institution is responsible for ensuring that the demand for appraisal is made by the record holder. The stockholder should instruct such firm, bank or institution that the demand for appraisal must be made by the record holder of the shares, which might be the nominee of a central security depository if the shares have been so deposited.

As required by Section 262, a demand for appraisal must be in writing and must reasonably inform Pathmark of the identity of the record holder (which might be a nominee as described above) and of such holder's intention to seek appraisal of such shares.

Stockholders of record who elect to demand appraisal of their shares must mail or deliver their written demand to: Pathmark Stores, Inc., 200 Milik Street, Carteret, New Jersey 07008, Attention: Secretary. The written demand for appraisal should specify the stockholder's name and mailing address, the number of shares owned, and that the stockholder is demanding appraisal of his or her shares. The written demand must be received by Pathmark prior to the taking of the vote on the proposal to adopt the merger agreement at the Pathmark special meeting. Neither voting (in person or by proxy) against, abstaining from voting on or failing to vote on the proposal to adopt the merger agreement will alone suffice to constitute a written demand for appraisal within the meaning of Section 262.

In addition, the stockholder must not vote its shares of common stock in favor of adoption of the merger agreement. A proxy that is signed and does not contain voting instructions will, unless revoked, be voted in favor of the adoption of the merger agreement, and will constitute a waiver of that stockholder's right of appraisal and will nullify any previously written demand for appraisal. Therefore, a stockholder who submits a proxy and who wishes to exercise appraisal rights must indicate that such

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stockholder's shares are to be voted against the proposal to adopt the merger agreement or to abstain from voting on that proposal.

Within 120 days after the effective time of the merger, either Pathmark, as the surviving corporation in the merger, or any stockholder who has timely and properly demanded appraisal of such stockholder's shares and who has complied with the required conditions of Section 262 and is otherwise entitled to appraisal rights may file a petition in the Delaware Court of Chancery demanding a determination of the fair value of the shares of all stockholders who have properly demanded appraisal. Pathmark, as the surviving corporation, has no obligation, and no present intention, to file such a petition. Accordingly, the failure of a stockholder to file a petition within the specified period could nullify the stockholder's previously written demand for appraisal. If a petition for an appraisal is timely filed, after a hearing on such petition, the Delaware Court of Chancery will determine which stockholders are entitled to appraisal rights and thereafter will appraise the shares owned by those stockholders, determining the fair value of the shares exclusive of any element of value arising from the accomplishment or expectation of the merger, together with a fair rate of interest to be paid, if any, upon the amount determined to be the fair value. In determining fair value, the Delaware Court of Chancery is to take into account all relevant factors. In *Weinberger v. UOP, Inc., et al.*, the Delaware Supreme Court discussed the considerations that could be considered in determining fair value in an appraisal proceeding, stating that "proof of value by any techniques or methods which are generally considered acceptable in the financial community and otherwise admissible in court should be considered and that [f]air price obviously requires consideration of all relevant factors involving the value of a company." The Delaware Supreme Court stated that in making this determination of fair value the court must consider "market value, asset value, dividends, earnings prospects, the nature of the enterprise and any other facts which were known or which could be ascertained as of the date of merger and which throw any light on future prospects of the merged corporation . . . . The Delaware Supreme Court construed Section 262 to mean that "elements of future value, including the nature of the enterprise, which are known or susceptible of proof as of the date of the merger and not the product of speculation, may be considered. The Delaware Supreme Court noted, however, that Section 262 provides that fair value is to be determined "exclusive of any element of value arising from the accomplishment or expectation of the merger."

Stockholders considering seeking appraisal should bear in mind that the fair value of their shares determined under Section 262 could be more than, the same as, or less than the merger consideration they are entitled to receive pursuant to the merger agreement if they do not seek appraisal of their shares, and that opinions of investment banking firms as to fairness from a financial point of view are not necessarily opinions as to fair value under Section 262.

The cost of the appraisal proceeding may be determined by the Delaware Court of Chancery and taxed upon the parties as the Delaware Court of Chancery deems equitable in the circumstances. Upon application of a stockholder seeking appraisal rights, the Delaware Court of Chancery may order that all or a portion of the expenses incurred by such stockholder in connection with the appraisal proceeding, including, without limitation, reasonable attorneys' fees and the fees and expenses of experts, be charged pro rata against the value of all shares entitled to appraisal. In the absence of such a determination of assessment, each party bears its own expenses.

Except as explained in the last sentence of this paragraph, at any time within sixty days after the effective time of the merger, any stockholder who has demanded appraisal shall have the right to withdraw such stockholder's demand for appraisal and to accept the cash and shares of A&P common stock to which the stockholder is entitled pursuant to the merger. After this period, the stockholder may withdraw such stockholder's demand for appraisal only with the consent of the surviving corporation in the merger. If no petition for appraisal is filed with the Delaware Court of Chancery within 120 days after the effec-

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tive time of the merger, stockholders' rights to appraisal shall cease and all stockholders shall be entitled only to receive the cash and shares of A&P common stock which constitute the merger consideration as provided for in the merger agreement. Inasmuch as the parties to the merger agreement have no obligation to file such a petition, and have no present intention to do so, any stockholder who desires that such petition be filed is advised to file it on a timely basis. No petition timely filed in the Delaware Court of Chancery demanding appraisal shall be dismissed as to any stockholders without the approval of the Delaware Court of Chancery, and that approval may be conditioned upon such terms as the Delaware Court of Chancery deems just.

Failure to comply with all the procedures set forth in Section 262 will result in the loss of a stockholder's statutory appraisal rights.

The foregoing is a brief summary of Section 262 that sets forth the procedures for demanding statutory appraisal rights. This summary is qualified in its entirety by reference to Section 262, a copy of the text of which is attached hereto as Annex J.

### **Restrictions on Sales of Shares by Affiliates of Pathmark**

The shares of A&P common stock to be issued in connection with the merger will be registered under the Securities Act of 1933, as amended (the *Securities Act*), and will be freely transferable under the Securities Act, except for shares of A&P common stock issued to any person who is deemed to be an affiliate of Pathmark at the time of the Pathmark special meeting. Persons who may be deemed to be affiliates include individuals or entities that control, are controlled by, or are under the common control of Pathmark and may include Pathmark's executive officers, directors and significant stockholders, including the Yucaipa Investors. Affiliates may not sell their shares of A&P common stock acquired in connection with the mergers except pursuant to:

an effective registration statement under the Securities Act covering the resale of those shares;

an exemption under paragraph (d) of Rule 145 under the Securities Act; or

any other applicable exemption under the Securities Act.

Pathmark has agreed to use its commercially reasonable efforts to deliver to A&P a letter agreement executed by each of its affiliates prior to the completion of the merger, pursuant to which these affiliates will agree, among other things, not to transfer any shares of A&P common stock received in the merger except in compliance with the Securities Act. This joint proxy statement/prospectus may not be used for resales of A&P common stock received pursuant to the merger by affiliates of Pathmark. In the Yucaipa Stockholder Agreement, A&P has granted to the Yucaipa Investors registration rights in respect of the A&P common stock they receive pursuant to the merger.

### **Stock Exchange Listing**

It is a condition to the completion of the merger that the shares of A&P common stock to be issued in connection with the merger be approved for listing on the NYSE, subject to official notice of issuance. Following the merger, the shares of A&P common stock will continue to trade on the NYSE under the symbol GAP.



**Delisting and Deregistration of Pathmark Common Stock**

If the merger is completed, Pathmark common stock will be delisted from NASDAQ and deregistered under the Exchange Act.

## THE MERGER AGREEMENT

The following is a summary of the material provisions of the merger agreement. This summary is qualified in its entirety by reference to the merger agreement, which is incorporated by reference in its entirety and attached to this joint proxy statement/prospectus as Annex A. We encourage you to read the merger agreement in its entirety because it is the legal document that governs the merger. This summary is not intended to provide you with any other factual information about A&P or Pathmark. Such information can be found elsewhere in this joint proxy statement/prospectus and in A&P's and Pathmark's public filings with the SEC, as described in the section entitled "Where You Can Find More Information" beginning on page 186.

### Structure and Effective Time; Marketing Period

The merger agreement provides for the merger of Merger Sub with and into Pathmark. Pathmark will survive the merger and continue to exist after the merger as a wholly owned subsidiary of A&P.

The closing of the merger will occur after the satisfaction or waiver of the closing conditions set forth in the merger agreement, except for those closing conditions that, by their nature, are to be satisfied at the closing (but subject to the satisfaction or waiver of those conditions), on such date (the *closing date*) as A&P and Pathmark will mutually agree, which will be no later than the second business day after the satisfaction or waiver of the conditions set forth in the merger agreement. See "Conditions to the Merger" beginning on page 131; except that if the Marketing Period, described below, has not ended at the time all such conditions have been satisfied or waived, then the closing date and the closing will occur on the earlier of (a) a date during the Marketing Period specified by A&P on at least two business days' notice to Pathmark and (b) the final day of the Marketing Period.

The purpose of the Marketing Period is to provide A&P an appropriate period of time during which it can market and place the debt financing contemplated by the financing commitments to finance the merger. For purposes of the merger agreement, *Marketing Period* means the first period of twenty consecutive calendar days after the date of first mailing of this joint proxy statement/prospectus to the stockholders of A&P and Pathmark and throughout which:

A&P and its financing sources have certain financial information required to be provided by them under the merger agreement in connection with A&P's financing of the merger; and

nothing has occurred and no condition exists that would prevent satisfaction of closing conditions for the merger regarding expiration or termination of the waiting period and any extension under the HSR Act; effectiveness of the Form S-4 registration statement of which this joint proxy statement/prospectus is a part; accuracy of Pathmark's representations and warranties under the merger agreement; and compliance by Pathmark with its covenants and agreements under the merger agreement.

The merger agreement further provides that:

the Marketing Period will end no earlier than five business days after the later to occur of the date the required Pathmark stockholder approval of the merger is obtained and the date the required A&P stockholder approval of each of the issuance of A&P common stock pursuant to the merger agreement and the amendment to the A&P charter is obtained;

if the financing of the merger is completed on a date earlier than the expiration of the twenty-consecutive-calendar-day period and the five-business-day period, then the Marketing Period will end on that earlier date;

calculations of the twenty-consecutive-calendar-day period will exclude the periods from and including August 17 through September 3, 2007 and December 21, 2007 through January 1, 2008;

the Marketing Period will not be deemed to have commenced if, prior to the completion of the Marketing Period, (a) Pathmark's accounting firm has withdrawn its audit opinion with respect to any financial statements required to be provided under the merger agreement in connection with the financing of the merger, (b) Pathmark has publicly announced any intention to restate any of its financial information or (c) Pathmark has failed to file any Form 10-K or Form 10-Q with the SEC by the date required under the Exchange Act; in each case with the Marketing Period recommencing upon remedy of such events as specified in the merger agreement; and

if the financial statements provided to A&P under the merger agreement in connection with the financing of the merger would not be sufficiently current, as provided in the merger agreement, then a new twenty-consecutive-calendar-day period will commence upon delivery to A&P of updated financial information that would be sufficiently current to permit the financing to be completed in accordance with the merger agreement.

The merger will become effective at the time a certificate of merger is duly filed with the Delaware Secretary of State (or at a later time if agreed by the parties and specified in the certificate of merger). We currently expect to complete the Merger during the second half of A&P's fiscal year 2007 ending February 23, 2008; however, we cannot assure you when, or if, all the conditions to completion of the Merger will be satisfied or waived (see Conditions to the Merger).

#### **Dissenters' Rights**

Shares of Pathmark common stock that are outstanding immediately prior to the effective time of the merger and that are held by any person who properly demands appraisal of such shares pursuant to Section 262 of the DGCL, who did not vote in favor of adopting the merger agreement or consent thereto in writing, and who complies in all other respects with Section 262 of the DGCL, shall not be converted into the right to receive the per share merger consideration as provided in the merger agreement, but shall instead be entitled to receive payment of the fair value of such shares in accordance with Section 262 of the DGCL. The appraisal rights of and procedures applicable to such dissenting stockholders are described further under Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Appraisal Rights beginning on page 109.

#### **Merger Consideration**

At the effective time of the merger, each share of Pathmark common stock (other than dissenting shares) will be converted into the right to receive (i) 0.12963 of a share of A&P common stock and (ii) \$9.00 in cash, without interest.

Pathmark stockholders will not receive any fractional shares of A&P common stock pursuant to the merger. Instead of any fractional shares, stockholders will be paid an amount in cash in lieu of such fraction calculated by multiplying (i) the number of fractional shares of A&P common stock such holder

would otherwise be entitled to receive and (ii) the closing price of the A&P common stock on the NYSE on the trading day immediately prior to the effective time of the merger.

#### **Treatment of Pathmark Stock Options, Warrants and Other Equity-Based Awards**

Each outstanding option to purchase shares of Pathmark common stock granted under any stock compensation plan maintained by Pathmark or its subsidiaries, which we refer to as the *Pathmark stock plans*, will become fully vested and exercisable no less than fifteen days prior to the closing of the merger.

Each outstanding option to purchase shares of Pathmark common stock, other than *Pre-Amendment Options* described in the next paragraph, granted under the Pathmark stock plans will be canceled in exchange for the right to receive a lump sum cash payment to be paid as soon as practicable after the completion of the merger. The lump sum cash payment shall equal the product of (a) the number of shares of Pathmark common stock such holder could have purchased had they exercised their stock options in full immediately prior to the closing and (b) the excess, if any, of (i) the Pathmark Closing Price over (ii) the exercise price per share of such stock option. Any stock options, other than *Pre-Amendment Options*, with exercise prices equal to or greater than the Pathmark Closing Price will be canceled for no consideration.

With respect to Pathmark *Pre-Amendment Options*, Pathmark will seek to obtain any consents required to cancel any such options with exercise prices less than the Pathmark Closing Price in exchange for a lump sum cash payment in the amount provided in the previous paragraph. Any such Pathmark stock options not canceled and cashed out, or with exercise prices equal to or greater than the Pathmark Closing Price, will be converted into an option to purchase, on the same terms and conditions as were applicable under such option, and taking into account vesting and other changes resulting from the merger, (a) the number of shares of A&P common stock equal to the product of (i) the number of shares of Pathmark common stock such holder could have purchased had such holder exercised such option in full immediately prior to the closing, and (ii) the Option Exchange Ratio (defined in the next sentence), *provided* that any fractional shares of A&P common stock resulting from such multiplication shall be rounded up or down to the nearest whole share, at (b) a price per share equal to (i) the exercise price per share of such *Pre-Amendment Option*, divided by (ii) the Option Exchange Ratio, *provided* that such exercise price shall be rounded up or down to the nearest cent. The *Option Exchange Ratio* means (x) the Pathmark Closing Price divided by (y) \$27.00.

Upon the closing of the merger, each award of Pathmark common stock subject to transfer restrictions and/or forfeiture then outstanding under the Pathmark stock plans will become fully vested and converted into the right to receive a single lump sum cash payment equal to the product of (a) the number of shares of Pathmark common stock subject to such award immediately prior to the closing of the merger and (b) the Pathmark Closing Price.

Upon the closing of the merger, each award of Pathmark restricted stock units then outstanding under the Pathmark stock plans will become fully vested and converted into the right to receive a single lump sum cash payment equal to the product of (a) the number of shares of Pathmark common stock applicable to such award immediately prior to the closing and (b) the Pathmark Closing Price.

Upon the closing of the merger, A&P shall (i) issue the warrants provided for in the Yucaipa Warrant Agreement in exchange for the warrants issued under the warrant agreement dated as of June 9, 2005 among Pathmark, the Yucaipa Investors and the other parties thereto, on the terms and subject to the conditions set forth therein; and (ii) assume the obligations of Pathmark under the 2000 Warrant Agreement and the warrants issued thereunder, so that the holders of the assumed warrants will have the right to pur-

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chase A&P common stock on the terms and subject to the conditions set forth in the 2000 Warrant Agreement and the warrants thereunder. For further details of the Yucaipa Warrant Agreement, see Adoption of the Merger Agreement (Pathmark Proposal 1) Yucaipa Warrant Agreement.

### **Exchange of Pathmark Stock Certificates for A&P Stock Certificates**

Upon completion of the merger, A&P will deposit with American Stock Transfer & Trust Company, Pathmark's exchange agent for the merger, cash in an amount sufficient to pay the aggregate cash consideration in the merger, and certificates representing the shares of A&P common stock issuable in exchange for outstanding shares of Pathmark common stock in an amount sufficient to pay the aggregate stock consideration in the merger and, if required, any dividends or other distributions on A&P common stock with a record date occurring after completion of the merger in accordance with the merger agreement.

Promptly following completion of the merger, A&P or the exchange agent will mail to each record holder of Pathmark common stock a letter of transmittal and instructions for use to effect the surrender of their Pathmark stock certificates in exchange for A&P common stock and cash. Upon surrender of a Pathmark stock certificate to the exchange agent, along with a completed and properly executed letter of transmittal and any other required documents, the Pathmark stock certificate will be canceled and the Pathmark stockholder will receive, without interest, a certificate representing the number of whole shares of A&P common stock to which such holder is entitled, the cash consideration, cash in lieu of fractional shares which such holder has the right to receive, and dividends or distributions, if any, payable in accordance with the merger agreement.

*Pathmark stockholders should not submit their Pathmark stock certificates for exchange unless and until they receive the transmittal instructions and a letter of transmittal from the exchange agent. A&P stockholders will continue to hold their A&P stock certificates following the merger and are not required to take any action with respect to their A&P stock certificates.*

A&P and the exchange agent will be entitled to deduct and withhold from the merger consideration otherwise payable such amounts as are required by applicable law.

### **Directors and Officers**

Upon closing of the merger, Gregory Mays will be elected by the existing A&P directors, unless he is serving as an employee or director of a competitor, to fill the existing vacant position on the A&P board of directors without stockholder action, as provided for under the director election provisions of the bylaws of A&P and Maryland law.

### **Transfers of Pathmark Shares; Lost Stock Certificates**

Upon completion of the merger, all shares of Pathmark common stock outstanding immediately prior to the effective time of the merger will automatically be canceled and no longer be outstanding, and all Pathmark stockholders shall cease to have any rights with respect to such Pathmark common stock except the right to receive the merger consideration. After the effective time of the merger, there will be no further transfers of shares of Pathmark common stock. If, after such time, any Pathmark common stock certificates are presented to the exchange agent, A&P or the surviving corporation, they will be canceled and exchanged for the merger consideration.

### Unclaimed Amounts

Any portion of the merger consideration deposited with the exchange agent that remains undistributed to Pathmark stockholders 180 days after the effective time of the merger shall be delivered to A&P upon demand, and any Pathmark stockholders who have not surrendered their certificates by then can only look to A&P and the surviving corporation for satisfaction of their claims for the merger consideration.

### Representations and Warranties

The merger agreement contains representations and warranties that the parties have made to each other as of specific dates. Except for its status as a contractual document that establishes and governs the legal relations among the parties with respect to the merger described therein, the merger agreement is not intended to be a source of factual, business or operational information about the parties. The representations and warranties contained in the merger agreement were made only for purposes of that agreement and as of specific dates, were solely for the benefit of the parties to that agreement, and may be subject to limitations agreed among those parties, including being qualified by disclosures among those parties. Those representations and warranties may have been made to allocate risks among the parties to the merger agreement, including where the parties do not have complete knowledge of all facts, instead of establishing matters as facts. Furthermore, those representations and warranties may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors. The assertions embodied in such representations and warranties are qualified by information contained in disclosure letters that the parties exchanged in connection with signing the merger agreement. Accordingly, investors and security holders should not rely on such representations and warranties as characterizations of the actual state of facts or circumstances, since they were only made as of the date of the merger agreement and are modified in important part by the underlying disclosure letters. Moreover, information concerning the subject matter of such representations and warranties may change after the date of the merger agreement.

The merger agreement contains customary representations and warranties of A&P and Pathmark relating to their respective businesses. The representations and warranties in the merger agreement do not survive the effective time of the merger.

Each of A&P and Pathmark has made representations and warranties to the other regarding, among other things:

corporate matters, including due organization and qualification;

authority to execute and deliver the merger agreement and the absence of conflicts with, or violations of, organizational documents or other obligations as a result of the merger;

capital structure and subsidiaries;

real property;

intellectual property;

environmental matters;

legal proceedings;

tax matters;  
labor matters;  
employee benefit plans;  
compliance with applicable laws;  
SEC reports and financial statements;  
the absence of material adverse changes; and  
insurance.

In addition, Pathmark has made other representations and warranties about itself to A&P as to:

material contracts;  
inventories;  
bank accounts;  
brokers' fees payable in connection with the merger;  
ownership of A&P common stock; and  
the receipt of a financial advisor's opinion.

Also, A&P has made other representations and warranties about itself to Pathmark as to:

solvency;  
ownership of Pathmark common stock; and

available funds and financing to consummate the merger and to fund working capital needs following the merger.

Certain of the representations and warranties made by the parties are qualified as to materiality or material adverse effect. For purposes of the merger agreement, *material adverse effect* means with respect to Pathmark or A&P, as the case may be, any change, event or circumstance that, individually or in the aggregate with all other changes, events and circumstances, has a material adverse effect on the business, results of operations, condition (financial or otherwise), assets or liabilities of each respective company and its subsidiaries, taken as a whole. In determining whether a material adverse effect has occurred or is reasonably likely to occur, the parties will disregard effects arising out of (1) general economic, legal, regulatory or political conditions in the United States of America or geographic regions in which each respective company and its subsidiaries operate, except to the extent that each respective company or its subsidiaries are disproportionately affected thereby; (2) conditions generally affecting the industries in which each respective company and its subsidiaries operate, except to the extent that each respective company or its subsidiaries are disproportionately affected thereby; (3) the announcement or pendency of the merger or the entry into the merger agreement or the voting and stockholder agreements

entered into in connection with the merger agreement; (4) any decrease in the market price of each respective company's common stock in and of itself (but not any change, event or circumstance that may be underlying such decrease to the extent that such change, event or circumstance would otherwise constitute a material adverse effect); (5) any changes in the securities markets generally, except to the extent that each respective company or its subsidiaries are disproportionately affected thereby; (6) the commencement or escalation of a war or armed hostilities or the occurrence of acts of terrorism or sabotage, except to the extent that each respective company or its subsidiaries are disproportionately affected thereby; (7) earthquakes, hurricanes or other natural disasters, except to the extent that each respective company or its subsidiaries are disproportionately affected thereby; and (8) compliance with the requirements of changes in law or generally accepted accounting principles in the United States of America or any interpretation thereof.

In addition, in determining whether a material adverse effect has occurred or is reasonably likely to occur with respect to Pathmark, the parties will disregard effects arising out of (1) (A) proposing, negotiating, committing to or effecting, by consent decree, hold separate order or otherwise, the sale, transfer, divestiture or disposition of stores, businesses or other assets arising from the parties' compliance with their obligations under the parties' covenant to seek antitrust and other governmental approvals and consents; (B) otherwise taking or committing to take actions that limit or would limit A&P's, Merger Subsidiaries or its subsidiaries (including, after the closing of the merger, Pathmark's and its subsidiaries as subsidiaries of A&P) freedom of action with respect to, or their ability to retain, one or more of their respective stores, businesses, product lines or assets arising from the parties' compliance with their obligations under the parties' covenant to seek antitrust and other governmental approvals and consents; or (C) the application of antitrust laws to the transactions contemplated by the merger agreement or the voting and stockholder agreements entered into in connection with the merger agreement; or (2) (A) as a result of Pathmark's entry into, and as permitted by, the merger agreement, the payment of any amounts due to, or the provision of any other benefits (including benefits relating to acceleration of stock options) to, any officers or employees under specified employment contracts, noncompetition agreements, employee benefit plans, severance arrangements or other arrangements (except to the extent that payments under such contracts, agreements, plans or arrangements solely for retention exceed the specified estimated retention payments) or (B) the incurrence by Pathmark of out-of-pocket fees and expenses (including legal, accounting, investment banking and other fees and expenses) in connection with the transactions contemplated by the merger agreement (except to the extent that such fees and expenses exceed specified estimated amounts).

Also, in determining whether a material adverse effect has occurred or is reasonably likely to occur with respect to A&P, the parties will disregard effects arising out of (1) sales of stores, offices, plants or warehouses owned or leased by the parties or their subsidiaries (or agreements or plans to sell such facilities) that arise from the parties' compliance with their obligations under their covenant to seek antitrust and other governmental approvals and consents; or (2) any legal action or similar proceeding brought by any governmental authority under any antitrust law relating to the transactions contemplated by the merger agreement and the voting and stockholder agreements entered into in connection with the merger agreement.

#### **Covenants and Agreements**

*Conduct of Business by Pathmark.* Pathmark has agreed, subject to certain exceptions and prior written consent of A&P (which consent will not be unreasonably withheld or delayed), between March 4, 2007 and the completion of the merger that Pathmark and its subsidiaries will use commercially reasonable efforts to conduct their business in the ordinary course of business generally consistent with past practice and to preserve intact their current business organization, keep available the services of their cur-



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rent officers and key employees and keep their relationships with key customers, suppliers, licensors, licensees, distributors and others having business dealings with them.

Pathmark has also agreed that during the same period, and again subject to certain exceptions or prior written consent of A&P (which consent will not be unreasonably withheld or delayed), Pathmark and each of its subsidiaries will not:

amend its organizational documents;

adopt a plan or agreement of liquidation, dissolution, restructuring, merger, consolidation, recapitalization or other reorganization (other than between wholly owned subsidiaries);

subject to certain exceptions, including certain transactions between Pathmark and its subsidiaries and as contemplated by the provisions described under Treatment of Pathmark Stock Options, Warrants and Other Equity-Based Awards :

issue, sell or otherwise dispose of any shares of its capital stock, voting securities or securities convertible into such stock or voting securities;

grant or issue any options, warrants, securities or rights that are linked to the value of its common stock, or other rights to purchase or obtain any shares of its capital stock or any of the foregoing;

split, combine, subdivide or reclassify any shares of its capital stock;

declare, set aside or pay any dividend or other distribution with respect to any shares of its capital stock; or

redeem, purchase or otherwise acquire any shares of its capital stock or any rights, warrants or options to acquire any such shares or effect any reduction in capital;

amend or otherwise restructure Pathmark's existing credit agreement; incur any additional principal indebtedness under Pathmark's indenture dated January 29, 2002; or issue any bond or other debt security, incur or guarantee any indebtedness, or enter into any agreement to maintain the financial condition of another person other than in the ordinary course of business, pursuant to Pathmark's existing credit agreement and other specified indebtedness, and indebtedness or guarantees solely between Pathmark and its subsidiaries;

subject to certain exceptions, increase the benefits under any employee benefit plan or collective bargaining agreement; increase the compensation or benefits payable to, or enter into any employment agreements with, any current or former director, officer, employee or consultant of Pathmark or its subsidiaries; grant any rights to severance, change in control or termination pay to, or enter into any severance or change in control agreement with any current or former director, officer, employee or consultant of Pathmark or its subsidiaries; or take any affirmative action to amend or waive any performance or vesting criteria or accelerate vesting, exercisability or funding under any employee benefit plan or collective bargaining agreement;

enter into or complete the acquisition of any other person or entity that would materially impair or delay the consummation of the transactions contemplated by the merger agreement or



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for consideration in excess of \$10,000,000 in the aggregate, other than other acquisitions in the ordinary course of business generally consistent with past practice;

sell, lease, license or otherwise dispose of fixed assets or personal property for consideration in excess of \$3,000,000 in the aggregate, other than pursuant to existing contracts in connection with the termination or closure of certain facilities, or in the ordinary course of business generally consistent with past practice;

encumber any material assets or property, except for specific permitted encumbrances;

subject to specific exceptions, make any new capital expenditures in excess of specified amounts;

settle any pending or threatened legal action or similar proceeding involving a payment that would reasonably be expected to have a material adverse effect on Pathmark;

except as required by generally accepted accounting principles or SEC regulations, change any material accounting method, principle or practice;

make, change or revoke any material tax election; adopt or change any material tax accounting method; enter into any tax allocation agreement, tax indemnity agreement or similar agreement; enter into any material tax settlement or compromise; or surrender any right to claim a material refund of taxes;

effect any sale and leaseback transactions other than in the ordinary course of business generally consistent with past practice;

terminate or close any store, office, plant or warehouse or make any announcement of the intention to do so, other than in the ordinary course of business generally consistent with past practice;

enter into any consulting contract requiring payments by Pathmark in excess of specified amounts other than in the ordinary course of business generally consistent with past practice and other than those cancelable without penalty within ninety days;

delay payments of accounts payable and other obligations or accelerate the collection of or modify the payment terms of receivables other than in the ordinary course of business generally consistent with past practice;

subject to specific exceptions, enter into any new contract or modify or amend any existing contract with an executive officer, director, or control persons of Pathmark or any of its subsidiaries or with the Yucaipa Investors or any of their affiliates or an executive officer, director or control person of the Yucaipa Investors;

incur out-of-pocket fees and expenses for investment banking, financial advisory services or due to the Yucaipa Investors and their affiliates in connection with the transactions contemplated by the merger agreement in excess of specified amounts;

materially adversely modify, amend or extend any material contract prior to its expiration date; or

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adopt, or propose to adopt, or maintain any shareholders' rights plan, poison pill or other similar plan or agreement, unless A&P and Merger Sub are exempted from the provisions of such plan or agreement.

*Conduct of Business by A&P.* A&P has agreed, subject to certain exceptions and prior written consent of Pathmark (which consent will not be unreasonably withheld or delayed), between March 4, 2007 and the completion of the merger that A&P and its subsidiaries will use commercially reasonable efforts to conduct their business in the ordinary course of business generally consistent with past practice and to preserve intact their current business organization, keep available the services of their current officers and key employees and keep their relationships with key customers, suppliers, licensors, licensees, distributors and others having business dealings with them.

A&P has also agreed that during the same period, and again subject to certain exceptions or prior written consent of Pathmark (which consent will not be unreasonably withheld or delayed), A&P and each of its subsidiaries will not:

amend its organizational documents, other than specific permitted amendments, including the proposed amendment to the A&P charter to exempt the transactions contemplated by the merger agreement and the agreements entered into in connection therewith from the preemptive rights provisions of the A&P charter and amendments necessary to effect A&P's possible reorganization into a holding company structure;

adopt a plan or agreement of liquidation, dissolution, restructuring, merger, consolidation, recapitalization or other reorganization (other than between wholly owned subsidiaries);

subject to certain exceptions, including certain transactions between A&P and its subsidiaries:

issue or sell any shares of its capital stock, voting securities or securities convertible into such stock or voting securities in an amount in excess of one-third of A&P's outstanding stock;

grant or issue any options, warrants, securities or rights that are linked to the value of its common stock, or other rights to purchase or obtain any shares of its capital stock or any of the foregoing;

split, combine, subdivide or reclassify any shares of its capital stock;

declare, set aside or pay any dividend or other distribution with respect to any shares of its capital stock; or

redeem, purchase or otherwise acquire any shares of its capital stock or any rights, warrants or options to acquire any such shares or effect any reduction in capital;

issue any bond or other debt security, incur or guarantee any indebtedness or enter into any agreement to maintain the financial condition of another person other than in the ordinary course of business, pursuant to any existing credit agreement and other specified indebtedness, indebtedness or guarantees solely between A&P and its subsidiaries in connection with store leases or equipment leases or in connection with insurance premium financing, and indebtedness not in excess of specified amounts;

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enter into or complete the acquisition of any other person or entity that would materially impair or delay the consummation of the transactions contemplated by the merger agreement or for consideration in excess of \$75,000,000 in the aggregate, other than other acquisitions in the ordinary course of business generally consistent with past practice;

sell, lease, license or otherwise dispose of fixed assets or personal property in a transaction that would materially delay A&P's ability to consummate the financing of the merger; or

delay payments of accounts payable and other obligations or accelerate the collection of or modify the payment terms of receivables other than in the ordinary course of business.

*Restrictions on Solicitation of Other Offers.* From and after March 4, 2007 until the closing of the merger or the termination of the merger agreement, the merger agreement precludes Pathmark, its subsidiaries and their respective directors, officers, employees, advisors, agents and representatives, and the Yucaipa Investors and their controlled and controlling affiliates from, directly or indirectly:

soliciting or knowingly encouraging or facilitating the submission of any Company Proposal, as such term is described below;

entering into, initiating or participating in any discussions or negotiations with, furnishing any nonpublic information relating to Pathmark or any of its subsidiaries or affording access to the business, properties, assets, books or records of Pathmark or any of its subsidiaries to, otherwise cooperating in any way with, or assisting or knowingly encouraging any effort by any third party or group that is seeking to make, or has made, or may reasonably be expected to make, a Company Proposal;

granting any waiver or release under any standstill or similar agreement with respect to any class of equity securities of Pathmark or any of its subsidiaries, other than a standstill provision contained in a confidentiality agreement entered into with such person pursuant to permitted discussions of nonpublic information as described below; or

entering into any agreement with respect to a Company Proposal other than a confidentiality agreement permitted pursuant to permitted discussions of nonpublic information as described below.

The merger agreement also provides that Pathmark shall, shall cause its subsidiaries to, and shall use its commercially reasonable efforts to cause their representatives to, cease immediately and cause to be terminated any and all existing activities, discussions and negotiations, if any, with any third party or group conducted prior to March 4, 2007 with respect to any Company Proposal.

The merger agreement provides further that, notwithstanding the restrictions described above, if Pathmark receives a Company Proposal:

that was not solicited, or knowingly encouraged or facilitated, by Pathmark in violation of the restrictions described above;

which either constitutes a Superior Proposal, as described below, or which the Pathmark board of directors determines in good faith, after consultation with its financial advisors and outside counsel, would reasonably be expected to result in a Superior Proposal; and

the Pathmark board of directors determines in good faith, after consultation with its outside legal counsel, that failing to engage in discussions or furnish information as described in the next clause would be inconsistent with its fiduciary duties under applicable law;

then, prior to the receipt of the Company Stockholder Approval, Pathmark may:

engage in negotiations or discussions (including the solicitation of a revised Company Proposal) with such third party or group, and

furnish to such third party or group and its attorneys, auditors, advisors and financing sources nonpublic information relating to, and afford such third party or group access to, the business, properties, assets, books and records of Pathmark or any of its subsidiaries pursuant to a confidentiality agreement no less favorable to Pathmark than the confidentiality agreement entered into with A&P in connection with the merger agreement.

Pathmark has agreed to provide as promptly as practicable to A&P any material information provided to such third party or group that has not previously been provided to A&P.

For purposes of the merger agreement, *Company Proposal* means any inquiry, proposal or offer from any third party or group relating to:

any direct or indirect acquisition or purchase, in a single transaction or a series of transactions, of (A) 20% or more of the assets (including capital stock of Pathmark's subsidiaries) of Pathmark and its subsidiaries, taken as a whole (other than in connection with sales of inventory in the ordinary course of business or with the parties' obligations to seek antitrust and other governmental consents and approvals), or (B) 20% or more of the outstanding shares of Pathmark's common stock;

any tender offer or exchange offer that, if consummated, would result in any third party or group owning, directly or indirectly, 20% or more of the outstanding shares of Pathmark common stock; or

any merger, consolidation, business combination, recapitalization, liquidation, dissolution, binding share exchange or similar transaction involving Pathmark pursuant to which any third party (or the stockholders of any third party) or group would own, directly or indirectly, 20% or more of any class of equity securities of Pathmark or of the surviving entity in a merger or the resulting direct or indirect parent of Pathmark or such surviving entity;

other than, in each case, the transactions contemplated by the merger agreement.

The merger agreement provides that the term *Superior Proposal* means any bona fide Company Proposal (*provided* that the applicable percentages in the definition of *Company Proposal* shall be 50% as opposed to 20%) which the Pathmark board of directors determines in good faith (after consultation with its financial advisors and outside counsel) (a) is reasonably likely to be consummated taking into the account the third party or group making such Company Proposal and all financial, legal, regulatory and other aspects of such Company Proposal and (b) would, if consummated, reasonably be expected to result in a transaction that is more favorable to the Pathmark stockholders than the merger, taking into account all financial, legal, regulatory and other aspects of such Company Proposal and of the merger agreement.

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The merger agreement provides that Pathmark must as promptly as practicable advise A&P in writing of the receipt after March 4, 2007 of any Company Proposal or any inquiry that could reasonably be expected to lead to any Company Proposal or inquiry, the material terms and conditions of any such Company Proposal or inquiry and the identity of the third party or group making any such Company Proposal or inquiry. Pathmark has agreed to keep A&P fully informed in all material respects of the status of (including any material developments with respect to) any such Company Proposal or inquiry (including any material changes thereto).

*Pathmark Stockholder Meeting and Duty of the Pathmark Board to Recommend the Transaction.* The merger agreement requires Pathmark to call and hold a special meeting of its stockholders not later than the 23<sup>rd</sup> business day following the mailing of this joint proxy statement/prospectus for the purpose of voting on the approval and adoption of the merger agreement and the transactions contemplated thereby. The Pathmark board of directors has agreed to recommend that Pathmark's stockholders vote in favor of adoption of the merger agreement and not to (a) withdraw (or modify in a manner adverse to A&P), or propose to withdraw (or modify in a manner adverse to A&P), the recommendation or declaration of advisability by the Pathmark board of directors of the merger agreement or the merger, or publicly recommend the approval or adoption of, or propose to recommend, any Company Proposal or Superior Proposal (any such action being referred to as an *Adverse Recommendation Change*); or (b) cause or permit Pathmark or any of its subsidiaries to enter into, any letter of intent, memorandum of understanding, agreement in principle, merger agreement, acquisition agreement or other similar agreement related to any Company Proposal, other than any confidentiality agreement referred to under *Restrictions on Solicitation of Other Offers*.

Notwithstanding the above, at any time prior to the time Pathmark stockholders have adopted the merger agreement, the Pathmark board of directors may, if, after consultation with its outside counsel, it determines in good faith that failure to take such action would be inconsistent with its fiduciary duties under applicable law, make an *Adverse Recommendation Change*. The board of directors of Pathmark, however, may not make an *Adverse Recommendation Change* until after the fifth business day following Pathmark's delivery to A&P of written notice advising A&P that the Pathmark board of directors intends to take such action and specifying the reasons therefor, including (if such change is due to a Superior Proposal) the material terms and conditions of any Superior Proposal (including a summary of the financial, legal, regulatory or other aspects that related to the Pathmark board of directors' determination that such Company Proposal is a Superior Proposal) that is the basis of the proposed action by the Pathmark board of directors, and prior to taking any such action, Pathmark shall discuss with A&P and consider in good faith any changes to the terms of the merger agreement proposed by A&P in response to such Superior Proposal or otherwise.

The merger agreement provides that the restrictions on solicitation of other offers described above do not prohibit the Pathmark board of directors from complying with Rule 14e-2(a) and Rule 14d-9 under the Exchange Act with regard to a Company Proposal, or from making any other legally required disclosure to Pathmark's stockholders with regard to the Company Proposal under federal securities laws, the regulations of any national securities exchange on which Pathmark's common stock is listed or as required under Delaware law.

*A&P Stockholder Meeting and Duty to Recommend.* The merger agreement requires A&P to call and hold a special meeting of its stockholders not later than the 23<sup>rd</sup> business day following the mailing of this joint proxy statement/prospectus for the purpose of voting on the proposal to authorize the issuance of A&P common stock pursuant to the merger and the proposal to amend the A&P charter to exempt the transactions contemplated by the merger agreement and the agreements entered into in connection therewith from the preemptive rights provisions of the A&P charter. The A&P board of directors has agr-

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eed to recommend that A&P's stockholders vote in favor of the issuance of A&P common stock and the A&P charter amendment. Additionally, the effectiveness of each of the proposal to approve the issuance of A&P common stock in connection with the merger and the proposal to approve the amendment to the A&P charter is conditioned on approval of the other, which means that neither proposal will have any effect unless both are approved.

*Financing.* A&P and Merger Sub have agreed to use their best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or advisable to arrange and obtain the debt financing on the terms and conditions described in the debt financing commitment letters, including using their best efforts:

to maintain in effect the debt financing commitment letters;

to negotiate and enter into definitive agreements with respect thereto on the terms and conditions contained therein;

to satisfy (or cause their affiliates to satisfy) on a timely basis all conditions, and otherwise comply with all terms, applicable to A&P, Merger Sub or their affiliates in such definitive agreements; and

to consummate the financing contemplated by the debt financing commitment letters at or prior to closing of the merger.

In the event that any portion of the financing becomes unavailable on the terms and conditions contemplated in the debt financing commitment letters, A&P and Merger Sub will use their best efforts to arrange to obtain any such portion from alternative sources as promptly as practicable following the occurrence of such event but not later than the last day of the Marketing Period, as described under Structure and Effective Time; Marketing Period. A&P has agreed to provide Pathmark copies of any alternative financing agreements, to give Pathmark prompt notice of any material breach by any party or any termination of the debt financing commitment letters and to keep Pathmark fully informed of the status of its efforts to arrange the financing. A&P and Merger Sub have agreed not to amend, supplement, modify or waive any provision or remedy under the debt financing commitment letters or the definitive agreements relating to the financing, without the consent of Pathmark, which consent shall not be unreasonably withheld or delayed.

In addition, A&P has agreed that, in the event that:

all or a portion of the financing structured as notes has not been consummated;

subject to limited exceptions, all closing conditions contained in the merger agreement have been satisfied or waived; and

the bridge facilities contemplated by the financing commitments, or alternative financing contemplated by the merger agreement, are available,

then A&P and Merger Sub will use the proceeds of such bridge financing or alternative financing for the purpose of consummating the transactions contemplated by the merger agreement.

A&P has also agreed to sell or otherwise dispose of up to 7.1 million shares of Metro common stock by June 2, 2007, and that, if the net cash proceeds to A&P of such disposition are less than \$190.0



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million, then A&P will issue and sell, by June 2, 2007, shares of A&P common stock and/or preferred stock sufficient to generate aggregate net cash proceeds in the amount of \$190.0 million. (On March 13, 2007, A&P sold 6,350,000 shares of its holdings in Metro for proceeds of approximately \$203.5 million and placed \$190.0 million of the proceeds in a blocked account to fund a portion of the merger consideration.) A&P agreed to deposit the aggregate net cash proceeds of such sales or dispositions into a blocked bank account through the closing of the merger and to use the funds in the blocked account as part of the consideration for the transactions under the merger agreement and for other limited purposes contemplated by the merger agreement.

Pathmark has agreed to use its best efforts, including certain specific undertakings, to cooperate in obtaining the arrangement of the financing of the transactions contemplated by the merger agreement. If the merger agreement is terminated according to its terms, then A&P has agreed to reimburse Pathmark for fees and expenses incurred by or on behalf of Pathmark solely as a result of its compliance with the provisions described in this Financing section. Neither Pathmark nor any of its subsidiaries shall be required to pay any commitment or other fee or incur any other liability in connection with the financing prior to the effective time of the merger.

*Governmental Approvals.* A&P, Merger Sub and Pathmark have agreed, subject to A&P's termination rights in connection with an Antitrust Termination Determination, as such term is described under Termination, to use their respective best efforts to cause the expiration or termination of the applicable waiting period under the HSR Act as soon as practicable and to resolve such objections, if any, as may be asserted with respect to the transactions contemplated by the merger agreement under any antitrust law.

To this end, A&P and Merger Sub have agreed to use their best efforts to seek to avoid the entry of, or seek to have vacated or terminated, any order, judgment, or similar determination of a court or governmental entity that would prevent or delay the closing of the merger. They have also agreed, subject to their termination rights, to use their best efforts to take all other actions necessary to avoid or eliminate all impediments under any antitrust law that may be asserted by any governmental entity regarding the merger, to enable the closing of the merger to occur as soon as reasonably possible, including (A) proposing and agreeing to, by consent decree, hold separate order, or otherwise, the divestiture or disposition of such stores, businesses or other assets of A&P and its subsidiaries or, after the closing of the merger, of Pathmark and its subsidiaries and (B) otherwise taking or committing to take actions that limit or would limit A&P's and its subsidiaries' (including, after the closing of the merger, Pathmark's and its subsidiaries') freedom of action with respect to, or its ability to retain, one or more of their respective stores, businesses, product lines or assets, in each case as may be required in order to avoid the entry of, or to effect the dissolution of, any judgment or similar order in any legal action or similar proceeding, which would otherwise have the effect of preventing or materially delaying the closing of the merger.

Notwithstanding the foregoing, A&P may enter into agreements with governmental entities to delay for reasonable periods of time the closing of the merger, subject to certain limitations, including that:

no such agreement shall delay the closing of the merger to a date later than December 4, 2007;

if, at the time of entering into the agreement, it is reasonably likely that the parties to the merger agreement in the aggregate would not be required to divest, sell or dispose of, stores, businesses or other assets with an aggregate amount of scheduled store level cashflow in excess of \$36.0 million in order to consummate the transactions contemplated by the merger

agreement, then no such agreement may be entered without the consent of Pathmark, which consent may not be unreasonably withheld or delayed; and

prior to entering into any such agreement, A&P must provide Pathmark with at least five business days prior written notice of its intention to do so and during such period A&P must consult in good faith with Pathmark regarding the agreement.

Notwithstanding anything in the merger agreement to the contrary, prior to December 5, 2007, A&P will not be required to divest, sell or otherwise dispose of, stores, businesses or other assets of A&P, Pathmark or their subsidiaries with an aggregate amount of scheduled store level cashflow in excess of \$36.0 million, or enter into any agreement to do so. On and after December 5, 2007, if the merger has not been completed and the merger agreement has not been terminated, this limitation on A&P's obligations will no longer apply. A&P will not be entitled to any adjustment to or diminution of the aggregate merger consideration as a result of any divestitures or otherwise.

*Indemnification; Insurance; Certain Benefit Plans.* A&P has agreed to maintain in effect after completion of the merger, for the benefit of current and former Pathmark directors and officers, the existing rights to indemnification and limitations on liability for acts or omissions occurring prior to the closing of the merger under the Pathmark certificate of incorporation, bylaws or disclosed agreements of Pathmark.

A&P has also agreed to pay the benefits to which any employee (or his or her beneficiaries) is entitled under the terms of disclosed supplemental retirement and excess benefit plans as in effect immediately prior to the closing of the merger.

The merger agreement provides that prior to the closing, Pathmark shall obtain, at A&P's expense, tail insurance policies with claims periods of at least six years from the closing with respect to directors and officers liability insurance in amount and scope at least as favorable as existing policies for claims arising from facts or events that occurred on or prior to the closing; provided that the aggregate premiums for such policies do not exceed an amount equal to 300% of the current annual premium of Pathmark's existing directors and officers liability insurance.

The merger agreement also provides that, for a period of six years after completion of the merger, the certificate of incorporation and bylaws of Pathmark, as the surviving corporation in the merger, will contain provisions no less favorable with respect to exculpation and indemnification than those set forth in the current certificate of incorporation and bylaws of Pathmark, except to the extent required by applicable law.

*Employee Benefits.* For twelve months and one day following the effective time of the merger, A&P has agreed with Pathmark that the continuing employees of Pathmark will be entitled to receive employee benefits (excluding equity-based plans) that, in the aggregate, are no less favorable than the employee benefits received by those employees prior to the merger. Subject to certain exceptions, A&P will or will cause the surviving corporation in the merger to give continuing Pathmark employees full credit for purposes of eligibility to participate, vesting and benefit accrual (other than with respect to any defined benefit plan) under the employee benefit plans or arrangements maintained by A&P, the surviving corporation in the merger or their subsidiaries to the same extent recognized by Pathmark or such subsidiaries under the corresponding Pathmark benefit plans immediately prior to the closing of the merger, and with respect to certain welfare benefit plans maintained for the benefit of continuing Pathmark employees following the closing of the merger, waive eligibility requirements or preexisting condition limitations to the same extent waived under comparable Pathmark plans immediately prior to the closing of the merger,

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and recognize deductible amounts paid by such continuing Pathmark employees under the corresponding Pathmark benefit plans.

The parties have agreed that nothing in the covenants described in this *Employee Benefits* section shall create any third-party beneficiary or other right either (i) in any person other than the parties to the merger agreement, including any current or former directors, officers, employees or consultants of Pathmark or its subsidiaries, any participant in any Pathmark employee benefit plan, or any dependent or beneficiary thereof; or (ii) to continued employment with Pathmark, A&P, Merger Sub, the surviving corporation or any of their respective affiliates.

*Cooperation; Commercially Reasonable Efforts.* A&P and Pathmark have agreed to use their commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all actions necessary, proper or advisable under applicable law to complete the merger and the other transactions contemplated by the merger agreement.

*Other Agreements.* The merger agreement contains a number of mutual covenants of A&P and Pathmark, including covenants relating to:

providing to each of the other access to the officers, employees, properties, offices and facilities of each of A&P and Pathmark and to financial, operating and other information;

communicating and cooperating with respect to public statements concerning the transactions contemplated by the merger agreement;

notifying each other of the occurrence or failure to occur of any event that would cause, or would reasonably be expected to cause, the failure to satisfy any condition to closing the merger provided in the merger agreement;

cooperating with each other in connection with any stockholder litigation or claims against either of them or their directors or officers relating to the merger;

preparing and filing this joint proxy statement/prospectus and assuring the accuracy of the information in it;

not selling or acquiring record or beneficial ownership of securities of each other; and

taking actions relating to exemptions from liability under Rule 16b-3 under the Exchange Act.

The merger agreement also contains covenants requiring Pathmark:

to use commercially reasonable efforts (a) to conduct an offer to purchase and related consent solicitation with respect to any and all of Pathmark's 8.75% Senior Subordinated Notes due 2012 outstanding on March 4, 2007 and amend the related indenture as reasonably requested by A&P or (b) if requested by A&P and permitted under the indenture, to redeem all of such outstanding notes pursuant to the redemption provisions of the indenture;

to deliver to A&P a letter identifying all persons who were, at the date of the Pathmark special meeting, affiliates of Pathmark for purposes of Rule 145 under the Securities Act; and

to use its commercially reasonable efforts to deliver to A&P a letter agreement executed by each of its affiliates prior to the completion of the merger, pursuant to which these affiliates will agree, among other things, not to transfer any shares of A&P common stock received in the merger except in compliance with the Securities Act.

The merger agreement also contains covenants requiring A&P:

to take all action necessary, after the effective time of the merger, to cause Merger Sub and the surviving corporation to perform all of their obligations under the merger agreement and to consummate the merger on the terms and conditions set forth in the merger agreement.

**Conditions to the Merger**

*Conditions to A&P's and Pathmark's Obligations to Complete the Merger.* Each party's obligation to complete the merger is subject to the satisfaction or waiver of various conditions on or prior to the closing date of the merger that include the following:

the merger agreement has been adopted by the affirmative vote of a majority of the outstanding shares of Pathmark common stock entitled to vote at the Pathmark special meeting;

the issuance of A&P common stock pursuant to the merger has been approved by the affirmative vote of the holders of a majority of the shares of A&P common stock cast on such proposal at the A&P special meeting; *provided* that at least a majority of the outstanding shares of A&P common stock vote on the proposal;

the amendment to the A&P charter to exempt the transactions contemplated by the merger agreement and the agreements entered into in connection therewith from the preemptive rights provisions of the A&P charter has been approved by the affirmative vote of the holders of two-thirds of A&P common stock outstanding;

the waiting periods applicable to the merger under the HSR Act have expired or been terminated and there is no obligation to delay the closing of the merger pursuant to any agreement between A&P and any governmental entity entered into in compliance with the provisions described under Covenants and Agreements Governmental Approvals ;

no judgment, injunction or ruling of a court of competent jurisdiction or any governmental entity is in effect that prevents or restrains completion of the merger or the other transactions contemplated by the merger agreement and the agreements entered into in connection therewith and no statute or regulation is in effect which prevents the consummation of or has the effect of making illegal the completion of the merger or the other transactions contemplated by the merger agreement and the agreements entered into in connection therewith;

the registration statement on Form S-4, of which this joint proxy statement/prospectus forms a part, has been declared effective by the SEC and is not the subject of any stop order or initiated or threatened proceedings seeking a stop order; and

the shares of A&P common stock issuable pursuant to the merger have been approved for listing on the NYSE.

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*Conditions to A&P's and Merger Sub's Obligations to Complete the Merger.* A&P's and Merger Sub's obligations to complete the merger are further subject to satisfaction or waiver of the following additional conditions:

Pathmark's representations and warranties made in the merger agreement must be true and correct as of the closing date of the merger as though made on the closing date, subject in certain cases to the materiality standards contained in the merger agreement; *provided* that this condition will not apply to a failure to be true and correct resulting from (1) the parties' compliance with the provisions described under Covenants and Agreements Governmental Approvals or (2) the application of antitrust laws to the transactions contemplated by the merger agreement and the agreements entered into in connection therewith;

Pathmark must have performed in all material respects all obligations required to be performed by it under the merger agreement on or prior to the closing date of the merger;

Pathmark must have provided A&P with a certificate signed by Pathmark's chief executive officer or chief financial officer certifying that the conditions described in the preceding two bullet points have been satisfied;

there is no suit, action or proceeding seeking to prohibit or restrain the completion of the merger or the other transactions contemplated by the merger agreement and the agreements entered into in connection therewith that is pending or threatened in writing, and not withdrawn, by any governmental entity that is reasonably likely to succeed, other than certain complaints filed by a governmental entity under the antitrust laws related to a proposed consent decree or other settlement agreement entered into by A&P;

since March 4, 2007, no material adverse effect has occurred and is continuing or would reasonably be expected to occur with respect to Pathmark (see the definition of material adverse effect under Representations and Warranties );

the aggregate number of shares of Pathmark stock held by any Pathmark stockholder who is entitled to demand, and who properly demands, an appraisal of such holder's shares in accordance with Section 262 of the DGCL (and who complies in all other respects with Section 262) does not exceed 10% of the shares of Pathmark stock outstanding immediately prior to the completion of the merger; and

the Management Services Agreement and the related consulting agreement with Yucaipa Advisors dated January 23, 2007 must have been terminated in accordance with their terms.

*Conditions to Pathmark's Obligation to Complete the Merger.* Pathmark's obligation to complete the merger is further subject to satisfaction or waiver of the following additional conditions:

A&P's representations and warranties made in the merger agreement must be true and correct as of the closing date of the merger as though made on the closing date, subject in certain cases to the materiality standards contained in the merger agreement; *provided* that this condition will not apply to a failure to be true and correct resulting from (1) the parties' compliance with the provisions described under Covenants and Agreements Governmental Approvals or (2) the application of antitrust laws to the transactions contemplated by the merger agreement and the agreements entered into in connection therewith;

A&P must have performed in all material respects all obligations required to be performed by it under the merger agreement on or prior to the closing date of the merger; and

A&P must have provided Pathmark with a certificate signed by A&P's chief executive officer or chief financial officer certifying that the conditions described in the preceding two bullet points have been satisfied.

**Termination**

The merger agreement may be terminated and the merger may be abandoned at any time prior to the closing date of the merger:

by mutual written consent of A&P, Merger Sub and Pathmark;

by written notice from either A&P or Pathmark if:

the closing of the merger has not occurred by the Outside Date, March 4, 2008, as such date may be extended as follows, unless the principal cause or the result of the failure of the effective time of merger to occur by that date is a breach of the merger agreement by the party seeking to terminate the merger agreement; *provided* that if, on the second business day before March 4, 2008, only antitrust-related closing conditions have not been satisfied, then A&P may elect to extend the Outside Date once, for a period of up to ninety days, so long as A&P's financing commitments are similarly extended; and *provided further* that if antitrust-related closing conditions have not been satisfied, then A&P may not terminate the merger agreement under this provision unless it pays the One-Year Termination Fee or Extension Termination Fee, if applicable (as described under Termination Fees and Expenses );

the Pathmark stockholders fail to adopt the merger agreement at the Pathmark special meeting;

the A&P stockholders fail to approve the issuance of A&P common stock pursuant to the merger and the amendment to the A&P charter to exempt the transactions contemplated by the merger agreement and the agreements entered into in connection therewith from the preemptive rights provisions of the A&P charter at the A&P special meeting;

any court or other governmental entity has issued a final, nonappealable judgment, injunction or ruling or taken any other action restraining or otherwise prohibiting the merger or the other transactions contemplated by the merger agreement and the agreements entered into in connection therewith; or

the other party has breached or failed to perform any of its representations, warranties, covenants or agreements in the merger agreement which breach or failure to perform (a) would give rise to the failure of a condition regarding representations and warranties and performance of obligations and (b) cannot be cured or is not cured by the breaching party within twenty business days after receipt of written notice of the breach from the other party;

by A&P if:

prior to the Pathmark special meeting, the Pathmark board of directors makes an Adverse Recommendation Change, as described under Covenants and Agreements Pathmark Stockholder Meeting and Duty to Recommend ;

on September 4, 2007, on written notice by A&P within the five preceding business days of its election to terminate the merger agreement due to an Antitrust Termination Determination; *provided* that A&P must provide at least five business days written notice of its intention to terminate the merger agreement under this provision together with a detailed summary of the reasons for such Antitrust Termination Determination and A&P must discuss and consider in good faith any comments by Pathmark regarding such Antitrust Termination Determination; or

on December 4, 2007, on written notice by A&P within the five preceding business days of its election to terminate the merger agreement due to an Antitrust Termination Determination; *provided* that to exercise this termination right, A&P must pay the Nine-Month Termination Fee, provide at least five business days written notice of its intention to terminate the merger agreement under this provision together with a detailed summary of the reasons for such Antitrust Termination Determination and must discuss such Antitrust Termination Determination in good faith with Pathmark; or

by Pathmark if:

within ten business days of A&P's written notice to Pathmark of A&P's failure to obtain and maintain \$190.0 million of net cash proceeds by June 2, 2007, in connection with the sale of Metro common stock or A&P common stock and/or preferred stock as described under Covenants and Agreements Financing. (On March 13, 2007, A&P sold 6,350,000 shares of its holdings in Metro for proceeds of approximately \$203.5 million.) A&P continues to hold approximately 11.7 million Metro shares; or

at any time, if the Marketing Period has ended as described under Structure and Effective Time; Marketing Period, all conditions described under Conditions to the Merger have been satisfied or waived and A&P does not have available funds to pay the aggregate cash consideration payable in the merger.

The merger agreement provides that *Antitrust Termination Determination* means that the A&P board of directors has determined in good faith, after consultation with its outside counsel, that it is reasonably likely that A&P, Merger Sub and Pathmark, in the aggregate, would be required to divest, sell, transfer or otherwise dispose of stores, businesses or other assets of A&P and Pathmark or of any of their subsidiaries with aggregate scheduled store level cashflow amounts in excess of \$36.0 million in order to consummate the transactions contemplated by the merger agreement.

#### **Effect of Termination**

If the merger agreement is terminated as described in Termination above, the agreement will be void, and there will be no liability or obligation of any party other than as set forth in Fees and Expenses. Designated provisions of the merger agreement, including the representations and warranties relating to brokers' fees, the confidential treatment of information and the payment of fees and expenses, including, if applicable, the termination fees described below, will survive termination. Additionally,

such termination shall not relieve any party of any liability for any willful breach of the merger agreement. Upon such termination, the parties shall comply with all the provisions of the confidentiality agreement entered into between A&P and Pathmark in connection with the merger agreement.

#### **Fees and Expenses**

Subject to certain exceptions, each party shall bear its own costs and expenses (including fees and expenses of financial advisors and legal counsel) incurred in connection with the merger agreement, the related agreements and the transactions contemplated thereby, whether or not the merger is consummated. Pathmark must pay A&P a \$25.0 million termination fee, decreased by the amount of certain fees and expenses paid by Pathmark as described in the next paragraph, if the merger agreement is terminated as follows:

if A&P terminates the merger agreement prior to the Pathmark special meeting because the Pathmark board of directors has withdrawn or modified its recommendation of the merger agreement in a manner adverse to A&P, or proposed to do so; or

if:

(1) A&P or Pathmark terminates the merger agreement because of the failure of the merger to be completed by the Outside Date, if the Pathmark special meeting has not been held before the Outside Date and this joint proxy statement/prospectus has been declared effective no less than twenty business days prior to the Outside Date and remains effective through the Outside Date; (2) A&P or Pathmark terminates the merger agreement because of the failure of the Pathmark stockholders to adopt the merger agreement at the Pathmark special meeting; or (3) A&P terminates the merger agreement because of a material breach by Pathmark of a representation, warranty, covenant or agreement in the merger agreement that is incurable or is uncured as described under Termination ; and

after March 4, 2007 and prior to such termination of the merger agreement a third party has publicly announced a Company Proposal to acquire Pathmark and within eighteen months of termination of the merger agreement Pathmark enters into a definitive agreement for a Company Proposal or consummates a Company Proposal; *provided* that for purposes of this provision all references to 20% in the definition of Company Proposal, as described under Covenants and Agreements Restrictions on Solicitation of Other Offers, shall instead be deemed to be 50%.

If A&P or Pathmark terminates the merger agreement because of the failure of the Pathmark stockholders to adopt the merger agreement at the Pathmark special meeting, then Pathmark must pay A&P all filing fees paid by A&P under the HSR Act, as well as legal fees and expenses incurred by A&P in connection with the merger agreement and the transactions contemplated thereby. This payment of these fees and expenses will reduce the amount of the termination fee described in the preceding paragraph.

If A&P or Pathmark terminates the merger agreement because of the failure of the A&P stockholders to approve the A&P share issuance and the A&P charter amendment at the A&P special meeting or if A&P terminates the merger agreement on September 4, 2007, because A&P has made an Antitrust Termination Determination, as described under Termination, then A&P must pay Pathmark the legal



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fees and expenses incurred by Pathmark in connection with the merger agreement and the transactions contemplated thereby.

A&P must pay Pathmark a \$25.0 million termination fee (the *Nine-Month Termination Fee* ), if (1) A&P terminates the merger agreement on December 4, 2007, because A&P has made an Antitrust Termination Determination, as described under Termination, or (2) A&P or Pathmark terminates the merger agreement after September 4, 2007 and on or before December 4, 2007 because any court or other governmental entity, at the request of any person seeking relief under antitrust laws, has issued a final, nonappealable judgment, injunction or ruling or otherwise restrained or prohibited the merger or the transactions contemplated in connection with the merger.

A&P must pay Pathmark a \$50.0 million termination fee (the *One-Year Termination Fee* ), if (1) March 4, 2008 has been reached and the Outside Date has not been extended as described under Termination, the antitrust-related conditions to closing the merger have not been satisfied and A&P or Pathmark terminate the merger agreement because of failure to complete the merger by the Outside Date; or (2) A&P or Pathmark terminates the merger agreement after December 4, 2007 and on or before March 4, 2008 because any court or other governmental entity, at the request of any person seeking relief under antitrust laws, has issued a final, nonappealable judgment, injunction or ruling or otherwise restrained or prohibited the merger or the transactions contemplated in connection with the merger.

A&P must pay Pathmark a \$75.0 million termination fee (the *Extension Termination Fee* ), if (1) the Outside Date has been extended as described under Termination, and A&P or Pathmark terminates the merger agreement because of failure to complete the merger by the extended Outside Date or (2) A&P or Pathmark terminates the merger agreement after March 4, 2008 because any court or other governmental entity, at the request of any person seeking relief under antitrust laws, has issued a final, nonappealable judgment, injunction or ruling or otherwise restrained or prohibited the merger or the transactions contemplated in connection with the merger.

A&P must pay Pathmark a \$50.0 million termination fee if Pathmark terminates the merger agreement because of A&P's failure to obtain and maintain \$190.0 million of net cash proceeds by June 2, 2007, in connection with the sale of Metro common stock as described under Covenants and Agreements Financing.

A&P must pay Pathmark a \$50.0 million termination fee if Pathmark terminates the merger agreement on or prior to March 4, 2008 because A&P does not have available funds to pay the aggregate cash consideration payable in the merger, if the Marketing Period has ended as described under Structure and Effective Time; Marketing Period and all conditions described under Conditions to the Merger have been satisfied or waived.

A&P must pay Pathmark a \$75.0 million termination fee if Pathmark terminates the merger agreement after March 4, 2008, as otherwise described in the preceding paragraph.

The above-described termination fees, subject to certain exceptions, shall be the sole monetary remedy in the event of termination of the merger agreement on the bases described in this Fees and Expenses section; *provided* that fees payable by A&P pursuant to the two immediately preceding paragraphs shall be the nonexclusive remedy in the event of termination on the bases described in such paragraphs, and payment of such amounts shall not relieve A&P from liability for any breach of the merger agreement.

**Amendment and Waiver**

*Amendment.* The merger agreement may be amended only by an instrument in writing signed on behalf of the parties. However, no amendment may be made that by law requires further approval of the A&P stockholders or Pathmark stockholders unless the required approval is obtained.

*Waiver.* A&P and Pathmark may waive failure of any party to comply with obligations, covenants, agreements or conditions in the merger agreement only by a written instrument signed by the party granting the waiver. The failure of any party to the merger agreement to assert its rights under the merger agreement shall not constitute a waiver of such rights.

**UNAUDITED PRO FORMA CONDENSED COMBINED  
FINANCIAL INFORMATION**

The following unaudited pro forma condensed combined financial information gives effect to the merger of A&P and Pathmark. The merger transaction will be accounted for using the purchase method of accounting, in accordance with accounting principles generally accepted in the United States, with A&P as the acquiror and Pathmark as the acquired company.

This transaction is expected to be completed during the second half of A&P's fiscal year 2007 and is subject to the completion of stockholder and regulatory approvals, as well as other customary closing conditions.

A&P and Pathmark stockholders should read the pro forma financial information in conjunction with A&P's and Pathmark's audited historical consolidated financial statements, accompanying footnotes and the section entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations" in A&P's and Pathmark's Annual Reports on Form 10-K, as amended, for the fiscal years ended February 24, 2007 and February 3, 2007, respectively, incorporated by reference into this joint proxy statement/prospectus. See "Where You Can Find More Information" beginning on page 186.

**The Great Atlantic & Pacific Tea Company, Inc.  
Unaudited Pro Forma Condensed Combined Balance Sheet  
As of February 24, 2007**

(Dollars in millions, except share and per share amounts)

	Historical		Pro Forma Adjustments	Note	Pro Forma Combined
	A&P	Pathmark			
<b>ASSETS</b>					
Current assets:					
Cash and cash equivalents	\$ 86.2	\$ 28.1	\$ 0.0		\$ 114.3
Restricted cash	51.2		(51.2)	(4)	0.0
Restricted marketable securities	20.3	0.0	(20.3)	(4)	0.0
Accounts receivable, net	117.1	20.6			137.7
Inventories	411.4	180.3	6.4	(3)	598.1
Prepaid expenses and other current assets	62.7	103.3	19.4	(8)	185.4
	<u>748.9</u>	<u>332.3</u>	<u>(45.7)</u>		<u>1,035.5</u>
Non-current assets:					
Property net	940.0	535.7	220.4	(3)	1,696.1
Investments in Metro, Inc.	368.9		(129.6)	(6)	404.1
			164.8	(6)	
Other assets	53.9	119.7	25.0	(5)	246.1
			(7.5)	(3)	
			55.0	(8)	
Goodwill	0.0	144.7	(144.7)	(3)	816.7
			816.7	(3)	
	<u>2,111.7</u>	<u>1,132.4</u>	<u>954.4</u>		<u>4,198.5</u>

The accompanying notes are an integral part of the Unaudited Pro Forma Condensed Combined Financial Statements.

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	Historical		Pro Forma Adjustments	Note	Pro Forma Combined
	A&P	Pathmark			
<b>LIABILITIES &amp; STOCKHOLDERS EQUITY</b>					
Current liabilities:					
Current portion of long-term debt	\$ 32.1	\$ 25.1	\$ (25.1)	(4)	\$ 32.1
Current portion of obligations under capital leases	1.6	11.4			13.0
Accounts payable	197.5	78.2			275.7
Accrued and other liabilities	327.3	136.9			464.2
<b>Total current liabilities</b>	<b>558.5</b>	<b>251.6</b>	<b>(25.1)</b>		<b>785.0</b>
Non-current liabilities:					
Long-term debt	284.2	423.1	25.1	(4)	1,050.4
			780.0	(4)	
			(448.2)	(4)	
			56.2	(4)	
			(70.0)	(4)	
Long-term obligations under capital leases	29.9	158.4			188.3
Long-term real estate liabilities	300.8				300.8
Common stock warrants			213.0	(4)	213.0
Other non-current liabilities	507.6	170.9	16.0	(7)	776.4
			81.9	(8)	
<b>Total liabilities</b>	<b>1,681.0</b>	<b>1,004.0</b>	<b>628.9</b>		<b>3,313.9</b>
Stockholders' equity					
Common stock	41.6	0.5	(0.5)	(3)	
			6.7	(4)	48.3
Common stock warrants	0.0	69.7	(69.7)	(3)	1.9
			1.9	(4)	
Paid-in capital	212.9	754.3	(754.3)	(3)	
			208.4	(4)	436.1
			14.8	(4)	
Additional other comprehensive income	22.9	(39.4)	39.4	(3)	187.7
			164.8	(6)	
Accumulated earnings (deficit)	153.3	(656.7)	656.7	(3)	210.6
			60.4	(6)	
			(3.1)	(2)	
<b>Total stockholders' equity</b>	<b>430.7</b>	<b>128.4</b>	<b>325.5</b>		<b>884.6</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 2,111.7</b>	<b>\$ 1,132.4</b>	<b>\$ 954.4</b>		<b>\$ 4,198.5</b>

The accompanying notes are an integral part of the Unaudited Pro Forma Condensed Combined Financial Statements.

**The Great Atlantic & Pacific Tea Company, Inc.**  
**Unaudited Pro Forma Condensed Combined Statement of Operations**

**52 Weeks Ended February 24, 2007**

(Dollars in millions, except share and per share amounts)

	Historical		Pro Forma Adjustments	Note	Pro Forma Combined
	A&P	Pathmark			
Sales:	\$ 6,850.3	\$ 4,058.0			\$ 10,908.3
Cost of merchandise sold	(4,785.8)	(2,875.2)			(7,661.0)
<b>Gross margin</b>	<b>2,064.5</b>	<b>1,182.8</b>			<b>3,247.3</b>
Store operating, general and administrative expense	(2,074.5)	(1,149.4)	(18.5)	(3)	(3,242.4)
<b>(Loss) income from operations</b>	<b>\$ (10.0)</b>	<b>\$ 33.4</b>	<b>\$ (18.5)</b>		<b>\$ 4.9</b>
(Loss) gain on sale of Canadian operations	(1.3)				(1.3)
Interest expense	(73.8)	(62.3)	(48.7)	(5)	(184.8)
Interest income	9.6	0.0	(3.4)	(5)	6.2
Dividend income from Metro, Inc.			4.4	(6)	4.4
Equity in earnings of Metro, Inc.	40.0	0.0	(40.0)	(6)	0.0
<b>Loss from continuing operations before income taxes</b>	<b>(35.5)</b>	<b>(28.9)</b>	<b>(106.2)</b>		<b>(170.6)</b>
Benefit from income taxes	62.1	10.6	18.2	(8)	90.9
<b>(Loss) income from continuing operations after taxes and before nonrecurring charges or credits directly attributable to the transaction</b>	<b>26.6</b>	<b>(18.3)</b>	<b>(88.0)</b>		<b>(79.7)</b>
<b>Per share data:</b>					
Net income (loss) per share:					
Basic	\$ 0.64				(\$ 1.65)
Diluted	\$ 0.63				(\$ 1.65)
Outstanding shares:					
Basic	41,430,600				48,137,037
Diluted	41,902,358				48,137,037

The accompanying notes are an integral part of the Unaudited Pro Forma Condensed Combined Financial Statements.

**Notes to Unaudited Pro Forma Condensed Combined Financial Statements**

**(Dollars in millions)**

**Note 1 Basis of Presentation**

These unaudited pro forma condensed combined financial statements ( *pro forma financial statements* ) have been prepared based upon historical financial statements of A&P and Pathmark, giving effect to the merger transaction and other related adjustments described in these footnotes. These pro forma financial statements should be read in conjunction with the historical financial statements of A&P and Pathmark incorporated by reference into this prospectus.

These pro forma financial statements and adjustments are based on preliminary internal estimates and assumptions made by management and have been made solely for purposes of developing these pro forma financial statements for illustrative purposes necessary to comply with the requirements of the SEC. These pro forma financial statements are not necessarily indicative of the results of operations that would have been achieved had the merger transaction actually taken place at the dates indicated and do not purport to be indicative of future financial position or operating results. The actual results reported by the combined company in periods following the merger may differ materially from that reflected in these pro forma financial statements for a number of reasons explained herein.

The Unaudited Pro Forma Condensed Combined Balance Sheet was prepared using the historical consolidated financial statements of A&P and Pathmark as of February 24, 2007 and February 3, 2007, respectively. The pro forma adjustments give effect to the merger as if it occurred on February 24, 2007.

The unaudited pro forma condensed combined statements of operations was prepared using the historical consolidated statements of operations of A&P and Pathmark for the 52 weeks ended February 24, 2007 and the 53 weeks ended February 3, 2007, respectively. The pro forma adjustments give effect to the merger as if it occurred on the first day of the 52 weeks ended February 24, 2007.

**Note 2 Purchase Price**

The purchase price allocation included in these pro forma financial statements is preliminary and is based on information that was available to management of A&P and Pathmark at the time these pro forma financial statements were prepared. Accordingly, the purchase price allocation will change and the impact of such changes could be material.

A&P used a market price of \$32.08 for A&P shares when calculating the value of the A&P common stock and warrants that will be issued in this transaction to holders of Pathmark common stock.

A&P used a market price of \$30.86 for A&P shares when calculating the value using a Black-Scholes valuation model of the A&P roll-over options that will be issued in this transaction to holders of Pathmark common stock. This was the quoted closing price of A&P common stock the last trading day before the parties entered into the merger agreement. The actual market price of A&P shares that will be used to calculate the value using the Black-Scholes valuation model will be the average quoted closing price for a few days surrounding the closing date.

A&P used a market price of \$11.25 for Pathmark shares when estimating the amount of cash that would be paid to buy out Pathmark option, restricted stock and restricted stock unit holders in accordance with the requirements stated below. This was the quoted closing market price of Pathmark common stock

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the last trading day before the parties entered into the merger agreement. The actual market price of Pathmark shares that will be used to calculate the cash payout and the option exchange ratio will be the quoted closing price on the day before the closing date.

The merger agreement provides that each share of Pathmark common stock outstanding will be converted into the right to receive 0.12963 shares of A&P common stock (together with cash in lieu of fractional shares) and \$9.00 in cash.

Additionally, A&P will issue roll-over stock warrants to the Yucaipa Investors under a formula whereby each Pathmark warrant will be converted into the right to receive 0.46296 A&P warrants (together with cash in lieu of fractional shares) at an exercise price equal to their existing exercise prices divided by 0.46296. For further details, see Yucaipa Warrant Agreement beginning on page 181.

A&P will assume the obligations of Pathmark in the 2000 Warrant Agreement such that the warrant holders under the 2000 Warrant Agreement shall have the right to purchase 0.12963 A&P common stock and receive \$9.00 per share upon receipt of the \$22.31 exercise price. See Treatment of Pathmark Stock Options, Warrants and Other Equity Based Awards beginning on page 116.

For Pathmark stock options granted prior to June 9, 2005 where consents are not obtained, and that have exercise prices greater than or equal to the fair market value of the underlying stock, A&P will issue A&P stock options in lieu of cash equal to (A) the number of shares of Pathmark common stock equal to the product of (I) the number of shares of Pathmark common stock such holder could have purchased had such holder exercised such stock option in full immediately prior to the closing date of the merger and (II) the Option Exchange Ratio at (B) a price per share equal to (I) the exercise price per share of such stock option divided by (II) the Option Exchange Ratio, where the Option Exchange Ratio means the quotient of (x) the Pathmark Closing Price and (y) \$27.00. The A&P stock options issued have a fair value in excess of the exchanged Pathmark stock options of approximately \$3.1 million which is recognized as compensation expense for purposes of these pro forma financial statements.

Each Pathmark restricted common stock unit or restricted share outstanding will be converted into cash equal to the product of (A) the number of shares of Pathmark common stock subject to award immediately prior the closing date and (B) the Pathmark Closing Price. Each Pathmark outstanding option granted on or after June 9, 2005 and each option granted prior to June 9, 2005 to the extent consents are obtained will be converted into cash equal to the product of (A) the number of shares of Pathmark common stock such holder could have purchased had such holder exercised such stock option in full immediately prior the closing date and (B) the excess, if any, of (I) the per share closing price of Pathmark common stock, as such price is quoted on the day immediately prior to the closing date of the merger over (II) the exercise price per share of such stock option. Any stock options, other than Pre-Amendment Options, with exercise prices equal to or greater than the Pathmark Closing Price will be canceled for no consideration; however, there are currently no such stock options.

Purchase price paid as:	
Equity issued to Pathmark common stockholders	\$ 215.1
Issuance to Pathmark option holders	11.7
Issuance to Pathmark 2005 warrant holders	213.0
Issuance to Pathmark 2000 warrant holders	1.9
	<hr/>
Total equity consideration	441.7
Cash paid to redeem Pathmark debt	465.2
Cash paid to Pathmark common stockholders at \$9/share	465.7
Cash paid to Pathmark option, restricted stock and restricted stock unit holders	19.8
Cash paid for estimated transaction fees (excluding financing fees)	52.0
	<hr/>
Total cash consideration	1,002.7
Total consideration	\$ 1,444.4

**Note 3 Purchase Price Allocation**

Under the purchase method of accounting, the aggregate consideration paid is allocated to the tangible and identifiable intangible assets acquired and liabilities assumed on the basis of their fair values on the transaction date. These pro forma financial statements presume that the historical value of Pathmark's tangible assets and liabilities approximates fair value. The actual values assigned may change significantly after a valuation is made. Pro forma adjustments are based on A&P management's preliminary internal estimates of fair values and eliminate the historical Pathmark Stockholders' equity accounts.

A&P management based the preliminary allocation of purchase price to favorable leases and certain owned property of approximately \$149.0 million and \$71.4 million, respectively, on a valuation performed on properties owned and under lease by Pathmark in 2004. It is assumed for purposes of these pro forma financial statements that the value of these properties and the specific properties valued in 2004 have not changed substantially from that date to the date these unaudited pro forma financial statements were prepared. Management will amortize the favorable leases over the remaining useful life of the original lease or the remaining useful life of the original lease plus one renewal option, depending on the probability of renewal at the closing date of the transaction. Management assumes the average estimated useful life is ten years and twenty years, respectively, for the favorable leases and owned property for purposes of calculating annual amortization expense of approximately \$18.5 million for these pro forma financial statements.

A&P preliminarily estimates the increase in fair value of Inventories to be approximately \$6.4 million.

A&P management believes that a portion of the purchase price may be allocated to favorable and unfavorable contracts; however, management is not able to estimate the value of these contracts at this time. The value of any such contracts will be amortized over the estimated useful life of the contracts which will be determined at the time the valuation is made. Adjustments to reflect the value of benefit plan obligations will be determined upon the closing of the merger and final valuations. A&P management also believes that a significant amount of the purchase price will be allocated to Pharmacy Scripts, Customer Relationships, and Trade Name; however, management does not have any indication of the value of these assets at this time. Pharmacy Scripts and Customer Relationships values will be amortized over the estimated useful life of the assets, which will be determined at the time the valuation is made. A&P intends to continue use of the Pathmark Trade Name indefinitely and therefore this asset will not be amortized.

The excess of the purchase price over the fair value of assets (tangible and intangible) and liabilities acquired will be allocated to Goodwill, which is not amortized. The amount of Goodwill assumed in these pro forma financial statements will change depending on the fair values allocated to the tangible and intangible assets and liabilities acquired.



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These preliminary adjustments are subject to the final outcome of independent analyses to be conducted after the completion of the merger. The final valuation and amounts recorded will be based on (i) the actual net tangible and intangible assets assumed of Pathmark that exist as of the completion of the merger and (ii) certain valuations and other studies performed with the assistance of outside valuation specialists after the completion of the merger and may differ materially from the information presented in these pro forma financial statements.

<b>Reconciliation of historical book value of Pathmark net assets acquired</b>	
Historical book value of Pathmark net assets	\$ 128.4
Less:	
Goodwill	(144.7)
Deferred Financing Fees	(7.5)
Current portion of long-term debt exchanged	25.1
Long-term debt exchanged	423.1
	424.4
Historical book value of Pathmark net assets acquired	424.4
Conforming accounting policy for insurance reserves (see Note 7)	(16.0)
Fair value of leased and owned property	220.4
Step-up in value of Inventory	6.4
Deferred tax assets	74.4
Deferred tax liability	(81.9)
Goodwill	816.7
	816.7
<b>Total allocation of consideration</b>	<b>\$ 1,444.4</b>

### Note 4 Financing

These pro forma financial statements reflect A&P management's best estimate of the amounts of financing at the time these pro forma financial statements were prepared. The actual amounts of financing will not be determined until shortly before the closing date of the merger. These pro forma financial statements assume:

#### Restricted Cash and Restricted Marketable Securities

A&P will utilize its Revolving Credit Agreement to collateralize letters of credit thereby enabling A&P to fund a portion of the acquisition with the previously restricted cash and marketable securities of \$51.2 million and \$20.3 million, respectively, at February 24, 2007. The remaining cash required will come from \$190.0 million in cash proceeds from the sale of Metro shares that are held in a blocked account as explained at Note 6 Investment in Metro.

#### Debt

A&P has received \$780.0 million in commitments from financial institutions to finance this acquisition and expects to issue new eight-year long-term notes. In addition, A&P has a \$615.0 million commitment for a Revolving Credit Agreement.

Proceeds will be used to pay down the outstanding Pathmark debt (\$448.2 million at February 3, 2007 comprised of current and noncurrent debt of \$25.1 million and \$423.1 million, respectively, and \$17.0 million for the contractual premium to redeem the Pathmark senior subordinated notes); pay down the existing A&P Revolving Credit Agreement for \$70.0 million; and fund the cash portion of the merger consideration.

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The actual amount of debt to be issued depends on the final balances of the Pathmark notes at the closing date of the merger, the amount of notes not tendered, the amount of pre-June 9, 2005 stock options not surrendered, the actual Pathmark Closing Price at the date immediately prior to the closing date of the merger, the number of options, shares of restricted stock, and restricted stock units outstanding, and the number of fractional shares purchased for cash.

A&P expects to issue 11,623,236 roll-over warrants in exchange for Pathmark's 2005 warrants in the transaction. The number of warrants to be issued was computed based on the number of Pathmark warrants outstanding on February 3, 2007 totaling approximately 25,106,350. Settlement of these warrants is subject to the Tengemann Stockholder Agreement which causes these instruments to be accounted for as a liability that is adjusted to market at each balance sheet date. These warrants are valued using a Black-Scholes valuation model using the price of A&P common stock of \$32.08 per common share, the average quoted market price of A&P common stock for two trading days before and two trading days after the merger was announced. See Note 2 Purchase Price for additional information.

### Equity

A&P expects to issue 6,706,437 shares of A&P common stock to Pathmark common stockholders in the transaction. The number of shares to be issued was computed based on the number of shares of unrestricted Pathmark common stock outstanding on February 3, 2007 of 51,735,220. For purposes of computing the purchase price, the price of A&P common stock used is \$32.08 per common share, the average quoted market price of A&P common stock for two trading days before and two trading days after the merger was announced. See Note 2 Purchase Price for additional information.

A&P expects to issue 1,144,658 roll-over stock options in exchange for options granted prior to June 9, 2005 that have exercise prices greater than or equal to the fair market value of the underlying stock at the closing date of the merger. (It is assumed for purposes of these pro forma financial statements that such consents will be obtained with respect to options granted prior to June 9, 2005 that have exercise prices less than the fair market value of the underlying stock.) The number of options to be issued was computed based on the number of shares underlying such options as of February 3, 2007 of 2,747,180. For purposes of computing the purchase price, the options are valued using a Black-Scholes valuation model using the price of A&P common stock of \$30.86 per common share, the quoted market price of A&P common stock the last trading day before the merger was announced. See Note 2 Purchase Price for additional information.

A&P will assume the 5,294,118 outstanding Pathmark 2000 warrants. Upon exercise each warrant will entitle the holder to receive 0.12963 shares of A&P common stock and \$9.00 in cash. For purposes of computing the purchase price, the 2000 Warrants are valued using a Black-Scholes valuation model using the price of A&P common stock of \$30.86 per common share, the quoted market price of A&P common stock the last trading day before the merger was announced. See Note 2 Purchase Price for additional information.

**Source & Use of Funds**

<b>Source of Funds</b>		
A&P Restricted cash	\$	51.2
A&P Restricted marketable securities		20.3
Proceeds in blocked account from sale of 6.35 million Metro shares		190.0
<b>Total Funds from Cash and Investments</b>	<b>\$</b>	<b>261.5</b>
New Senior Secured Notes	\$	780.0
New Revolving Credit Agreement		56.2
Issuance of 11.6 million A&P warrants to Pathmark 2005 warrant holders		213.0
Issuance of 5.3 million A&P warrants to Pathmark 2000 warrant holders		1.9
Issuance of 1.1 million A&P stock options to Pathmark option holders		14.8
Issuance of 6.7 million common shares of A&P at \$1.00 par value		215.1
<b>Total Funds from Debt and Equity</b>	<b>\$</b>	<b>1,281.0</b>
<b>Total Source of Funds</b>	<b>\$</b>	<b>1,542.5</b>
<b>Use of Funds</b>		
Purchase of Pathmark common shares		
Cash consideration at \$9.00 per share	\$	465.7
Equity consideration		215.1
		680.8
Purchase of Pathmark Options, Restricted Stock and RSUs		19.8
Exchange of Pathmark warrants		
Issuance of 11.6 million A&P warrants to Pathmark 2005 warrant holders		213.0
Issuance of 5.3 million A&P warrants to Pathmark 2000 warrant holders		1.9
		214.9
Exchange of Pathmark options		
Issuance of 1.1 million A&P stock options to Pathmark option holders		14.8
Pathmark Debt exchange		465.2
Repay borrowings under former A&P Revolving Credit Agreement		70.0
Transaction Costs (including financing fees)		77.0
<b>Total Use of Funds</b>	<b>\$</b>	<b>1,542.5</b>

**Note 5 Interest Expense and Income**

A&P estimates that it will incur approximately \$25 million in financing fees (\$22 million for new notes and \$3 million for a new Revolving Credit Agreement) which will be capitalized in Other assets. For purposes of these pro forma financial statements, A&P has assumed that eight-year fixed rate notes will be issued at a rate of 10.5%, based on current indications of interest rates. The revolver will be at variable rates, assumed to be 7.1% and outstanding for a five-year period. The actual terms have not been finalized and may include variable rates and differing lives than assumed herein. Using these assumptions, results in incremental estimated interest expense of \$48.7 million. Further, these pro forma financial statements reflect a reduction in interest income of \$3.4 million due to the use of the restricted cash and restricted marketable securities to fund a portion of the acquisition and collateralizing letters of credit with A&P's Revolving Credit Agreement. A change of 1/8% in the interest rate would result in a change in interest expense and net loss of \$1.1 million.

**Note 6 Investment in Metro**

Pursuant to the terms of the merger agreement, A&P sold approximately 35% of its investment in Metro on March 8, 2007 for approximately \$203.5 million and placed \$190.0 million of the proceeds in a blocked account to fund a portion of the merger consideration. The sale of such shares resulted in a reduction in the investment of approximately \$129.6 million and an increase in Accumulated earnings (due to the gain) of approximately \$60.4 million for purposes of these pro forma financial statements.



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Further, the sale of these shares resulted in A&P's diminished influence over Metro such that the accounting treatment for this investment will change from the equity method to the cost method. Under the cost method, A&P will treat this investment as available-for-sale pursuant to FAS 115, *Accounting for Certain Investments in Debt and Equity Securities* and adjust the Investment in Metro, Inc. to market price at each balance sheet date through Additional other comprehensive income. The market price at February 24, 2007 for the remaining shares of Metro was approximately \$404.1 million, requiring an adjustment to the Unaudited Pro Forma Condensed Combined Balance Sheet Investment in Metro, Inc. and Additional other comprehensive income of \$164.8 million.

For purposes of the Unaudited Pro Forma Condensed Combined Statement of Operations, A&P assumed the sale of shares occurred at the beginning of the year and has eliminated the equity income from this investment and recorded dividend income of approximately \$4.4 million (as prescribed by the cost method of accounting in APB 18, *The Equity Method of Accounting for Investments in Common Stock*) which is equivalent to approximately 65% of the dividend proceeds received by A&P during fiscal year 2006.

### **Note 7 Conforming Accounting Methods**

Based on A&P's preliminary review of Pathmark's significant accounting policies, A&P expects to record an additional \$16.0 million for self-insurance reserves to conform Pathmark accounting policies to those of A&P which will be recorded through the purchase price allocation (see Note 3 Purchase Price Allocation). The difference in policy is attributable to A&P including expected legal fees in the calculation of the expected obligation. A&P does not expect this adjustment to have a significant impact on annual expense incurred. This amount could change based upon final valuation of the reserve.

Any additional adjustments are not expected to be significant. Upon consummation of the merger, further review of Pathmark's accounting policies may result in required revisions to Pathmark's policies to conform to A&P.

### **Note 8 Income Tax Effect**

Prior to the merger, A&P maintained a valuation allowance of approximately \$74.4 million on its net deferred tax assets (\$19.4 million classified against current assets and \$55.0 million classified against noncurrent assets). As a result of the merger, additional net deferred tax liabilities of approximately \$81.9 million would be generated and accordingly, A&P's valuation allowance would be released as part of the purchase price allocation. In addition, the Unaudited Pro Forma Condensed Combined Statement of Operations includes a tax benefit of approximately \$18.2 million that would result from the pro forma additional interest expense.

### **Note 9 Cost Savings**

These pro forma financial statements do not include any adjustments for any cost or other operating synergies that may result from the merger. A&P expects the transaction to generate significant synergies by the second year following the closing of the merger. Cost synergy opportunities in cost of goods and administration are expected to be achieved through increased scale, contract terminations, and the elimination of the overlap between the two companies. See Adoption of the Merger Agreement (Pathmark Proposal 1) beginning on page 46.

These pro forma financial statements do not include any adjustments resulting from integration planning or other nonrecurring charges resulting from the merger. The substantial majority of nonrecurring charges resulting from the merger will be comprised of employee termination costs and other exit

costs related to the Pathmark business that are expected to be recognized in the opening balance sheet in accordance with EITF Issue No. 95-3, *Recognition of Liabilities in Connection with a Purchase Business Combination*. Other merger-related charges may be incurred that do not meet the criteria in EITF Issue No. 95-3, including employee termination and exit costs related to the A&P business, other integration-related costs, and the impacts of potential divestitures, if any, that may be required by governmental authorities. A&P and Pathmark have just recently begun collecting information in order to formulate the detailed integration plans to deliver planned synergies. At this time, however, the status of the integration plans and the merger-related costs are too uncertain to include in these pro forma financial statements. A&P, however, estimates costs incurred to restructure the combined organization to be approximately \$115.0 million to be incurred over the first eighteen months after the closing of the merger. This amount is comprised of \$30.0 million in capital costs mainly relating to Information System conversions and \$85.0 million of expenses related to severance, contract terminations, and other integration related expenses.

**Note 10 Unaudited Pro Forma Combined Earnings Per Common Share**

Unaudited pro forma combined earnings per common share are computed in accordance with SFAS No. 128, *Earnings Per Share*. Pro forma combined basic earnings per share of A&P common stock is computed by dividing: (i) pro forma combined net earnings by (ii) the weighted average number of shares of A&P common stock outstanding during the period as if the merger had occurred on the first day of the period presented, which are referred to as the basic shares. Because the Unaudited Pro Forma Condensed Combined Statement of Operations presents a net loss, diluted earnings per share are presented as equivalent to basic earnings per share.

The average number of shares of Pathmark common stock outstanding have been adjusted to reflect the impact of the merger by applying the exchange ratios to amounts historically reported by Pathmark.

<i>Weighted average pro forma combined number of common shares:</i>	
A&P weighted average common shares, basic	41,430,600
Pathmark equivalent weighted average number of common shares outstanding of A&P	6,706,437
	<hr/>
Total combined companies weighted average number of common shares outstanding, basic and diluted	48,137,037

**COMPARISON OF STOCKHOLDERS RIGHTS**

The rights of A&P stockholders are currently governed by the Maryland General Corporation Law (the *MGCL*) and the Articles of Restatement of the Certificate of Incorporation, as amended, and the By-Laws of A&P, which we refer to as the charter and bylaws of A&P, respectively. The rights of Pathmark stockholders are currently governed by the DGCL and the Amended and Restated Certificate of Incorporation and the Amended and Restated By-Laws of Pathmark, which we refer to as the certificate of incorporation and bylaws of Pathmark, respectively.

This section of the joint proxy statement/prospectus describes the material differences between the rights of A&P's stockholders and Pathmark's stockholders.

This section does not include a complete description of all differences among the rights of A&P's stockholders and Pathmark's stockholders, nor does it include a complete description of the specific rights of these stockholders. Furthermore, the identification of some of the differences in the rights of these stockholders as material is not intended to indicate that other differences that may be equally important do not exist.

You are urged to read carefully the relevant provisions of the MGCL and the DGCL, as well as the charter and bylaws of A&P and the certificate of incorporation and bylaws of Pathmark. Copies of the charter and bylaws of A&P and the certificate of incorporation and bylaws of Pathmark are filed as exhibits to the reports of A&P and Pathmark incorporated by reference into this joint proxy statement/prospectus. See *Where You Can Find More Information* beginning on page 186.

Under the Tengelmann Stockholder Agreement, and the related bylaw amendments authorized by the A&P board of directors in connection with such agreement, the rights of A&P stockholders set forth below will be altered as provided in both the Tengelmann Stockholder Agreement and bylaw amendments. See *Adoption of the Merger Agreement (Pathmark Proposal 1) Tengelmann Stockholder Agreement*.

**Capitalization**

*A&P*

The authorized capital stock of A&P currently consists of 80,000,000 shares of common stock, par value \$1.00 per share, and 3,000,000 shares of preferred stock without par value. All of the A&P preferred shares are available for future issuance in one or more series to be designated by the board of directors.

The preferred stock may be issued from time to time, in one or more series as authorized by the board of directors. Prior to issuance of shares of each series, the board of directors is required by the MGCL and the charter to file articles supplementary containing a description of the stock, including preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications, terms and conditions of redemption, and other rights as set or

*Pathmark*

The authorized capital stock of Pathmark currently consists of 100,000,000 shares of common stock, par value \$0.01 per share, and 5,000,000 shares of preferred stock, par value \$0.01 per share. All of the Pathmark preferred shares are available for future issuance in one or more series to be designated by the board of directors.

The preferred stock may be issued from time to time, in one or more classes or series, as expressly authorized by the board of directors. Pathmark's certificate of incorporation authorizes the board of directors, without further stockholder action, to issue the preferred stock, in one or more classes or series, and determine by resolution the voting powers (if any) and such distinctive designations, preferences and relative, par-

*A&P*

changed by the board of directors and a statement that the stock has been classified or reclassified by the board of directors under the authority contained in the charter. The rights of preferred stockholders may supersede the rights of common stockholders.

**Voting Rights of Stockholders**

*A&P*

Each outstanding share of A&P common stock is entitled to one vote on each matter submitted to a vote at a meeting of the stockholders, including the election of directors. Currently, there are no shares of any class outstanding other than common stock.

**Preemptive Rights**

*A&P*

The holders of A&P common stock have preemptive rights to subscribe for and purchase additional shares of stock of any class of A&P and any securities convertible into stock of any class, *provided, however*, that no preemptive right shall exist with respect to

- (1) shares issued for not less than their fair value in exchange for services or property other than money,
- (2) shares remaining unsubscribed after having been offered to stockholders,
- (3) treasury shares sold for not less than their fair value,
- (4) shares issued or issuable pursuant to articles of merger,
- (5) preferred shares without then present voting power with respect to the election of directors issued for not less than their fair value, and
- (6) shares issued and sold to A&P's officers or other employees or to the officers or other employees of any subsidiary of A&P upon such terms and conditions as are approved by the affirmative vote of a majority of all of the shares entitled to vote with respect thereto at a meeting duly called and held for such purpose.

The determination of fair value by the board of

*Pathmark*

icipating, optional or other special rights and such qualifications, limitations or restrictions thereof. The rights of preferred stockholders may supersede the rights of common stockholders.

*Pathmark*

Each outstanding share of Pathmark common stock is entitled to one vote on all matters submitted to a vote of stockholders, including the election of directors. Currently, there are no classes of shares outstanding other than common stock.

*Pathmark*

The holders of common stock do not have preemptive rights to subscribe for and to purchase additional shares of stock of any class or classes of Pathmark.



directors is conclusive in the absence of fraud or gross disparity in such determination.

**Reverse Stock Splits**

*A&P*

The MGCL permits the board of directors of a corporation with a class of securities registered under the Exchange Act, subject to any restriction in its charter, without stockholder action, to effect a reverse stock split resulting in a combination of shares at a ratio of not more than ten shares into one share in any twelve-month period. A reverse stock split is defined as a combination of outstanding shares of stock of a corporation into a lesser number of shares of stock of the same class without any change in the aggregate amount of stated capital of the corporation, except for a change resulting from an elimination of fractional shares. The A&P charter does not restrict such reverse stock splits.

*Pathmark*

Under the DGCL, a corporation may amend its certificate of incorporation to effect a change in stock or the rights of stockholders, or an exchange, reclassification, subdivision, combination or cancellation of the stock or rights of stockholders.

**Size of the Board of Directors**

*A&P*

Under the MGCL, a Maryland corporation must have a board of directors consisting of at least one director. The A&P charter provides that the A&P board of directors is to consist of twenty directors, which number of directors may be increased or decreased as provided in the bylaws. The A&P charter and bylaws provide that the number of directors must not be less than three. Pursuant to the bylaws, the board of directors may fix the number of directors from time to time by resolution of the board of directors. Currently, the number of members of the A&P board of directors is eight.

*Pathmark*

Under the DGCL, except in certain circumstances, such as a close corporation, a corporation must have a board of directors consisting of at least one director. The Pathmark certificate of incorporation provides that the board of directors is to be established in the manner provided in the bylaws. The Pathmark bylaws provide that the number of directors must not be less than nine or more than ten.

Pursuant to the bylaws, the board of directors may fix the number of directors from time to time by resolution of the board of directors. Currently, the number of members of the Pathmark board of directors is ten.

**Classification of the Board**

*A&P*

The MGCL permits classification of a Maryland corporation's board of directors if the corporation's charter or bylaws so provide. The A&P charter and bylaws do not provide for classification of the A&P board of directors. See the discussion under

*Pathmark*

The DGCL permits classification of a Delaware corporation's board of directors if the corporation's certificate of incorporation, an initial bylaw or bylaw adopted by a stockholder vote so pro-

Subtitle 8 of Title 3 of the MGCL regarding board classification. *Pathmark* provides.

*Pathmark*'s certificate of incorporation and bylaws do not provide for classification of the *Pathmark* board of directors.

### Vacancies on the Board

#### *A&P*

Under the MGCL, stockholders may elect a successor to fill a vacancy on the board of directors which results from the removal of a director. Under the MGCL and the bylaws of A&P, a majority of the remaining directors, whether sufficient to constitute a quorum or not, may also fill a vacancy unless it results from an increase in the size of the board, in which case the vacancy may be filled by a majority of the entire board of directors. See the discussion under Subtitle 8 of Title 3 of the MGCL regarding the filling of vacancies on the board if a corporation elects to be subject to relevant sections of Subtitle 8 of Title 3 of the MGCL.

#### *Pathmark*

Under the DGCL, vacancies and newly created directorships may be filled by a majority of the directors then in office, even though less than a quorum, or by a sole remaining director unless otherwise provided in the certificate of incorporation or bylaws.

*Pathmark*'s bylaws provide that any vacancy occurring on the board of directors for any reason, including an increase in the authorized number of directors, may be filled by the board of directors, acting by a majority of the directors at any meeting, although less than a quorum, or by a sole remaining director. Any directors so chosen shall hold office until the next annual meeting of stockholders and until their successors are elected and qualified or until their earlier removal or resignation.

### Removal of Directors

#### *A&P*

Under the MGCL, the stockholders of a corporation may remove any director, with or without cause, by the affirmative vote of a majority of all votes entitled to be cast generally for the election of directors, except in certain circumstances including election of directors by a separate class or series, cumulative voting, a classified board or as otherwise provided in the charter.

Pursuant to the MGCL, the A&P bylaws provide that A&P stockholders may remove any of the A&P directors at any time by the affirmative vote of a majority of all votes entitled to be cast generally for the election of directors. See the discussion under

Subtitle 8 of Title 3 of the MGCL regarding the vote required for removal of directors if a corporation elects to be subject to relevant sections of Subtitle 8 of Title 3 of the MGCL.

#### *Pathmark*

Under the DGCL, in the absence of cumulative voting or a classified board, any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote in an election of directors.

*Pathmark*'s certificate of incorporation and bylaws do not provide for cumulative voting or a classified board and do not otherwise address the removal of directors; provided, that whenever the holders of any class or series of stock are entitled to elect one or more directors by the certificate of incorporation, the right to remove directors without cause shall apply to the vote of the holders of the outstanding shares of such class or series and not to the vote of the outstanding shares as a whole.

**Cumulative Voting**

*A&P*

Under the MGCL, cumulative voting is permitted if the corporation's charter so provides. A&P's charter does not provide for cumulative voting.

*Pathmark*

Under the DGCL, cumulative voting is permitted if provided for in the certificate of incorporation. Pathmark's certificate of incorporation does not provide for cumulative voting.

**Notice of Stockholders Meetings**

*A&P*

The MGCL requires the secretary of a Maryland corporation to give notice in writing or by electronic transmission of each meeting of stockholders to each stockholder of record entitled to vote at the meeting and to each other stockholder entitled to notice of the meeting. The notice must state the place and time of the meeting and, if a special meeting, the purpose or purposes for which the meeting is to be held, not less than ten nor more than ninety days before each stockholder meeting.

*Pathmark*

The DGCL requires notice to stockholders of the date, time and place of each annual and special stockholders' meeting at least ten days, but no more than sixty days, before the meeting date. However, notice of a stockholders' meeting to vote upon a merger or a sale of all or substantially all of the corporation's assets, must be delivered at least twenty days, but no more than sixty days, before the meeting date.

A&P's bylaws require notice of stockholder meetings to be given not less than fifteen nor more than ninety days before the meeting and permit the meetings to be held at such place as designated by the board of directors.

Pathmark's bylaws provide for notice of at least ten days, but no more than sixty days, before the meeting date.

**Right to Call Special Meetings of Stockholders**

*A&P*

The MGCL provides that a special meeting of stockholders may be called by a Maryland corporation's president, board of directors or any other person specified in the corporation's charter or bylaws. The MGCL also provides that the secretary of a corporation shall call a special meeting of the stockholders on the written request of stockholders entitled to cast at least 25% of all the votes entitled to be cast at the meeting unless the charter or bylaws of the corporation contain a provision requiring the written request of stockholders entitled to cast a greater or lesser percentage of all votes entitled to be cast at the meeting, but such percentage may not be greater than a majority of all votes entitled to be cast at the meeting. See the discussion under the Subtitle 8 of Title 3 of the MGCL regarding the percentage of the stock-

*Pathmark*

Under the DGCL, a special meeting of stockholders may be called by the board of directors or by any person or persons authorized by the certificate of incorporation or the bylaws.

Pathmark's bylaws provide that special meetings of stockholders may be called by the board of directors.

holders which must request a special meeting if a corporation elects to be subject to relevant sections of Subtitle 8 of Title 3 of the MGCL.

A&P's bylaws permit special meetings of stockholders to be called by the chief executive officer, the chairman of the board, the president, the secretary upon the written request of stockholders entitled to cast at least 25% of all votes entitled to be cast at the meeting, or upon the written request of three or more directors. A&P's bylaws and the MGCL also provide that unless the special meeting is requested by stockholders entitled to vote at least a majority of all votes entitled to be cast at the meeting, a special meeting need not be called to consider any matter that is substantially the same as a matter voted on at any special meeting of the stockholders held during the preceding twelve months.

#### **Action by Written or Electronic Consent of Stockholders**

##### *A&P*

Under the MGCL, common stockholders may act without a meeting if a unanimous written or electronic consent that describes the action is signed or given by all stockholders entitled to vote on the matter and is filed in paper or electronic form with the records of stockholder meetings. The MGCL further provides that if authorized by the charter, the holders of common stock may act by written or electronic consent of the holders entitled to cast not less than the minimum number of votes that would be necessary to authorize or take the action at a stockholders' meeting if the corporation gives notice of the action to each holder of the class of common stock not later than ten days after the effective date of the action.

Additionally, the MGCL provides that unless the charter requires otherwise, the holders of any class of stock, other than common stock entitled to vote generally in the election of directors, may take action by written or electronic consent of the holders entitled to cast not less than the minimum number of votes that would be necessary to authorize or take the action at a stockholders' meeting if the corporation gives notice of the action to each holder of the class of stock not later than ten days after the effective time of the action.

A&P's charter and bylaws do not address stockholder action without a meeting.

##### *Pathmark*

Under the DGCL, unless otherwise provided in the certificate of incorporation, any action required by the DGCL to be taken at any annual or special meeting of stockholders, or any action that may be taken at any annual or special meeting of stockholders, may be taken without a meeting, without prior notice and without a vote if a consent or consents, in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take action at a meeting in which all shares entitled to vote on the matter were present and voting.

Pathmark's certificate of incorporation does not prohibit action by written consent.

## Stockholder Proposals

### *A&P*

The MGCL provides that the charter or bylaws of a Maryland corporation may require any stockholder proposing a nominee for election as a director or any other matter to be considered at a meeting of stockholders to provide advance notice of the nomination or proposal to the corporation not more than ninety days before the date of the meeting, or, in the case of an annual meeting, ninety days before the first anniversary of the preceding year's annual meeting or the mailing date of the notice of the preceding year's annual meeting. The charter or bylaws may provide another time.

A&P's charter and bylaws do not address stockholder proposals.

### *Pathmark*

The DGCL does not contain specific provisions regarding notice of stockholders' proposals or nominations for directors.

Pathmark's bylaws provide that in order for a stockholder to bring business or nominate one or more persons for election to the board before an annual meeting of stockholders, the stockholder must give timely written notice to the secretary of Pathmark. To be timely, the notice must be delivered to, or mailed and received by, Pathmark's secretary not less than sixty days, but no more than ninety days, prior to the anniversary date of the previous year's annual meeting; *provided, however*, that in the event the annual meeting is called for a date that is not within thirty days before or after such anniversary date, notice by the stockholder must be received at the principal executive offices of Pathmark not later than the close of business on the tenth day following the day on which Pathmark's notice of the date of the meeting is first given or disclosed to the general public, whichever occurs first.

Notice proposing business to be brought before the annual meeting of stockholders shall set forth as to each matter of business:

a brief description of the business desired to be brought before the annual meeting of stockholders and the reasons for conducting such business at the annual meeting of stockholders;

the name and address, as they appear on Pathmark's books, of the stockholder proposing such business;

the class and number of shares of Pathmark which are beneficially owned by the stockholder; and

any material interest of the stockholder in such business.

The chairman of the annual meeting of stockholders shall, if the facts warrant, determine and declare to the meeting that the business was not properly brought before the meeting in accordance with the provisions the bylaws, and if so

determined, the chairman shall also declare to the meeting and any such business not properly brought before the meeting shall not be transacted.

#### Director Nominations by Stockholders

##### *A&P*

Under the MGCL, director nominations by stockholders are treated as stockholder proposals. See Stockholder Proposals.

A&P's charter and bylaws do not address director nominations by stockholders.

##### *Pathmark*

The DGCL does not contain specific provisions regarding notice of nominations for directors.

Pathmark's bylaws provide that in order for a stockholder to nominate a director for election by the stockholders, the stockholder must give timely written notice to the secretary of Pathmark as described under Stockholder Proposals.

The notice must set forth the following information:

the name, age, business address and residence address of each such person in such notice;

the principal occupation or employment of each such person;

the number of shares of capital stock of Pathmark which are beneficially owned by each such person; and

such other information concerning each such person as would be required, under the rules of the SEC in a proxy statement soliciting proxies for the election of such person as a director.

The notice shall include a signed consent of each such nominee to serve as a director of Pathmark, if elected. The board of directors or a committee thereof shall consider nominating for election as director any person for whom a stockholder timely submits such recommendation in proper form.

#### Dividends

##### *A&P*

If authorized by its board of directors, a Maryland corporation generally may make distributions to its stockholders unless, after giving effect to the distribution, the corporation would not be able to pay its debts as they come due in the ordinary course of business or the corporation's total assets would be

##### *Pathmark*

The DGCL permits a corporation to declare and pay dividends out of surplus or, if there is no surplus, out of its net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year. *Surplus* is defined as the excess of the net assets of the corporation over

less than its total liabilities, plus, unless the charter permits otherwise (which the A&P charter does not), the amount that would be needed if the corporation were to be dissolved at the time of the distribution to satisfy the preferential rights of stockholders whose preferential rights on dissolution are superior to those receiving the distribution.

the amount determined to be the capital of the corporation by the board of directors. The capital of the corporation cannot be less than the aggregate par value of all issued shares of capital stock. Net assets equals total assets minus total liabilities. The DGCL also provides that dividends may not be paid out of net profits if, after the payment of the dividend, the capital of the corporation is less than the amount of capital represented by the outstanding stock of all classes having a preference upon the distribution of assets.

#### **Amendment to Charter**

##### *A&P*

Under the MGCL, amendments to a Maryland corporation's charter generally require the board of directors to (1) adopt a resolution declaring the amendments to be advisable on substantially the terms and conditions provided in such resolution, and (2) direct that the amendments be submitted for consideration at either an annual or special meeting of the stockholders. The corporation must provide notice to each stockholder entitled to vote on such amendments and each stockholder not entitled to vote on such amendment if the contract rights of such stockholder's stock, as expressly set forth in the charter, would be altered by the amendment. The stockholders must approve an amendment by the affirmative vote of two-thirds of all votes entitled to be cast on the matter unless a lesser proportion, but not less than a majority of all votes entitled to be cast, is provided for in the charter. The A&P charter does not so provide.

A&P reserves the right under its charter to make, from time to time, any amendments of its charter that are authorized by law, including any amendments that alter the contract rights of outstanding stock as expressly set forth in the charter.

#### **Amendment to Bylaws**

##### *A&P*

Under the MGCL, the power to adopt, alter and repeal a Maryland corporation's bylaws is vested in the stockholders, except to the extent that the charter or bylaws vest it in the board of directors. The A&P bylaws provide that the bylaws may be altered,

##### *Pathmark*

Under the DGCL, an amendment to the certificate of incorporation requires (1) the approval of the board of directors, (2) the approval of the holders of a majority of the outstanding stock entitled to vote upon the proposed amendment, and (3) the approval of the holders of a majority of the outstanding stock of each class entitled to vote thereon as a class. Pathmark's certificate of incorporation does not alter the standards for the approval of an amendment to the certificate of incorporation.

##### *Pathmark*

Under the DGCL, bylaws may be adopted, amended or repealed by the stockholders entitled to vote, and by the board of directors if the corporation's certificate of incorporation confers the power to adopt, amend or repeal the corporation's

amended or repealed, and new bylaws may be adopted, by the A&P board of directors or the stockholders by a majority vote at any meeting called for that purpose. However, no amendment adopted by the stockholders may be repealed by the board of directors.

bylaws upon the directors.

Pathmark's certificate of incorporation confers the power to adopt, amend or repeal the bylaws upon the board of directors.

### Mergers and Share Exchanges

#### *A&P*

Under the MGCL, the board of directors of a Maryland corporation proposing a merger, consolidation, transfer of all or substantially all of the assets of the corporation or share exchange must generally (1) adopt a resolution declaring the proposed transaction to be advisable on substantially the terms and conditions provided in such resolution, and (2) direct that the proposed transaction be submitted for consideration at either an annual or special meeting of the stockholders. The corporation must provide notice to each stockholder entitled to vote on such proposed transaction and each stockholder not entitled to vote on the proposed transaction, except the stockholders of a successor in a merger if the merger does not alter the contract rights of their stock as expressly set forth in the charter. The stockholders must approve a merger, consolidation, transfer of all or substantially all of the assets of the corporation or share exchange by the affirmative vote of two-thirds of all votes entitled to be cast on the matter unless a lesser proportion, but not less than a majority of all votes entitled to be cast, is provided for in the charter. The A&P charter does not so provide.

Under the MGCL, a merger or share exchange need only be approved by:

a majority vote of the entire board of directors of each of the constituent corporations if the merger is between a ninety percent or more owned subsidiary and such subsidiary's parent if the charter of the successor is not amended other than for the purposes of changing the successor's name, the name or other designation of the par value of any class or series of the successor's stock, or the aggregate par value of the successor's stock, and the contract rights of the stock of the successor issued in the merger are identical to the contract rights of the stock for which the stock of the successor was exchanged.

#### *Pathmark*

Under the DGCL, a merger, consolidation or sale of all or substantially all of a corporation's assets must be approved by the board of directors and, except with respect to certain mergers, by a majority of the outstanding stock of the corporation entitled to vote thereon. No vote of stockholders of a constituent corporation surviving a merger is required, unless the corporation provides otherwise in its certificate of incorporation, if:

the merger agreement does not amend the certificate of incorporation of the surviving corporation,

each share of stock of the surviving corporation outstanding before the merger is an identical outstanding or treasury share after the merger, and

either no shares of common stock of the surviving corporation and no shares, securities or obligations convertible into such stock are to be issued or delivered pursuant to the merger or the authorized unissued shares or treasury shares of the surviving corporation to be issued or delivered under the merger agreement, plus those initially issuable upon conversion of any other shares, securities or obligations to be issued or delivered under such agreement do not exceed 20% of the shares of common stock of such corporation outstanding immediately prior to the effective time of the merger.

a majority of the Maryland successor corporation's



entire board of directors if (1) such merger does not reclassify or change the terms of any class or series of stock that is outstanding immediately before the merger becomes effective or otherwise amend such successor's charter and the number of its shares of stock of such class or series outstanding immediately after the effective time of the merger does not increase by more than 20% of the number of its shares of the class or series of stock that is outstanding immediately before the merger becomes effective, or (2) there is no stock outstanding or subscribed for and entitled to be voted on the merger.

a share exchange must be approved for a Maryland successor corporation only by its board of directors and by any other action required by its charter.

With respect to a Maryland transferee corporation, a transfer of all or substantially all of the assets of a Maryland corporation need only be approved by the board of directors of the Maryland transferee.

Under the MGCL, a transfer of all or substantially all of the assets of a Maryland corporation need only be approved by the board of directors of the corporation if all of the equity interests of the transferee are owned, directly or indirectly, by the corporation.

#### **Appraisal Rights**

##### *A&P*

Under the MGCL, appraisal rights are available only in connection with (1) a consolidation or merger with another corporation, (2) acquisitions of the stockholder's stock in a share exchange, (3) a transfer of assets requiring stockholder approval, (4) an amendment of a corporation's charter in a way that alters the contract rights, as expressly set forth in the charter, of any outstanding stock and substantially adversely affects the stockholder's rights, unless the right to do so is reserved by the charter, or (5) transactions governed by the Maryland Business Combination Act relating to transactions with interested stockholders, or that are exempt from such Act pursuant to certain specified exemptions.

Unless, however, the transaction is subject to the Maryland Business Combination Act or exempted therefrom pursuant to certain specified exemptions, no appraisal rights are available to holders of shares

##### *Pathmark*

The DGCL generally provides stockholders of a corporation involved in a merger the right to demand and receive payment in cash of the fair value of their stock in certain mergers as determined by the Delaware Court of Chancery. As a general matter, appraisal rights are not available with respect to shares:

listed on a national securities exchange,

designated as a national market system security on an interdealer quotation system operated by the National Association of Securities Dealers, Inc., or

held of record by more than 2,000 stockholders,

*provided* that, notwithstanding the foregoing, appraisal rights shall be available to holders of shares of a constituent corporation if the holders are required to accept in the merger anything

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of any class of stock if:

the stock is listed on a national securities exchange, is designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc., or is designated for trading on the NASDAQ Small Cap Market,

the stock is that of the successor in a merger, unless (1) the merger alters the contract rights of the stock as expressly set forth in the charter (or other organizational document of the successor), and the charter does not reserve the right to do so, or (2) the stock is to be changed or converted into something other than either stock in the successor or cash, scrip or other rights or interests arising out of the provisions for the treatment of fractional shares of stock in the successor,

the stock is generally not entitled to be voted on the transaction or the stockholder did not own the shares on the record date,

the charter provides that the stockholders are not entitled to exercise appraisal rights, or

the stock is that of an open-ended investment company registered under the Investment Company Act of 1940 and the value placed on the stock in the transaction is its net asset value.

Holders of A&P common stock will not have appraisal rights with respect to the merger because A&P is not a party to the merger, because the outstanding shares of A&P common stock are listed on the NYSE and because the transaction is not subject to the Maryland Business Combination Act, or exempted therefrom pursuant to certain specified exemptions. See Anti-takeover Statutes.

**Anti-takeover Statutes**

*A&P*

**Maryland Business Combination Act**

The provisions of the Maryland Business Combination Act do not apply to business combinations of A&P because A&P had an existing interested stock-

other than any combination of:

shares of stock of the surviving corporation in the merger or depository receipts in respect thereof,

shares of stock (or depository receipts in respect thereof) of another corporation that, at the effective date of the merger, will be:

listed on a national securities exchange,

designated as a national market system security on an interdealer quotation system operated by the National Association of Securities Dealers, Inc., or

held of record by more than 2,000 holders, and

cash instead of fractional shares of stock or depository receipts received.

Appraisal rights will be available to holders of Pathmark common stock under the merger because the stockholders are required to receive cash as merger consideration, and the merger consideration therefore does not consist entirely of the types of consideration under the Delaware appraisal statute, such as shares of stock of the surviving corporation, shares of common stock listed on a national securities exchange and cash in lieu of fractional shares that would otherwise result in appraisal rights not being available to holders of Pathmark common stock.

*Pathmark*

Section 203 of the DGCL generally prohibits business combinations, including mergers, sales and leases of assets, issuances of securities

holder on July 1, 1983 and its charter and bylaws do not provide otherwise. A&P may, however, opt into these provisions by charter or bylaw provision or by board resolution.

Under the Maryland Business Combination Act, certain business combinations between a Maryland corporation and an interested stockholder or an affiliate of an interested stockholder are prohibited for five years after the most recent date on which the interested stockholder became an interested stockholder. Under the MGCL, an interested stockholder includes a person who is:

the beneficial owner, directly or indirectly, of 10% or more of the voting power of the outstanding voting stock of the corporation; or

an affiliate or associate of the corporation and was the beneficial owner, directly or indirectly, of 10% or more of the voting power of the then outstanding stock of the corporation at any time within the two-year period immediately prior to the date in question. A person is not an interested stockholder if, prior to the most recent time at which the person otherwise had become an interested stockholder, the board of directors of the corporation approved the transaction which otherwise would have resulted in the person becoming an interested stockholder.

Business combinations for the purposes of the preceding paragraph are defined by the MGCL to include certain mergers, consolidations, share exchanges and asset transfers, some issuances and reclassifications of equity securities, the adoption of certain plans of liquidation or dissolution or the receipt by an interested stockholder or its affiliate of any loan, advance, guarantee, pledge or other financial assistance or tax advantage provided by the corporation. After the five-year moratorium period has elapsed, any such business combination must be recommended by the board of directors of the corporation and approved by the affirmative vote of at least:

80% of the votes entitled to be cast by holders of outstanding shares of voting stock of the corporation voting together as a single group; and

two-thirds of the votes entitled to be cast by holders of voting stock of the corporation other than voting stock held by the interested stockholder or its affiliates or associates with whom the business combination is to be effected, voting together as a single

and similar transactions by a corporation or a subsidiary with an interested stockholder who beneficially owns 15% or more of a corporation's voting stock, within three years after the person or entity becomes an interested stockholder, unless:

the board of directors of the target corporation has approved, before the acquisition time, either the business combination or the transaction that resulted in the person becoming an interested stockholder,

upon consummation of the transaction that resulted in the person becoming an interested stockholder, the person owns at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding, for purposes of determining the voting stock outstanding (but not the voting stock owned by the interested stockholder), those shares owned by directors who are officers and shares owned by employee stock plans in which participants do not have the right to determine confidentially whether shares will be tendered in a tender or exchange offer, or

after the person or entity becomes an interested stockholder, the business combination is approved by the board of directors and authorized by the vote of at least two-thirds of the outstanding voting stock not owned by the interested stockholder.

These restrictions on interested stockholders do not apply under some circumstances, including if the corporation's original certificate of incorporation contains a provision expressly electing not to be governed by the Delaware statute regulating business combinations, or if the corporation, by action of its stockholders, adopts an amendment to its certificate of incorporation or bylaws expressly electing not to be governed by these provisions of the DGCL (and such amendment is duly approved by the stockholders entitled to vote thereon) or, unless otherwise provided in the certificate of incorporation, if the corporation does not have a class of voting stock that is listed on a national securities exchange, authorized for quotation on the NASDAQ Stock Market, or held of record by more than 2,000 stockholders.

Pathmark's certificate of incorporation and by-

group.

The above voting requirements of the Maryland Business Combination Act do not apply if each of the following conditions is met:

laws do not contain provisions opting out of the restrictions prescribed by this section of the DGCL. The merger does not constitute a prohibited business combination with an interested stockholder under this statute.

The aggregate amount of cash and the market value as of the later of the day prior to the stockholder vote or the twenty days prior to the closing date (or, if no stockholder vote, as of the closing date), which is referred to as the *valuation date*, of consideration other than cash to be received per share by holders of common stock is at least equal to the highest of the following:

(i) the highest per share price paid by the interested stockholder for any shares of such stock of the same class or series within the five-year period immediately before the announcement date of the proposed business combination *plus* compound interest as specified in the Maryland Business Combination Act, *less* the aggregate amount of any cash dividends and the market value of any noncash dividends paid, per share of such stock from the earliest date through the valuation date, up to the amount of interest;

(ii) the highest per share price paid by the interested stockholder for any shares of such stock of the same class or series on or within the five-year period immediately prior to the most recent date on which the interested stockholder became an interested stockholder, which is referred to as the *determination date*, *plus* compound interest as specified in the Maryland Business Combination Act, *less* the aggregate amount of any cash dividends and the market value of any noncash dividends paid per share of such stock from the earliest date through the valuation date, up to the amount of interest;

(iii) the market value per share of such stock of the same class or series on the announcement date of the proposed business combination *plus* compound interest as specified in the Maryland Business Combination Act, *less* the aggregate amount of any cash dividends and the market value of any noncash dividends paid per share of such stock from the earliest date through the valuation date, up to the amount of interest;

(iv) the market value per share of such stock of the same class or series on the determination date

*plus* compound interest as specified in the Maryland Business Combination Act, *less* the aggregate amount of any cash dividends and the market value of any noncash dividends paid per share of such stock from the earliest date through the valuation date, up to the amount of interest; or

(v) the price per share equal to the market value per share of such stock of the same class or series on the announcement date of the proposed business combination or on the determination date, whichever is higher, multiplied by a fraction equal to (A) the highest per share price paid by the interested stockholder for any shares of such stock of the same class acquired by such interested stockholder within the five-year period immediately prior to the announcement date of the proposed business combination over (B) the market value per share of such stock of the same class on the first day in such five-year period on which the interested stockholder acquires any shares of such stock,

The aggregate amount of cash and the market value as of the valuation date of consideration other than cash to be received per share by holders of shares of any class or series of outstanding stock other than common stock in the business combination must be at least equal to the price required for such stock of any class or series under subsections (i)(v), above; or the highest preferential amount per share to which the holders of shares of such class or series of stock are entitled in the event of any voluntary or involuntary liquidation, dissolution or winding up of the corporation, whichever is greater,

the consideration to be received by holders of any class of outstanding stock is cash or the same form as the interested stockholder paid for its shares. If the interested stockholder has paid for shares with varying forms of consideration, the form of consideration for such stock shall be either cash or the form used to acquire the largest number of shares previously acquired, and

after the determination date and prior to the consummation of the business combination there has been: (i) no failure to declare and pay full periodic dividends on any outstanding preferred stock; (ii) no reduction in the annual rate of dividends paid on any class or series of stock that is not preferred stock, except as necessary to reflect or correct any capitaliza-

tion changes to the corporation; and (iii) the interested stockholder did not become the beneficial owner of any additional shares of stock except as part of the transaction which resulted in such interested stockholder becoming an interested stockholder or by virtue of proportionate stock splits or stock dividends. Clauses (i) and (ii) above do not apply if no interested stockholder, or an affiliate or associate of the interested stockholder, voted as a director in a manner inconsistent with such clauses and the interested stockholder, within ten days after any such action, notifies the board in writing that such interested stockholder disapproves of such action and requests in good faith that the board rectify such act or failure to act.

The provisions of the Maryland Business Combination Act do not apply:

if the business combination has, either specifically, generally, or generally by types, whether as to specifically identified or unidentified existing or future interested stockholders or their affiliation, been approved or exempted therefrom, in whole or in part, by resolution of the board of directors either (i) prior to September 1, 1983 or such earlier date as may be irrevocably established by resolution of the board of directors or (ii) at any time prior to the most recent time that an interested stockholder became an interested stockholder if such business combinations involve transactions with a particular interested stockholder or its existing or future affiliates, and

unless otherwise provided by the charter or bylaws of the corporation, to business combinations of a corporation which, on July 1, 1983, had an existing interested stockholder, whether such business combination is with the existing stockholder or any other person that becomes an interested stockholder after July 1, 1983 unless the board of directors elects by resolution after July 1, 1983 to be subject to the Maryland Business Combination Act, in whole or in part, specifically, generally or generally by types as to specifically identified or unidentified interested stockholders.

#### **Maryland Control Share Acquisition Act**

*A&P*

*Pathmark*

The Maryland Control Share Acquisition Act provides that control shares of a Maryland corporation

The DGCL does not contain a control share acquisition statute.

acquired in a control share acquisition have no voting rights except to the extent approved by a vote of two-thirds of the votes entitled to be cast on the matter, excluding shares of stock owned by the acquiror or by officers or by employees who are also directors of the corporation.

*Control shares* are voting shares of stock that, if aggregated with all other shares of stock previously acquired by that person or with respect to which such person is entitled to exercise voting power (other than pursuant to a revocable proxy), would entitle the acquiror, directly or indirectly, to exercise voting power in electing directors within one of the following ranges of voting power:

one-tenth or more but less than one-third,

one-third or more but less than a majority or

a majority or more of all voting power.

Control shares do not include shares that the acquiring person is then entitled to vote as a result of having previously obtained stockholder approval.

A *control share acquisition* means the acquisition, directly or indirectly, of ownership of or power to direct the voting power of issued and outstanding control shares, subject to certain exceptions. A person who has made or proposes to make a control share acquisition may compel the board of directors, upon satisfaction of certain conditions, including the delivery of an acquiring person statement containing certain required information and the delivery of an undertaking to pay certain expenses, by written request made at the time of delivery of such acquiring person statement, to call a special meeting of stockholders to be held within fifty days after receiving both the request and undertaking to consider the voting rights of the shares. If no request for a meeting is made, the corporation may itself present the question at any meeting of stockholders.

If voting rights are not approved at the meeting or if the acquiring person does not deliver an acquiring person statement as required by the Maryland Control Share Acquisition Act, then, subject to certain conditions and limitations, the corporation may redeem any or all of the control shares, except those for which voting rights have previously been approved. The corporation's redemption of the control shares will be for fair value determined, without regard to the absence of voting rights, as of the date of the last con-

control share acquisition or, if a meeting of stockholders is held to consider the voting rights of the shares, as of the date of such meeting. Unless the corporation's charter or bylaws provide otherwise, if voting rights for control shares are approved at a stockholders meeting and the acquiror becomes entitled to vote a majority of the shares entitled to vote, all other stockholders may exercise appraisal rights. A&P's charter and bylaws do not provide otherwise. The fair value of the shares as determined for purposes of the appraisal rights may not be less than the highest price per share paid in the control share acquisition. Certain limitations and restrictions otherwise applicable to the exercise of dissenters' rights do not apply in the context of a control share acquisition.

A control share acquisition does not include:

- shares acquired in a merger, consolidation or share exchange if the corporation is a party to the transaction;

- shares acquired or under contract to be acquired before November 4, 1988;

- shares acquired under the laws of descent and distribution;

- shares acquired under the satisfaction of a pledge or other security interest created in good faith and not for the purpose of circumventing the Maryland Control Share Acquisition Act; or

- acquisitions approved or exempted by our charter or bylaws.

Neither the charter nor the bylaws of A&P exempt identified or unidentified existing or future stockholders or their affiliates or associates from the Maryland Control Share Acquisition Act. However, because Tengelmann owned a majority of A&P's outstanding common stock prior to November 4, 1988, the control share acquisition provisions of the MGCL do not apply to acquisitions of A&P common stock by Tengelmann made in good faith and not for the purposes of circumventing the Maryland Control Share Acquisition Act.



**Subtitle 8 of Title 3 of the MGCL**

*A&P*

Subtitle 8 of Title 3 of the MGCL allows a Maryland corporation with a class of equity securities registered under the Exchange Act to elect to be governed by certain Maryland law provisions, notwithstanding a contrary provision in the charter or bylaws. The election to be governed by one or more of these provisions can be made by a Maryland corporation in its charter or bylaws or by resolution adopted by the board of directors. The corporation however must have at least three directors who, at the time of electing to be subject to the provisions, are not:

*Pathmark*

The DGCL does not contain a comparable provision.

officers or employees of the corporation;

persons seeking to acquire control of the corporation;

directors, officers, affiliates or associates of any person seeking to acquire control; or

nominated or designated as directors by a person seeking to acquire control.

Articles supplementary must be filed with the Maryland State Department of Assessments and Taxation if a Maryland corporation elects to be subject to any or all of the provisions by board resolution or bylaw amendment or the board of directors adopts a resolution that prohibits the corporation from electing to be subject to any or all of the provisions of Subtitle 8 of Title 3. Stockholder approval is not required for the filing of articles supplementary.

The provisions to which a corporation can elect under Subtitle 8 to be subject are:

a classified board,

a requirement that the removal of directors requires the affirmative vote of two-thirds of all the votes entitled to be cast by the stockholders generally in the election of directors,

a requirement that the number of directors be fixed only by vote of the directors,

a requirement that a vacancy on the board be filled only by the remaining directors and for the remainder of the full term of the directorship in which the vacancy occurred and until a successor is elected and qualifies, and

a requirement that special stockholders meetings must be called by the corporation at the request of stockholders only upon the written request of stockholders entitled to cast at least a majority of the votes

entitled to be cast at the meeting.

A Maryland corporation's charter may contain a provision or the board of directors may adopt a resolution that prohibits the corporation from electing to be subject to Subtitle 8 of Title 3 of the MGCL. The A&P charter does not contain any such provision and A&P's board of directors has not adopted any resolution containing any such prohibition.

#### **Standard of Conduct for Directors**

##### *A&P*

Under the MGCL, the standard of conduct for directors is governed by statute. The MGCL requires that a director of a Maryland corporation perform his or her duties: (1) in good faith, (2) in a manner he or she reasonably believes to be in the best interests of the corporation, and (3) with the care that an ordinarily prudent person in a like position would use under similar circumstances. The MGCL presumes that any act of a director satisfies this standard of conduct. In addition, under the MGCL, the acts of directors of a Maryland corporation relating to or affecting an acquisition or potential acquisition of control of a corporation are not subject to any higher duty or greater scrutiny than is applied to any other act of a director.

A director's duty does not require him or her to (1) accept, recommend or respond to any proposal by a person seeking to acquire control of the corporation, (2) authorize the corporation to redeem any rights under, or modify or render inapplicable, any stockholders rights plan, (3) make a determination under the Maryland Business Combination Act or the Maryland Control Share Acquisition Act, (4) elect to be subject to, or refrain from electing to be subject to, Subtitle 8 of Title 3 of the MGCL (see Subtitle 8 of Title 3 of the MGCL ) or (5) act or fail to act solely because of the effect the act or failure to act may have on an acquisition or potential acquisition of control of the corporation or the amount or type of consideration that may be offered or paid to the stockholders in an acquisition.

##### *Pathmark*

The Delaware standards of conduct for directors have developed through written opinions of the Delaware courts. Generally, directors of Delaware corporations are subject to a duty of loyalty and a duty of care. The duty of loyalty has been said to require directors to make decisions in the best interests of the corporation and to refrain from self-dealing. According to the Delaware Supreme Court, the duty of care requires directors . . . in managing the corporate affairs . . . to use that amount of care which ordinarily careful and prudent men would use in similar circumstances.

**Limitations on Liability of Directors and Officers**

*A&P*

Under the MGCL, the charter of a Maryland corporation may include a provision expanding or limiting the liability of the corporation's directors or officers for money damages in a suit under state law by stockholders or by or in the right of the corporation. However, a Maryland corporation may not include any provision that restricts or limits the liability of its directors or officers (1) to the extent that it is proved that the person actually received an improper benefit or profit in money, property or services for the amount of the benefit or profit in money, property or services actually received, or (2) to the extent that a judgment or other final adjudication adverse to the person is entered in a proceeding based on a finding in the proceeding that the person's action, or failure to act, was the result of active and deliberate dishonesty and was material to the cause of action adjudicated in the proceeding. The A&P charter does not include any such provisions.

*Pathmark*

The DGCL provides that a corporation may include in its certificate of incorporation a provision eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. However, the provision may not eliminate or limit the liability of a director for:

- breach of the duty of loyalty,
- acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law,
- unlawful payments of dividends, certain stock repurchases or redemptions, or
- any transaction from which the director derived an improper personal benefit.

Pathmark's certificate of incorporation contains a provision limiting the liability of its directors to the fullest extent permitted by the DGCL.

**Indemnification of Directors and Officers**

*A&P*

Under the MGCL, a Maryland corporation may indemnify any director or officer made or threatened to be made a party to any proceeding by reason of service in that capacity unless it is established that (1) the act or omission of the director or officer was material to the matter giving rise to the proceeding and (a) was committed in bad faith or (b) was the result of active and deliberate dishonesty, (2) the director or officer actually received an improper personal benefit in money, property or services, or (3) in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful.

Under the MGCL, reasonable expenses may be advanced to a present or former director, or to an officer, employee or agent who is not a director to the same extent that they may be advanced to a director, unless limited by the charter. Advances of reasonable expenses to directors, officers, employees and agents prior to the final adjudication of a proceeding may be generally authorized in the corporation's charter or bylaws, or by contract, or upon a determination that indemnification is proper, made by the board of directors, special legal counsel or the stockholders as de-

*Pathmark*

The DGCL provides that a corporation may indemnify any person who is made a party to any third-party action, suit or proceeding on account of being a director, officer, employee or agent of the corporation (or was serving at the request of the corporation in such capacity for another corporation, partnership, joint venture, trust or other enterprise) against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement, actually and reasonably incurred by him or her in connection with the action, suit or proceeding, if the person:

- acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, and
- in a criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful.

The DGCL also permits indemnification by a corporation under similar circumstances for expenses (including attorneys' fees) actually and reasonably incurred by such persons in connection with the defense or settlement of an action or suit by or in the right of the corporation (includ-

scribed below. The director, officer, employee or agent must give to the corporation a written affirmation of his or her good faith belief that the standard of conduct necessary for indemnification by the corporation has been met, and a written undertaking providing that if it is ultimately determined that the standard of conduct has not been met, the director, officer, employee or agent will repay the amount advanced.

Under the MGCL, unless limited by a corporation's charter, a court of appropriate jurisdiction may, under certain circumstances, order indemnification if it determines that the director or officer is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director or officer has met the standards of conduct required under the MGCL or has been adjudged liable on the basis that a personal benefit was improperly received in a proceeding charging improper personal benefit to the director or the officer. The A&P charter does not contain provisions limiting such indemnification. If the proceeding was an action by or in the right of the corporation or involved a determination that the director or officer received an improper personal benefit, however, no indemnification may be made if the individual is adjudged liable to the corporation, except to the extent of expenses approved by a court of appropriate jurisdiction.

The MGCL also provides that, where indemnification is permissible, it must be authorized for a specific proceeding after a determination has been made that indemnification of the director or officer is permissible in the circumstances because the director or officer has met the standard of conduct described in the first paragraph under

Indemnification of Directors and Officers. Such determination must be made (1) by a majority vote of a quorum of the board of directors consisting of directors who are not parties to the proceeding (or if such a quorum cannot be obtained, the determination may be made by a majority vote of a committee of the board which consists solely of one or more directors who are not parties to the proceeding and who were designated to act by a majority of the full board of directors), (2) by special legal counsel selected by the board of directors or by a committee of the board of directors by vote as set forth in the preceding sentence (or if the requisite quorum of the board of directors cannot be obtained and the committee cannot be established, a majority of the full board of directors, including directors who

ing derivative actions) if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and, except that no indemnification may be made in respect of any claim, issue or matter as to which the person is adjudged to be liable to the corporation unless and to the extent the Delaware Court of Chancery or the court in which the action or suit was brought determines upon application that the person is fairly and reasonably entitled to indemnity for the expenses which the court deems to be proper.

To the extent a present or former director or officer is successful in the defense of such an action, suit or proceeding, the corporation is required by the DGCL to indemnify such person for reasonable expenses incurred thereby.

Unless otherwise ordered by a court, any right to indemnification provided above shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the present or former director, officer, employee or agent is proper in the circumstances because the person has met the applicable standard of conduct. With respect to a person who is a director or officer at the time of such determination, such determination must be made:

by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum,

by a committee of such directors designated by majority vote of such directors, even though less than a quorum,

if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or

by the stockholders.

Expenses (including attorneys' fees) incurred by an officer or director in defending any action, suit or proceeding may be paid in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of that officer or director to repay the amount if it is ultimately determined that that person is not entitled to be so indemnified. Such expenses incurred by former officers and directors and other employees and agents may be paid upon such

are parties, may select the special counsel), or (3) by a vote of the stockholders other than those stockholders who are directors or officers and a party to the proceedings. The MGCL provides that the indemnification and advancement of expenses provided under the MGCL are not exclusive of any other rights, by indemnification or otherwise, to which a director or officer may be entitled under the charter, the bylaws, a resolution of stockholders or directors, an agreement or otherwise.

The MGCL requires a corporation (unless its charter provides otherwise, which A&P's charter does not) to indemnify reasonable expenses for a director or officer who has been successful, on the merits or otherwise, in the defense of any proceeding to which he is made or threatened to be made a party by reason of his service in that capacity.

In addition, the MGCL provides that a corporation may not indemnify a director or officer or advance expenses for a proceeding brought by that director or officer against the corporation, except for a proceeding brought to enforce indemnification, or unless the charter, bylaws, resolution of the board of directors, or an agreement approved by the board of directors expressly provides otherwise.

A&P's charter provides that A&P shall indemnify any person who is or was a director to the maximum extent now or hereafter permitted by law in connection with any threatened, pending or completed action, suit or proceeding arising out of such person's service as a director to the corporation or to another organization at A&P's request.

A&P's charter also provides that A&P shall indemnify any person who is or was an officer, employee or agent of the corporation to the extent required by law and that A&P may, as authorized by the board of directors, further indemnify such individuals to the maximum extent permitted by law in connection with any threatened, pending or completed action, suit or proceeding.

terms and conditions, if any, as the corporation deems appropriate.

Pathmark's certificate of incorporation and bylaws provide for mandatory indemnification of its officers, directors, employees and agents to the fullest extent permitted by the DGCL. Pathmark's certificate of incorporation and bylaws provide that the corporation may advance expenses to officers and directors upon receipt of an undertaking by such officer or director, and that the corporation may advance expenses for its former officers and directors and employees and agents upon such terms, if any, as Pathmark deems appropriate.

### DESCRIPTION OF A&P S CAPITAL STOCK

The following description of A&P s capital stock is a summary and is qualified in its entirety by reference to A&P s charter and bylaws, which are filed as exhibits to the registration statement of which this joint proxy statement/prospectus forms a part, and by applicable law.

A&P s authorized share capital consists of 80,000,000 common shares, \$1.00 par value, and 3,000,000 preferred shares without par value. At [ ], 2007, [ ] common shares and no preferred shares were outstanding.

#### Preferred Stock

The A&P board of directors can, without the approval of stockholders, issue one or more series of preferred shares. The board of directors may also determine the rights, preferences and limitations of each series including the maximum number of shares in the series, voting rights, conversion rights, redemption rights, dividend rights, liquidation rights, any preferences over the common shares with respect to dividend or liquidation distributions, and the terms and conditions of issue. The preferred stock may be senior to the common stock with respect to dividends, distributions upon liquidation and other rights.

#### Common Stock

A&P s common stock is listed for trading on the NYSE under the symbol GAP. A&P s transfer agent and registrar for common shares is the American Stock Transfer and Trust Company, 59 Maiden Lane, New York, NY 10038, telephone: (800) 937-5449.

Common stockholders only receive dividends when, as and if authorized by the board of directors and declared by A&P. If declared, dividends may be paid in cash, stock or other forms of consideration. If and when A&P issues preferred shares, common stockholders may not receive dividends until A&P has satisfied its obligations to the preferred stockholders. Some of A&P s outstanding debt securities, credit agreements and other loan agreements also restrict A&P s ability to pay dividends.

All outstanding shares of common stock are fully paid and nonassessable. Any additional common shares issued in connection with the merger would also be fully paid and nonassessable. There are no subscription rights, conversion rights or redemption or sinking fund provisions with respect to the shares of common stock but preemptive rights apply to issuances of capital stock and convertible securities in certain circumstances. See Adoption of the Merger Agreement (Pathmark Proposal 1) Comparison of Stockholders Rights Preemptive Rights.

Each share of common stock is entitled to one vote in the election of directors and other matters. Directors are elected by the vote of a plurality in interest of stockholders present in person or by proxy and entitled to vote in the election at a meeting at which a quorum is present. Common stockholders are not entitled to cumulative voting rights. Members of the A&P board of directors serve one-year terms (and until their successors are elected and qualify) and all directors are elected annually. Directors may be removed from office by the vote of a majority of the outstanding shares entitled to vote generally for the election of directors.

The quorum required at a stockholders meeting is a majority of the votes entitled to be cast at the meeting, represented in person or by proxy. If a quorum is present, action on a matter is approved by the vote of a majority of all the votes cast at the meeting, unless otherwise required by law or the A&P charter. The MGCL requires approval by two-thirds of all votes entitled to be cast on the matter by each voting group entitled to vote, in the case of extraordinary corporate actions, such as:

certain mergers;

with respect to the party other than the successor, a share exchange;

an amendment to the charter, with certain exceptions;

with respect to the transferor corporation, the sale, lease, exchange or other disposition of all or substantially all of corporation's assets, other than in the usual and regular course of business or if all of the equity interests of the transferee are owned, directly or indirectly, by the transferor corporation; or

the dissolution of the corporation.

**Provisions Restricting a Change of Control**

A&P's charter and bylaws, as well as the provisions of the MGCL, contain provisions that may have the effect of delaying, deferring or preventing a change in control of A&P. These provisions are summarized under Adoption of the Merger Agreement (Pathmark Proposal 1) Comparison of Stockholders' Rights in this joint proxy statement/prospectus. Although A&P's charter does not contain such a provision, the MGCL allows a corporation's charter to contain a provision requiring for any purpose a lesser proportion of the votes of all classes or of any class of stock than the proportion required by the MGCL for that purpose, but this proportion may not be less than a majority of all votes entitled to be cast on the matter. If a corporation's charter contains such a provision, it will effect the procedures necessary to effect a change of control.

**YUCAIPA STOCKHOLDER AGREEMENT**

The following is a summary of the material provisions of the Yucaipa Stockholder Agreement. This summary is qualified in its entirety by reference to the Yucaipa Stockholder Agreement, which is incorporated by reference in its entirety and attached to this joint proxy statement/prospectus as Annex B. We encourage you to read the agreement in its entirety because it is the legal document that governs the obligations of the parties thereto.

Concurrently with the execution and delivery of the merger agreement, A&P entered into the Yucaipa Stockholder Agreement with the Yucaipa Investors, which will not become effective until the closing of the merger.

Under the terms of the Yucaipa Stockholder Agreement, the Yucaipa Investors have agreed to certain standstill and transfer restrictions and will receive certain registration rights in respect of the A&P common stock they will own following the closing of the merger and any A&P common stock issuable upon exercise of the A&P Series A Warrants and the A&P Series B Warrants, together with the *roll-over warrants* .

**Standstill Provisions**

The Yucaipa Stockholder Agreement provides that the Yucaipa Investors may not acquire beneficial ownership of more than 9.9% of the outstanding common stock of A&P (excluding any A&P common stock received upon the exercise of the roll-over warrants) until the earliest to occur of the following (the *Standstill Expiration Date* ):

June 9, 2015, the expiration date of the Series B Warrants to acquire A&P common stock that Yucaipa will receive in exchange for its Series B Warrants to acquire Pathmark common stock as described under Adoption of the Merger Agreement (Pathmark Proposal 1) Yucaipa Warrant Agreement ;

the third anniversary of the date on which all roll-over warrants have been exercised;

any date on which the A&P board of directors determines to solicit, or publicly announces its intention to solicit, a proposal for the acquisition of A&P (an *A&P Acquisition Proposal* ), or approves, accepts, authorizes or recommends to the A&P stockholders their approval of an A&P Acquisition Proposal;

any date on which A&P or any of its affiliates enters into a letter of intent, agreement in principle or definitive agreement regarding an A&P Acquisition Proposal;

any date on which the Yucaipa Investors own less than 1% of the outstanding A&P common stock;

any date on which a third party s ownership of A&P s common stock exceeds Tengelmann s ownership of A&P s common stock; or

any date on which Tengelmann and its affiliates beneficially own, in the aggregate, less than 20% of the outstanding A&P common stock.



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The Yucaipa Investors have also agreed that until the Standstill Expiration Date they will not, without the prior approval of the A&P board of directors:

propose, solicit or knowingly encourage any proposal for any extraordinary corporate transaction (including any business combination or dissolution) involving A&P or its subsidiaries or propose or attempt to acquire control of A&P or its subsidiaries;

make or participate in any solicitation of proxies to vote or in any election contest or agree or announce an intention to vote with any person undertaking a solicitation, or seek to advise or influence any person or group regarding the voting of any voting stock of A&P or its subsidiaries, or make any proposal to be voted upon by A&P stockholders;

form, join or encourage the formation of or participate in any group (subject to limited exceptions) with respect to any voting stock of A&P or its subsidiaries, including pursuant to any voting agreement or trust;

seek representation on the A&P board of directors, seek to remove any member of the A&P board of directors or act to influence A&P management or the A&P board of directors; or

seek to amend or waive any of the provisions described in this paragraph or enter into discussions or arrangements or disclose any intention or arrangement inconsistent with the provisions described in this paragraph.

### **Transfer Restrictions**

The Yucaipa Investors may not, until the second anniversary of the Standstill Expiration Date, transfer, assign or encumber any shares of A&P common stock except:

to an affiliate or partner of the Yucaipa Investors or to Tengelmann or A&P (or one of their affiliates);

pursuant to a registered offering as described in Registration Rights or in a block trade with a financial institution, subject to certain transfer restrictions described below;

in any tender offer, business combination or exchange offer for A&P common stock which (i) was not solicited by the Yucaipa Investors or their affiliates, (ii) is for 100% of the A&P outstanding common stock, (iii) includes a majority tender condition and (iv) includes a binding commitment to pay the same or higher consideration in a back-end merger;

in any tender offer, business combination or exchange offer for A&P common stock which (i) was recommended by the A&P board of directors, (ii) was made by or on behalf of Tengelmann or its affiliates or (iii) that has been accepted by holders of a majority of outstanding A&P common stock (other than A&P stock owned by the Yucaipa Investors);

in a transaction made in compliance with Rule 144 or Rule 145 under the Securities Act of 1933, as amended;

in foreclosures of common stock or of the roll-over warrants by a financial institution for the benefit of which an encumbrance on such common stock or warrants was created in connection with an extension of credit and not for the purpose of circumventing the transfer restric-

tions provisions and before which the financial institution has offered A&P a right of first refusal to purchase such common stock or warrants for cash at their fair market value and A&P has chosen not to purchase such common stock or warrants; or

in hedging transactions designed to protect against fluctuations in the value of A&P common stock or the roll-over warrants that are not for the purpose of circumventing the transfer restriction provisions.

Notwithstanding the foregoing, the Yucaipa Investors may not transfer A&P common stock in a registered offering pursuant to the provisions described in Registration Rights, a block trade or pursuant to Rule 144 or 145 (a) if the transferee would thereafter own more than 9.9% of A&P's outstanding common stock or (b) the amount transferred to any person would be greater than 5.0% of A&P's outstanding common stock.

### Registration Rights

The Yucaipa Stockholder Agreement provides that, subject to certain requirements, upon the Yucaipa Investors' written demand, in accordance with the Yucaipa Stockholder Agreement, A&P will file with the SEC and maintain the effectiveness of a registration statement registering the sale of Yucaipa's shares of A&P common stock. The agreement provides that the Yucaipa Investors are entitled to up to two such demand registrations in any twelve-month period, and up to three in the aggregate. Each such demand registration must be in the amount of at least \$25.0 million, based on then-current market prices for A&P common stock.

The Yucaipa Stockholder Agreement also provides the Yucaipa Investors with piggyback registration rights, which provide that A&P will include the Yucaipa Investors' shares of A&P common stock in any registration statement that A&P files with respect to any sales of A&P common stock by A&P (other than for certain business combinations or benefit plans) or by any other A&P stockholder, subject to customary restrictions and limitations.

### YUCAIPA VOTING AGREEMENT

The following is a summary of the material provisions of the Stockholder Voting Agreement, dated March 4, 2007, between A&P and the Yucaipa Investors (the *Yucaipa Voting Agreement*). This summary is qualified in its entirety by reference to the Yucaipa Voting Agreement, which is incorporated by reference in its entirety and attached to this joint proxy statement/prospectus as Annex C. We encourage you to read the agreement in its entirety because it is the legal document that governs the obligations of the parties thereto.

As an inducement to A&P to enter into the merger agreement and in connection with the merger agreement, A&P and the Yucaipa Investors entered into the Yucaipa Voting Agreement. As of the date of the Yucaipa Voting Agreement, the Yucaipa Investors owned an aggregate of 20,000,100 shares of Pathmark common stock, representing approximately 38% of the Pathmark common stock outstanding on that date.

Pursuant to the terms of the Yucaipa Voting Agreement, the Yucaipa Investors agreed to vote shares of Pathmark common stock that they own as of the Pathmark record date (1) in favor of the merger agreement, (2) against any action that would reasonably be expected to result in a breach of the merger agreement, and (3) against any action that would compete with or impair the merger. These voting obligations do not apply to any other shares owned by the Yucaipa Investors in excess of 33%. The Yucaipa Investors have also agreed to grant, upon request, an irrevocable proxy to A&P to vote shares subject to

the voting agreement to carry out the foregoing actions. The Yucaipa Investors are allowed to hedge their stock and warrants to purchase Pathmark stock so long as they retain their voting rights.

The Yucaipa Voting Agreement will terminate upon the earliest to occur of (1) the closing of the merger, (2) termination of the merger agreement or (3) the Outside Date, as described under Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger Agreement Termination.

### **TENGELMANN STOCKHOLDER AGREEMENT**

The following is a summary of the material provisions of the Tengelmann Stockholder Agreement. This summary is qualified in its entirety by reference to the Tengelmann Stockholder Agreement, which is incorporated by reference in its entirety and attached to this joint proxy statement/prospectus as Annex D. We encourage you to read the agreement in its entirety because it is the legal document that governs the obligations of the parties thereto.

As an inducement to Tengelmann to support the merger and concurrently with the execution and delivery of the merger agreement, A&P entered into the Tengelmann Stockholder Agreement with Tengelmann, certain provisions of which will not become effective until the closing of the merger.

Under the terms of the Tengelmann Stockholder Agreement, Tengelmann will receive certain nomination, approval, registration, preemptive and other rights. In addition, Tengelmann will be entitled to antidilution protection, access to A&P information, and expense reimbursement. Upon the closing of the merger, A&P's bylaws will be amended as provided in Annex I to this joint proxy statement/prospectus in order to give effect to certain of these rights. As more fully described below, certain of Tengelmann's rights depend upon its ownership percentage of A&P stock and any calculation of this percentage will include the shares owned by Tengelmann's affiliates.

#### **Composition of A&P's Board of Directors**

The Tengelmann Stockholder Agreement provides that A&P's board of directors will have nine members. Any increase or decrease in the number of directors requires the approval of directors holding 66.67% of the total number of board seats (including vacancies) and, in the case of any decrease that reduces Tengelmann's right to designate directors for nomination, the approval of Tengelmann.

Upon completion of the merger, A&P's board of directors will consist of:

four directors designated for nomination by Tengelmann;

four directors who were serving on A&P's board immediately before the closing of the merger and were not designated for nomination by Tengelmann; and

Gregory Mays, currently a director on Pathmark's board of directors, or another person elected in accordance with the merger agreement.

Following completion of the merger and for so long as its aggregate actual ownership percentage of A&P common stock is at least 10%, Tengelmann will have the right to designate for nomination to A&P's board a number of directors proportionate to Tengelmann's aggregate ownership percentage of A&P common stock calculated to give effect to Tengelmann's antidilution protection described below. A&P and its board of directors will include in management's slate of nominees, and recommend to the A&P stockholders the election of, each of the Tengelmann nominees. A&P must use its reasonable best efforts to solicit from its stockholders that are eligible to vote for the election of directors proxies in favor

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of the Tengelmann nominees. The A&P board may exclude, however, a particular Tengelmann nominee from management's slate and its recommendation if it determines in good faith after receiving specific written advice from outside counsel that such recommendation would reasonably be expected to violate the directors' duties under Maryland law because the nominee is unfit to serve as the director of an NYSE-listed company, or the nominee's service as a director would reasonably be expected to violate an applicable law or result in a conflict of interest because the nominee is a director, employee or stockholder of another company, in which case A&P must provide Tengelmann with a reasonable opportunity (no less than thirty days) to designate an alternate nominee. A nominee's relationship with Tengelmann may not serve as a basis for such a determination by the A&P board.

If A&P nominates and recommends the election of all Tengelmann nominees, then Tengelmann has agreed to vote all shares of A&P common stock held by it in a manner identical to the manner in which the non-Tengelmann affiliated stockholders vote their shares with respect to the election of directors other than the Tengelmann nominees, described in the agreement as the *mirror vote* requirement. The mirror vote requirement does not apply to any election of directors in which any person other than Tengelmann, its affiliates or certain other persons acting with Tengelmann have initiated a proxy contest or other solicitation in favor of nominees not on management's slate. With respect to any other matters to be voted upon, Tengelmann is free to vote its shares in its sole discretion.

Subject to any requirement to have a certain number of independent directors on a committee of the board of directors of A&P, the Tengelmann nominees shall have pro rata membership on each such committee.

### Approval Rights

#### *Tengelmann*

For so long as Tengelmann's aggregate ownership percentage of A&P common stock calculated to give effect to Tengelmann's antidilution protection described below is at least 25%, the following matters will require Tengelmann's approval (in addition to any other board or stockholder approval required by law or A&P's charter or bylaws):

any business combination involving, or sale or merger of, A&P, except for such business combinations involving consideration not exceeding \$50 million;

any issuance of equity, or right to acquire equity, of A&P, or change to the terms of any A&P equity security, requiring stockholder approval other than the issuance of the roll-over warrants, pursuant to any employee compensation plan or other benefit plan or under rights existing as of the closing date after giving effect to the merger;

A&P charter or bylaws amendments;

amendments to A&P's committee charters or corporate governance guidelines which would reasonably be expected to obviate any of Tengelmann's rights under the Tengelmann Stockholder Agreement or the exercise thereof;

adoption, amendment or implementation of, or redemption under, any rights plan or other takeover defenses;

any discriminatory transaction or transaction with any affiliate (other than Tengelmann); and

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changes in policies concerning the need for approval by A&P's board intended or reasonably likely to have the effect of obviating any of Tengelmann's rights under the Tengelmann Stockholder Agreement or the exercise thereof.

### *Tengelmann Directors*

For so long as Tengelmann's aggregate ownership percentage of A&P common stock calculated to give effect to Tengelmann's antidilution protection described below is at least 25%, the following matters will require the approval of a majority of the directors on A&P's board that were designated for nomination by Tengelmann (in addition to any other board or stockholder approval required by law or A&P's charter or bylaws):

acquisitions and dispositions with a fair market value above \$50 million (including a disposition of any portion of the Canadian equity stake in Metro);

any issuance of equity, or right to acquire equity, of A&P, or change to the terms of any A&P equity security other than the issuance of the roll-over warrants, pursuant to any employee compensation plan or other benefit plan or under rights existing as of the closing date after giving effect to the merger;

repurchases of A&P common stock (other than pursuant to employee stock plans or from Tengelmann pursuant to the Tengelmann Stockholder Agreement);

dividends;

adoption or amendment of strategic plans, priorities or direction for a period of at least three years, except for amendments not exceeding \$10 million individually or in the aggregate in any twelve-month period;

adoption of or changes to the operating plan or budget, capital expenditures budget, financing plan or any financial goal, except for changes not exceeding \$10 million individually or in the aggregate in any twelve-month period;

appointment or removal of the chairman or appointment (but not removal) of the chief executive officer;

dissolution;

unbudgeted capital expenditures of more than \$10 million; and

debt incurrences over \$50 million (other than refinancings of approved debt on consistent terms or terms more favorable to A&P that do not increase principal amount).

### *Non-Tengelmann Directors*

The approval of a majority of A&P's board of directors, including a majority of directors who were not designated for nomination by Tengelmann, will be required to approve:

transactions between A&P (or its subsidiaries) and Tengelmann (or its subsidiaries or affiliates), other than ordinary course compensation arrangements;

actions that must be approved by A&P's stockholders that would reasonably be expected to adversely and disproportionately affect A&P's stockholders other than Tengelmänn; and

changes in A&P's policies or practices in a manner that would limit or adversely affect the authority of the directors on A&P's board who were not designated for nomination by Tengelmänn.

*Warrants and Put Rights*

For so long as Tengelmänn's aggregate ownership percentage of A&P common stock calculated to give effect to Tengelmänn's antidilution protection described below is at least 25%, upon exercise by the Yucaipa Investors, A&P may not settle the roll-over warrants for stock without the approval of Tengelmänn (in addition to any other board or stockholder approval required by law or A&P's charter or bylaws). In addition, for so long as Tengelmänn's aggregate actual ownership percentage of A&P common stock is at least 10%, Tengelmänn will have the right to cause A&P to settle all or a portion of any exercise by the Yucaipa Investors of roll-over warrants with A&P common stock purchased by A&P from Tengelmänn. Tengelmänn's rights shall be subject to A&P's satisfaction of an objective liquidity test.

**Antidilution Protection**

To the extent that any decrease in Tengelmänn's aggregate actual ownership percentage of A&P common stock is the result of issuances of equity securities by A&P, as opposed to dispositions of equity securities by Tengelmänn, the decrease will not be taken into account when determining Tengelmänn's aggregate ownership percentage of A&P common stock for purposes of determining the number of directors that Tengelmänn is entitled to nominate or whether the approval rights or Tengelmänn's rights with respect to the roll-over warrants described above apply, unless such issuances were (i) in connection with a business combination or other acquisition by A&P that was approved by Tengelmänn (other than the merger) or (ii) made on or about the closing date of the merger in connection with the merger, as merger consideration, but not in any event by any warrants or options issued in connection with the merger.

**Registration Rights**

Tengelmänn will be entitled to demand registration rights (subject to a \$25 million minimum threshold) but may not exercise these rights more than twice in any twelve-month period or more than three times in any twenty-four-month period. Tengelmänn will also be entitled to piggy-back registration rights, subject to customary restrictions and limitations.

**Preemptive Rights**

For so long as Tengelmänn's aggregate actual ownership percentage of A&P common stock is at least 10%, Tengelmänn will be entitled to customary preemptive rights with respect to equity issuances by A&P, other than issuances under the roll-over warrants or warrants issued under the 2000 Warrant Agreement, issuances under employee compensation plans or other benefit plans, issuances for consideration other than cash, issuances to Tengelmänn, issuances pursuant to rights or equity existing as of the closing date after giving effect to the merger, or issuances pursuant to the preemptive rights in A&P's charter.

### Access to Information

Subject to customary confidentiality provisions, A&P will afford Tengelmann reasonable access to its books and records (including financial records), including to enable Tengelmann to prepare its financial statements and for its financial reporting generally.

### Expense Reimbursement

Whether or not the merger is completed, A&P will reimburse Tengelmann for all reasonable out-of-pocket expenses incurred in connection with (1) the merger and the related transactions (including financings) and the Tengelmann Stockholder Agreement and (2) subject to the authorization of Tengelmann's activities by the A&P directors who are not Tengelmann nominees, any purchase or sale of more than 15% of A&P's outstanding common stock, sale of A&P or all or substantially all of A&P's assets or other business combination, strategic transaction or capital transaction involving A&P.

### TENGELMANN VOTING AGREEMENT

The following is a summary of the material provisions of the Stockholder Voting Agreement, dated March 4, 2007, between Pathmark and Tengelmann (the *Tengelmann Voting Agreement*). This summary is qualified in its entirety by reference to the Tengelmann Voting Agreement, which is incorporated by reference in its entirety and attached to this joint proxy statement/prospectus as Annex E. We encourage you to read the agreement in its entirety because it is the legal document that governs the obligations of the parties thereto.

As an inducement to Pathmark to enter into the merger agreement and in connection with the execution and delivery of the merger agreement, Tengelmann entered into the Tengelmann Voting Agreement with Pathmark. As of the date of the Tengelmann Voting Agreement, Tengelmann owned 21,995,371 shares of A&P common stock, representing approximately 53% of the common stock outstanding on that date.

Pursuant to the terms of the Tengelmann Voting Agreement, Tengelmann has agreed to vote all of its A&P common stock (1) in favor of the issuance of A&P common stock in the merger, (2) in favor of the amendment to the A&P charter to exempt the transactions contemplated by the merger agreement and the agreements entered into in connection therewith from the preemptive rights provisions of the A&P charter, (3) against any action that would reasonably be expected to result in a breach of the merger agreement and (4) against any action that would compete with or impair the merger.

The Tengelmann Voting Agreement will terminate upon the earliest to occur of (1) the closing of the merger, (2) termination of the merger agreement or (3) the one-year anniversary of the merger agreement.

### YUCAIPA WARRANT AGREEMENT

The following is a summary of the material provisions of the Yucaipa Warrant Agreement. This summary is qualified in its entirety by reference to the Yucaipa Warrant Agreement, which is incorporated in this joint proxy statement/prospectus by reference to Exhibit 4.1 of A&P's current report on Form 8-K filed March 6, 2007. We encourage you to read the agreement in its entirety because it is the legal document that governs the obligations of the parties thereto.

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As of March 4, 2007, the Yucaipa Investors owned:

Pathmark Series A Warrants to purchase 10,060,000 shares of Pathmark common stock with an exercise price of \$8.50 per share; and

Pathmark Series B Warrants to purchase 15,046,350 shares of Pathmark common stock with an exercise price of \$15.00 per share.

Under the terms of the Yucaipa Warrant Agreement entered into in connection with the merger agreement, A&P has agreed to issue the Yucaipa Investors warrants, which we refer to as roll-over warrants, to purchase A&P common stock in exchange for the cancellation of warrants to purchase Pathmark common stock. The warrants to acquire Pathmark common stock held by the Yucaipa Investors will be exchanged for roll-over warrants to acquire a number of shares of A&P common stock as follows:

the Pathmark Series A Warrants will be exchanged for A&P Series A Warrants to purchase an aggregate of 4,657,378 shares of A&P common stock at an exercise price of \$18.36 per share; and

the Pathmark Series B Warrants will be exchanged for A&P Series B Warrants to purchase an aggregate of 6,965,858 shares of A&P common stock at an exercise price of \$32.40 per share.

The A&P Series A Warrants will expire on June 9, 2008 and the A&P Series B Warrants will expire on June 9, 2015.

The roll-over warrants will contain the following provisions:

The Yucaipa Investors are required to exercise the warrants on a cashless basis, and, at A&P's discretion, the warrants may be settled by payment of the in-the-money amount of exercised warrants in cash, stock or a combination thereof;

if the Yucaipa Investors exercise all of their A&P Series B Warrants, then A&P must settle by payment of the in-the-money amount of such warrants within twenty business days of exercise; *provided, however*, that if A&P gives notice within twenty business days that it intends to settle in cash, then it may defer payment of up to 50% of the cash payment until the first anniversary of the exercise date, which deferred portion will bear interest at the prime rate after such twenty business day period; and

customary antidilution provisions.

The Yucaipa Warrant Agreement also provides that, until June 9, 2014, the Yucaipa Investors may not exercise A&P Series B Warrants in an aggregate amount in any twelve-month period that is greater than 50% of the amount of A&P Series B Warrants issued to them in connection with the merger, unless (a) such exercise is in connection with a change of control of A&P or (b) an exercise of all of the Yucaipa Investors A&P Series B Warrants then outstanding.



**APPROVAL OF THE A&P SHARE ISSUANCE (A&P PROPOSAL 1)**

In connection with the merger, A&P stockholders are being asked to consider and vote on a proposal to approve the issuance of A&P common stock pursuant to the merger agreement. Stockholder approval of the issuance of A&P common stock pursuant to the merger agreement is required under the rules of the NYSE, which require the affirmative vote of the holders of a majority of shares of A&P common stock cast on such proposal, in person or by proxy, *provided* that the total votes cast on the proposal represent at least a majority of the outstanding shares of A&P common stock entitled to vote on the proposal. Because approval is based on the affirmative vote of a majority of votes cast, the failure of an A&P stockholder to vote or a broker nonvote will not affect the outcome of the vote on the proposal, assuming more than a majority of the outstanding shares vote on the proposal. Because the NYSE treats abstentions as votes cast with respect to the stock issuance proposal, an abstention will have the same effect as a vote **AGAINST** this proposal. Abstentions and broker nonvotes will be counted for the purposes of determining whether a quorum exists at the A&P special meeting. See *The A&P Special Meeting*.

Additionally, the effectiveness of each of the proposal to approve the issuance of A&P common stock in connection with the merger and the proposal to approve the amendment to the A&P charter is conditioned on approval of the other, which means that neither proposal will have any effect unless both are approved. We cannot complete the merger unless these two proposals are approved by the A&P stockholders.

The A&P board of directors believes that the merger is in the best interests of A&P and its stockholders and has unanimously authorized, declared the advisability of and recommended the merger agreement and the transactions it contemplates. For the factors considered by the A&P board of directors in reaching its decision to approve the merger agreement and the transactions it contemplates, see *Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger A&P's Reasons for the Merger; Recommendation of the A&P Board of Directors*. The A&P board of directors unanimously recommends that A&P stockholders vote **FOR** the proposal to approve the issuance of shares of A&P common stock pursuant to the merger agreement.

**APPROVAL OF THE A&P CHARTER AMENDMENT  
(A&P PROPOSAL 2)**

In connection with the merger, A&P stockholders are being asked to consider and vote on a proposal to approve an amendment to the A&P's charter to exempt the transactions contemplated by the merger agreement and the agreements entered into in connection therewith from the preemptive rights provisions of the A&P charter, including exempting the issuance of warrants to purchase A&P common stock to the Yucaipa Investors in connection with the conversion of their existing warrants to acquire Pathmark common stock and the issuance of shares of A&P common stock to the Yucaipa Investors upon exercise of such warrants, as described under *Adoption of the Merger Agreement (Pathmark Proposal 1) Yucaipa Warrant Agreement*. For a description of the preemptive rights of A&P stockholders, see *Adoption of the Merger Agreement (Pathmark Proposal 1) Comparison of Stockholders' Rights Preemptive Rights*. The proposal to amend the A&P charter requires the affirmative vote of two-thirds of the outstanding shares of A&P common stock. Therefore, an A&P stockholder's failure to vote, a broker nonvote or an abstention will have the same effect as a vote against approval of the amendment to the A&P charter.

Additionally, the effectiveness of each of the proposal to approve the issuance of A&P common stock in connection with the merger and the proposal to approve the amendment to the A&P charter is conditioned on approval of the other, which means that neither proposal will have any effect unless both

are approved. We cannot complete the merger unless these two proposals are approved by the A&P stockholders.

The A&P board of directors believes that the merger is in the best interests of A&P and its stockholders and has unanimously approved, declared the advisability of, and adopted the merger agreement and the transactions it contemplates, including, without limitation, the amendment to the A&P charter. For the factors considered by the A&P board of directors in reaching its decision to approve the merger agreement and the transactions it contemplates, see Adoption of the Merger Agreement (Pathmark Proposal 1) The Merger A&P s Reasons for the Merger; Recommendation of the A&P Board of Directors. The A&P board of directors unanimously recommends that A&P stockholders vote FOR the proposal to approve the amendment to A&P s charter regarding preemptive rights.

#### EXPERTS

The consolidated financial statements and management s assessment of the effectiveness of internal control over financial reporting (which is included in Management s Report on Internal Control over Financial Reporting) incorporated in this document by reference to A&P s Annual Report on Form 10-K for the year ended February 24, 2007 have been so incorporated in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

The consolidated financial statements and management s report on the effectiveness of internal control over financial reporting of Pathmark Stores, Inc. incorporated in this joint proxy statement/prospectus by reference from the Annual Report on Form 10-K, as amended, of Pathmark for the year ended and as of February 3, 2007 have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their reports (which reports (1) express an unqualified opinion on the consolidated financial statements and include an explanatory paragraph relating to the Company s adoption of Statement of Financial Accounting Standards ( SFAS ) No. 123(R), Share-Based Payment , as revised, and SFAS No. 158, Employers Accounting for Defined Benefit Pension and Other Postretirement Plans an amendment of SFAS No. 87, 88, 106, and 132(R) , (2) express an unqualified opinion on management s assessment regarding the effectiveness of internal control over financial reporting, and (3) express an unqualified opinion on the effectiveness of internal control over financial reporting), which are incorporated herein by reference, and have been so incorporated in reliance upon the reports of such firm given upon their authority as experts in accounting and auditing.

#### LEGAL MATTERS

The legality of the A&P common stock offered hereby will be passed upon for A&P by McGuireWoods LLP, Maryland counsel to A&P.

#### STOCKHOLDER PROPOSALS

A&P plans to hold its annual meeting of stockholders on or around July 19, 2007. In order to be considered for inclusion in A&P s proxy statement for the annual meeting, stockholder proposals must have been received at A&P s principal executive offices, at The Great Atlantic & Pacific Tea Company, Inc., Two Paragon Drive, Montvale, New Jersey 07645, Telephone: (201) 573-9700, Attention: Secretary, no later than [ ], 2007 and otherwise comply with the requirements of Rule 14a-8 under the Exchange Act.

In accordance with Pathmark s bylaws, Pathmark stockholders may not submit stockholder proposals to be considered at the Pathmark special meeting. Pathmark plans to hold its annual meeting of

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stockholders on or around June 14, 2007. In order to be considered for inclusion in Pathmark's proxy statement for the annual meeting, stockholder proposals must have been received at Pathmark's principal executive offices, at Pathmark Stores, Inc., 200 Milik Street, Carteret, New Jersey 07008, Telephone: (732) 499-3000, Attention: Secretary, no later than January 8, 2007 and otherwise comply with the requirements of Rule 14a-8 under the Exchange Act.

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**WHERE YOU CAN FIND MORE INFORMATION**

Pathmark and A&P file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any reports, statements or other information filed by A&P or Pathmark at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the Public Reference Room. You can also inspect reports, proxy statements and other information about A&P at the offices of the NYSE, 20 Broad Street, New York, New York 10005. You may also obtain copies of this information by mail from the Public Reference Section of the SEC, 100 F Street, N.E., Room 1580, Washington, D.C. 20549, at prescribed rates, or from commercial document retrieval services.

The SEC maintains a website that contains reports, proxy statements and other information, including those filed by A&P and Pathmark, at [www.sec.gov](http://www.sec.gov). You may also access the SEC filings and obtain other information about A&P and Pathmark through the websites maintained by A&P and Pathmark, which are [www.aptea.com](http://www.aptea.com) and [www.pathmark.com](http://www.pathmark.com), respectively. The information contained in those websites is not incorporated by reference into this joint proxy statement/prospectus.

As allowed by SEC rules, this joint proxy statement/prospectus does not contain all the information you can find in the registration statement on Form S-4 filed by A&P to register the shares of stock to be issued in the merger and the exhibits to the registration statement. The SEC allows A&P and Pathmark to incorporate by reference information into this joint proxy statement/prospectus, which means that we can disclose important information to you by referring you to other documents filed separately with the SEC. The information incorporated by reference is deemed to be part of this joint proxy statement/prospectus, except for any information superseded by information in this joint proxy statement/prospectus. This joint proxy statement/prospectus incorporates by reference the documents set forth below that A&P (Commission file number 1-4141) and Pathmark (Commission file number 1-5287) have previously filed with the SEC. These documents contain important information about the companies and their financial condition.

**A&P FILINGS WITH THE SEC**

**PERIOD AND/OR FILING DATE**

Annual Report on Form 10-K (including information incorporated therein by reference to A&P's 2007 Annual Report to Stockholders)

Year ended February 24, 2007, as filed April 25, 2007

Definitive Proxy Statement on Schedule 14A

Filed [        ], 2007

Current Reports on Form 8-K

Filed February 28, 2007, March 5, 2007, March 6, 2007, March 14, 2007, April 20, 2007, April 25, 2007, April 26, 2007 and May 7, 2007

**PATHMARK FILINGS WITH THE SEC**

**PERIOD AND/OR FILING DATE**

Annual Report on Form 10-K, excluding Item 5 as amended by filing of Form 10-K/A

Year ended February 3, 2007, as filed April 19, 2007

Amendment No. 1 to Annual Report on Form 10K

Filed May 11, 2007

Definitive Proxy Statement on Schedule 14A

Filed May 11, 2007

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**PATHMARK FILINGS WITH THE SEC**

**PERIOD AND/OR FILING DATE**

Definitive Proxy Soliciting Materials on Schedule 14A

Filed March 5, 2007 and March 21, 2007

Current Reports on Form 8-K

Filed February 27, 2007, March 5, 2007 and April 19, 2007

All documents filed by A&P and Pathmark pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act, from the date of this joint proxy statement/prospectus to the date of the special meeting shall also be deemed to be incorporated herein by reference.

You may also obtain copies of any document incorporated in this joint proxy statement/prospectus, without charge, by requesting them in writing, by telephone or by e-mail from the appropriate company at the following addresses:

**Pathmark Stores, Inc.**

Investor Relations  
200 Milik Street  
Carteret, New Jersey 07008  
Telephone: (732) 499-3000

**The Great Atlantic & Pacific Tea Company, Inc.**

Investor Relations  
Two Paragon Drive  
Montvale, New Jersey 07645  
Telephone: (201) 573-9700

Neither A&P nor Pathmark have authorized anyone to give any information or make any representation about the merger that is different from, or in addition to, that contained in this joint proxy statement/prospectus or in any of the materials that are incorporated by reference into this joint proxy statement/prospectus. Therefore, if anyone does give you information of this sort, you should not rely on it. If you are in a jurisdiction where offers to exchange or sell, or solicitations of offers to exchange or purchase, the securities offered by this joint proxy statement/prospectus are unlawful, or if you are a person to whom it is unlawful to direct these types of activities, then the offer presented in this joint proxy statement/prospectus does not extend to you. The information contained in this joint proxy statement/prospectus speaks only as of the date of this document unless the information specifically indicates that another date applies.

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**AGREEMENT AND PLAN OF MERGER**

**by and among**

**THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.**

**and**

**SAND MERGER CORP.**

**and**

**PATHMARK STORES, INC.**

**Dated as of March 4, 2007**

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## AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER is made and entered into and effective as of March 4, 2007, by and among THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC., a Maryland corporation (“Parent”), SAND MERGER CORP., a Delaware corporation and a wholly owned Subsidiary of Parent (“Merger Sub”), and PATHMARK STORES, INC., a Delaware corporation (the “Company”). Capitalized terms used in this Agreement and not otherwise defined shall have the meanings given to such terms in Article I.

### RECITALS

WHEREAS, the Board of Directors of each of Parent, Merger Sub and the Company has approved and declared advisable this Agreement and the merger of Merger Sub with and into the Company (the “Merger”) upon the terms and subject to the conditions set forth in this Agreement, whereby, among other things, each issued and outstanding share of common stock, par value \$0.01 per share, of the Company (the “Company Common Stock”) not owned by Parent, Merger Sub or the Company will be converted into the right to receive the Per Share Merger Consideration;

WHEREAS, simultaneously with the execution and delivery of this Agreement, (i) Parent and Yucaipa are entering into the Yucaipa Voting Agreement, the Yucaipa Stockholder Agreement and the Yucaipa Warrant Agreement and (ii) the Company and Tengemann are entering into the Tengemann Voting Agreement; and

WHEREAS, Parent, Merger Sub and the Company desire to make certain representations, warranties, covenants and agreements in connection with the Merger and also to prescribe various conditions to the Merger.

NOW, THEREFORE, in consideration of the foregoing, the representations, warranties, covenants and agreements set forth in this Agreement, and other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the parties hereby agree as follows:

### ARTICLE I

#### DEFINITIONS

SECTION 1.1 Definitions. For purposes of this Agreement, the following terms, when used in this Agreement, shall have the meanings assigned to them in this Section 1.1:

“13D Group” means any group of Persons formed for the purpose of acquiring, holding, voting or disposing of Voting Stock of another Person that would be required under Section 13(d) of the Exchange Act (as in effect on, and based on legal interpretations thereof existing on, the date hereof), to file a statement on Schedule 13D with the SEC as a “person” within the meaning of Section 13(d)(3) of the Exchange Act if such group beneficially owned Voting Stock representing more than 5% of any class of Voting Stock of such other Person then outstanding.

“2000 Warrant Agreement” means the Warrant Agreement dated as of September 19, 2000 between the Company and ChaseMellon Shareholder Services, LLC.

“2000 Warrants” means the warrants issued by the Company pursuant to the 2000 Warrant Agreement.

“2005 Warrant Agreement” means the Warrant Agreement dated as of June 9, 2005 among the Company, Yucaipa and the other parties thereto.

“2005 Warrants” means the warrants issued by the Company pursuant to the 2005 Warrant Agreement.

“Action” means any action, cause of action, claim, prosecution, investigation, suit, litigation, grievance, arbitration or other proceeding, whether civil, criminal or administrative, at Law or in equity, by or before any Governmental Entity.

“Affiliate” means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified Person. A Person shall be deemed to control another Person if such first Person possesses, directly or indirectly, the power to direct, or cause the direction of, the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise.

“Agreement” means this Agreement and Plan of Merger, as the same may be amended or supplemented.

“Allocated Amount” for each Facility specified in Section 1.1(a) of the Parent Disclosure Letter or Section 1.1(a) of the Company Disclosure Letter means the amount set forth next to such Facility in Section 1.1(a) of the Parent Disclosure Letter or Section 1.1(a) of the Company Disclosure Letter, as the case may be.

“Ancillary Agreements” means the Tengelmann Voting Agreement, the Yucaipa Stockholder Agreement, the Yucaipa Voting Agreement and the Yucaipa Warrant Agreement.

“Antitrust Law” means the Sherman Antitrust Act of 1890, as amended, the Clayton Antitrust Act of 1914, as amended, the HSR Act, the Federal Trade Commission Act of 1914, as amended, and all other applicable competition, merger control, antitrust, trade regulation or similar transnational, national, federal or state, domestic or foreign Laws, and other Laws and administrative and judicial doctrines that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition through merger or acquisition.

“Antitrust Termination Determination” means that the Board of Directors of Parent shall have determined in good faith, after consultation with its outside counsel, that it is reasonably likely that Parent, Merger Sub and/or the Company (in the aggregate) would be required to divest, sell, transfer and/or otherwise dispose of stores, businesses or other assets of Parent and/or the Company or of any of their Subsidiaries with aggregated Allocated Amounts in excess of the Threshold Amount in order to consummate the transactions contemplated by this Agreement.

“Business Day” means any day, other than a Saturday, Sunday or a day on which the banks or national securities exchanges located in New York, New York shall be authorized or required by Law to close.

“Charter” means the Parent’s Amended and Restated Certificate of Incorporation, as amended.

“Company Budgets” means, collectively, the Pathmark Stores, Inc. 2007 Annual Operating Plan, the Pathmark Stores, Inc. 2007 Capital Plan and the Pathmark Stores, Inc. 2008 and 2009 Long Range Plan, in each case as set forth in Section 1.1 (b) of the Company Disclosure Letter.



“Company Credit Agreement” means the Credit Agreement dated as of October 1, 2004 among the Company, as borrower, Banc of America Securities LLC, as arranger, Fleet Retail Group, Inc., as administrative agent and collateral agent, GMAC Commercial Finance LLC and General Electric Capital Corporation, as co-documentation agents, the CIT Group/Business Credit, Inc., as syndication agent, and the other agents and lenders parties thereto (including any guarantees, collateral documents, instruments and agreements executed in connection therewith, and any amendments, supplements or modifications thereto not prohibited by Section 6.1(d)).

“Company Disclosure Letter” means the disclosure letter of the Company referred to in Article IV.

“Company Material Adverse Effect” means any change, event or circumstance that, individually or in the aggregate with all other changes, events and circumstances, has a material adverse effect on the business, results of operations, condition (financial or otherwise), assets or liabilities of the Company and its Subsidiaries, taken as a whole, other than any change, event or circumstance arising out of: (i) general economic, legal, regulatory or political conditions in the United States of America or geographic regions in which the Company and its Subsidiaries operate, except to the extent that the Company or its Subsidiaries are disproportionately affected thereby; (ii) conditions generally affecting the industries in which the Company and its Subsidiaries operate, except to the extent that the Company or its Subsidiaries are disproportionately affected thereby; (iii) the announcement or pendency of the Merger or the entry into this Agreement or the Ancillary Agreements; (iv) any decrease in the market price of the Company Common Stock in and of itself (but not any change, event or circumstance that may be underlying such decrease to the extent that such change, event or circumstance would otherwise constitute a Company Material Adverse Effect); (v) any changes in the securities markets generally, except to the extent that the Company or its Subsidiaries are disproportionately affected thereby; (vi) the commencement or escalation of a war or armed hostilities or the occurrence of acts of terrorism or sabotage, except to the extent that the Company or its Subsidiaries are disproportionately affected thereby; (vii) earthquakes, hurricanes or other natural disasters, except to the extent that the Company or its Subsidiaries are disproportionately affected thereby; (viii) compliance with the requirements of changes in Law or GAAP or any interpretation thereof; (ix) (A) proposing, negotiating, committing to or effecting, by consent decree, hold separate order or otherwise, the sale, transfer, divestiture or disposition of stores, businesses or other assets arising from the parties’ compliance with their obligations under Section 6.6, (B) otherwise taking or committing to take actions that limit or would limit Parent’s, Merger Sub’s or its Subsidiaries’ (including, after the Effective Time, the Company’s and its Subsidiaries’ as Subsidiaries of Parent) freedom of action with respect to, or their ability to retain, one or more of their respective stores, businesses, product lines or assets arising from the parties’ compliance with their obligations under Section 6.6, or (C) the application of Antitrust Laws (including any Action or Judgment arising under Antitrust Laws) to the transactions contemplated by this Agreement or the Ancillary Agreements; or (x) (A) as a result of the Company’s entry into, and as permitted by, this Agreement, the payment of any amounts due to, or the provision of any other benefits (including benefits relating to acceleration of stock options) to, any officers or employees under the employment contracts, non-competition agreements, employee benefit plans, severance arrangements or other arrangements set forth in Section 1.1(c) of the Company Disclosure Letter (except to the extent that payments under such contracts, agreements, plans or arrangements solely for retention exceed the estimated retention payments set forth in Section 1.1(c) of the Company Disclosure Letter) or (B) the incurrence by the Company of out-of-pocket fees and expenses (including legal, accounting, investment banking and other fees and expenses) in connection with the transactions contemplated by this Agreement (except to the extent that fees and expenses for legal, accounting and other exceed the estimated amount, or with respect to investment banking and financial advisory fees the specified amount, set forth in Section 1.1(d) of the Company Disclosure Letter).





“Company Plans” means all employee benefit plans (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”)) and all bonus, incentive, stock option, stock purchase, restricted stock, phantom stock or other stock-based compensation, deferred compensation, medical, life insurance, disability, fringe benefit, supplemental executive retirement, severance or other benefit plans, programs, policies, practices, trusts or arrangements, and all employment, termination, severance, change in control, compensation or other Contracts or agreements, to which the Company or any of its ERISA Affiliates is a party, or which are sponsored, maintained or contributed to by the Company or any of its ERISA Affiliates or as to which the Company or any of its ERISA Affiliates has any liability and any material Contracts, arrangements, agreements, policies, practices or understandings between the Company or any of its ERISA Affiliates and any current or former employee, director or consultant of the Company or of any of its Subsidiaries, including any Contracts, arrangements or understandings relating to a change in control of the Company; provided, however, that the term “Company Plans” shall exclude any plan that is a multiemployer plan as defined in Section 3(37) or 4001(a)(3) of ERISA.

“Company Proposal” means any inquiry, proposal or offer from any Third Party or 13D Group relating to (i) any direct or indirect acquisition or purchase, in a single transaction or a series of transactions, of (A) 20% or more (based on the fair market value thereof, as determined by the Board of Directors of the Company) of the assets (including capital stock of the Subsidiaries of the Company) of the Company and its Subsidiaries, taken as a whole (other than sales of inventory in the ordinary course and other than inquiries, proposals and offers to acquire or purchase assets in connection with the parties’ obligations under Section 6.6(e)), or (B) 20% or more of the outstanding shares of the Company Common Stock; (ii) any tender offer or exchange offer that, if consummated, would result in any Third Party or 13D Group owning, directly or indirectly, 20% or more of the outstanding shares of the Company Common Stock; or (iii) any merger, consolidation, business combination, recapitalization, liquidation, dissolution, binding share exchange or similar transaction involving the Company pursuant to which any Third Party (or the shareholders of any Third Party) or 13D Group would own, directly or indirectly, 20% or more of any class of equity securities of the Company or of the surviving entity in a merger or the resulting direct or indirect parent of the Company or such surviving entity, other than, in each case, the transactions contemplated by this Agreement.

“Company SEC Reports” means the forms and reports filed by the Company with the SEC since January 31, 2004.

“Company Stock Plans” means the Amended and Restated 2000 Employee Equity Plan, the Amended and Restated 2000 Non-Employee Directors’ Equity Plan, the Stock Option Award Agreements between the Company and John Standley and Kenneth Martindale, and the Restricted Stock Award Agreements between the Company and John Standley and Kenneth Martindale.

“Confidentiality Agreement” means the letter agreement between the Company and Parent dated December 20, 2006.

“Contract” means any contract, agreement, commitment, lease, purchase order, license, mortgage, indenture, note, bond, concession agreement, franchise agreement or other instrument, including all amendments thereto.

“Copyrights” means all rights in a work of authorship and all copyrights (including all registrations and applications to register the same).

“Electronic Data Room” means the DataSite electronic data room maintained by the Company in connection with the transactions contemplated by this Agreement and the Ancillary Agree-



ments and to which Parent and Merger Sub have been given access, as such data room was constituted immediately prior to the execution of this Agreement.

“Encumbrance” means any lien, encumbrance, security interest, pledge, mortgage, hypothecation, charge, restriction on transfer of title, adverse claim, title retention agreement of any nature or kind, or other encumbrance, except for any restrictions arising under any applicable securities Laws.

“Environment” means ambient air, indoor air, surface water, groundwater and surface and subsurface strata and natural resources such as wetlands, flora and fauna.

“Environmental Law” means any Law and the common law relating to (i) pollution or the protection of the Environment, (ii) the protection of human health and safety as it pertains to Hazardous Materials, or (iii) the generation, handling, use, presence, treatment, transport, storage, disposal or Release of any Hazardous Materials.

“ERISA Affiliate” means any trade or business, whether or not incorporated, which together with the Company or Parent, as applicable, would be deemed a “single employer” within the meaning of Section 414(b), (c) or (m) of the Code or Section 4001(b)(1) of ERISA.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Executive Officer” means any individual who would be required to be identified as a “named executive officer” in any proxy statement filed by the Company with the SEC.

“Existing Notes” means the Company’s 8¾% Senior Subordinated Notes due 2012 outstanding on the date hereof.

“Existing Stockholders’ Agreement” means the Amended and Restated Stockholders’ Agreement dated as of November 30, 2005 among the Company and Yucaipa.

“Facilities” means any store, office, plant or warehouse owned or leased by Parent or any of its Subsidiaries and/or by the Company or any of its Subsidiaries.

“GAAP” means generally accepted accounting principles in the United States of America as in effect from time to time.

“Governmental Entity” means any domestic or foreign, transnational, national, federal, state, municipal or local government, or any other domestic or foreign governmental, regulatory or administrative authority, or any agency, board, department, commission, court, tribunal or instrumentality thereof.

“Hazardous Materials” means any pollutant, contaminant, waste, chemical, compound, substance or material, including any petroleum or petroleum product or by-product, asbestos-containing material, urea formaldehyde foam insulation, or mold, regulated under any Environmental Law.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

“Indebtedness” means, with respect to any Person, without duplication: (i) (A) indebtedness for borrowed money, (B) all obligations of such Person evidenced by bonds, debentures, notes or



similar instruments, (C) all obligations of such Person under interest rate or currency hedging transactions (valued at the termination value thereof), (D) all letters of credit issued for the account of such Person and (E) obligations of such Person to pay rent or other amounts under any lease of real property or personal property, which obligations are required to be classified as capital leases in accordance with GAAP; (ii) indebtedness for borrowed money of any other Person guaranteed, directly or indirectly, in any manner by such Person; and (iii) indebtedness of the type described in clause (i) above secured by any Encumbrance upon property owned by such Person, even though such Person has not in any manner become liable for the payment of such indebtedness; provided, however, that Indebtedness shall not be deemed to include (A) any accounts payable or trade payables incurred in the ordinary course of business of such Person, or (B) any intercompany indebtedness between any Person and any wholly owned Subsidiary of such Person or between any wholly owned Subsidiaries of such Person.

“Initiation Date” means the date the Joint Proxy Statement is first mailed to the Company’s stockholders and Parent’s stockholders.

“Intellectual Property” means all Trademarks, Patents, Copyrights, Trade Secrets, service marks, service mark rights, computer programs, moral rights and the benefits of any waivers of moral rights and any other proprietary intellectual property rights.

“Judgment” means any applicable judgment, order or decree of any Governmental Entity.

“Labor Laws” means any applicable Law relating to employment standards, employee rights, health and safety, labor relations, workplace safety and insurance and/or pay equity.

“Law” means any applicable statute, code, rule, regulation, ordinance, Judgment, or other pronouncement of any Governmental Entity having the effect of law.

“Marketing Period” means the first period of 20 consecutive calendar days after the Initiation Date (i) throughout and at the end of which (A) Parent and its financing sources shall have the Required Information and (B) nothing has occurred and no condition exists that would cause any of the conditions set forth in Sections 7.1(b), 7.1(d), 7.2(a) and 7.2(b) to fail to be satisfied assuming the Closing were to be scheduled for any time during such 20-consecutive-calendar-day period, and (ii) at the end of which the other conditions set forth in Sections 7.1 and 7.2 shall be satisfied (other than those conditions that by their terms are to be satisfied at the Closing); provided that (v) the Marketing Period shall end no earlier than five Business Days after the later to occur of (A) the date the Company Stockholder Approval is obtained and (B) the date the Parent Stockholder Approval is obtained; (w) the Marketing Period shall end on any earlier date that is the date on which the Financing is consummated; (x) for purposes of calculating such 20-consecutive-calendar-day period, the periods from and including August 17 through and including September 3, 2007 and from and including December 21, 2007 through and including January 1, 2008 shall not be counted or taken into account; (y) the Marketing Period shall not be deemed to have commenced if, prior to the completion of the Marketing Period, (A) the Company’s independent registered accounting firm shall have withdrawn its audit opinion with respect to any financial statements contained in the Required Information, in which case the Marketing Period will not be deemed to commence, at the earliest, unless and until a new unqualified audit opinion is issued with respect to the consolidated financial statements for the applicable periods by the Company’s independent registered accounting firm or another independent registered accounting firm reasonably acceptable to Parent, (B) the Company shall have publicly announced any intention to restate any of its financial information, in which case the Marketing Period will not be deemed to commence, at the earliest, unless and until such restatement has been completed and the Company SEC Reports have been amended or the Company has announced that it has concluded that no restatement shall be required in accordance with GAAP or (C) the Company shall have failed to file any Form 10-K or Form 10-Q with the SEC by the date required under



the Exchange Act, in which case the Marketing Period will not be deemed to commence, at the earliest, unless and until all such reports have been filed; and (z) if the financial statements included in the Required Information that is available to Parent on the first day of any such 20-consecutive-calendar-day period would not be sufficiently current on any day during such 20-consecutive-calendar-day period to permit (i) if the Financing is being effected pursuant to a public offering, a registration statement using such financial statements to be declared effective by the SEC on the last day of the 20-consecutive-calendar-day period or (ii) the Company's independent registered accounting firm to issue a customary comfort letter to purchasers (in accordance with its normal practices and procedures) on the last day of the 20-consecutive-calendar-day period, then a new 20-consecutive-calendar-day period shall commence upon Parent receiving updated Required Information that would be sufficiently current to permit the actions described in (i) if applicable, and (ii) on the last day of such 20-consecutive-calendar-day period.

"NYSE" means the New York Stock Exchange.

"Parent Common Stock" means the common stock, par value \$1.00 per share, of Parent.

"Parent Disclosure Letter" means the disclosure letter of Parent and Merger Sub referred to in Article V.

"Parent Material Adverse Effect" means any change, event or circumstance that, individually or in the aggregate with all other changes, events and circumstances, has a material adverse effect on the business, results of operations, condition (financial or otherwise), assets or liabilities of Parent and its Subsidiaries, taken as a whole, other than any change, event or circumstance arising out of: (i) general economic, legal, regulatory or political conditions in the United States of America or geographic regions in which Parent and its Subsidiaries operate, except to the extent that Parent or its Subsidiaries are disproportionately affected thereby; (ii) conditions generally affecting the industries in which Parent and its Subsidiaries operate, except to the extent that Parent or its Subsidiaries are disproportionately affected thereby; (iii) the announcement or pendency of the Merger or the entry into this Agreement or the Ancillary Agreements; (iv) any decrease in the market price of the Parent Common Stock in and of itself (but not any change, event or circumstance that may be underlying such decrease to the extent that such change, event or circumstance would otherwise constitute a Parent Material Adverse Effect); (v) any changes in the securities markets generally, except to the extent that Parent or its Subsidiaries are disproportionately affected thereby; (vi) the commencement or escalation of a war or armed hostilities or the occurrence of acts of terrorism or sabotage, except to the extent that Parent or its Subsidiaries are disproportionately affected thereby; (vii) earthquakes, hurricanes or other natural disasters, except to the extent that Parent or its Subsidiaries are disproportionately affected thereby; (viii) compliance with the requirements of changes in Law or GAAP or any interpretation thereof; (ix) sales of Facilities (or agreements or plans to sell Facilities) that arise from the parties' compliance with their obligations under Section 6.6; or (x) any Action brought by any Governmental Entity under any Antitrust Law relating to the transactions contemplated by this Agreement and the Ancillary Agreements.

"Parent Plans" means all employee benefit plans (as defined in Section 3(3) of ERISA) and all bonus, incentive, stock option, stock purchase, restricted stock, phantom stock or other stock-based compensation, deferred compensation, medical, life insurance, disability, fringe benefit, supplemental executive retirement, severance or other benefit plans, programs, policies, practices, trusts or arrangements, and all employment, termination, severance, change in control, compensation or other Contracts or agreements, to which Parent or any of its ERISA Affiliates is a party, or which are sponsored, maintained or contributed to by Parent or any of its ERISA Affiliates or as to which Parent or any of its ERISA Affiliates has any liability and any material Contracts, arrangements, agreements, policies, practices or understandings between Parent or any of its ERISA Affiliates and any current or former employee, director or consultant of Parent or of any of its Subsidiaries, including any Contracts, arrange-





ments or understandings relating to a change in control of Parent; provided, however, that the term “Parent Plans” shall exclude any plan that is a multiemployer plan as defined in Section 3(37) or 4001(a)(3) of ERISA.

“Parent SEC Reports” means the forms, reports and documents (including all exhibits) filed by Parent with the SEC since February 28, 2004.

“Patents” means all patents, patent rights and patent applications, including divisions, continuations, continuations-in-part, reissues, re-examinations, and all extensions thereof.

“Permits” means, collectively, all applicable consents, approvals, permits, orders, authorizations, licenses and registrations from Governmental Entities.

“Permitted Encumbrance” means: (i) mechanics’, carriers’, workers’, repairers’, materialmen’s, warehousemen’s, construction and other Encumbrances arising or incurred in the ordinary course of business and not yet due and payable or being contested in good faith by appropriate proceedings; (ii) Encumbrances for Taxes, utilities and other governmental charges that, in each case, are not yet due or payable, are being contested in good faith by appropriate proceedings or may thereafter be paid without giving rise to any material penalty or material additional cost or liability; (iii) matters of record or registered Encumbrances affecting title to any owned or leased real property of a Person and its Subsidiaries; (iv) requirements and restrictions of zoning, building and other applicable Laws and municipal by-laws, and development, site plan, subdivision or other agreements with municipalities that do not individually or in the aggregate materially and adversely affect the use of the owned or leased Real Property of a Person and its Subsidiaries affected thereby as currently used in the business of such Person and its Subsidiaries; (v) statutory Encumbrances of landlords for amounts not yet due and payable; (vi) Encumbrances arising under conditional sales Contracts and equipment leases with third parties entered into in the ordinary course of business generally consistent with past practice; (vii) defects, irregularities or imperfections of title and other Encumbrances which, individually or in the aggregate, do not materially impair the continued use (in a manner generally consistent with current use in the business of the Person and its Subsidiaries) of the asset or property to which they relate; and (viii) (A) with respect to the Company and its Subsidiaries, Encumbrances arising under the Company Credit Agreement and (B) with respect to Parent and its Subsidiaries, Encumbrances arising under any credit agreement existing as of the date hereof.

“Person” means an association, a corporation, an individual, a partnership, a limited partnership, a limited liability company, an unlimited liability company, a trust or any other entity or organization, including a Governmental Entity.

“Preemptive Rights Charter Amendment” means an amendment to the preemptive right of stockholders of Parent set forth in Article 7 of Parent’s Charter, which amendment specifically exempts the transactions contemplated by this Agreement and the Ancillary Agreements from the application of Article 7 but otherwise does not alter such preemptive rights; provided that no such amendment shall be necessary if Article 7 has been previously eliminated from Parent’s Charter.

“Registered Intellectual Property” means all (i) registered trademarks and service marks and applications therefor, (ii) registered copyrights and applications therefor, (iii) issued patents and patent applications and (iv) domain names, in each case, that are owned by the Company or any of its Subsidiaries and are material to the conduct of the business of the Company and its Subsidiaries.

“Release” means any spilling, leaking, pumping, emitting, emptying, discharging, injecting, escaping, leaching, migrating, dumping or disposing of Hazardous Materials (including the aban-



donment or discarding of barrels, containers or other closed receptacles containing Hazardous Materials) into or through the Environment or into or out of any real property, including the movement of Hazardous Materials through or in the air, soil, surface water, groundwater or property.

“Representatives” means the directors, officers, employees, agents, investment bankers, financing sources (with respect to Parent and Merger Sub only), attorneys, accountants and advisors of either Parent and Merger Sub, on the one hand, or the Company, on the other hand, as the context requires. Yucaipa and its controlled and controlling Affiliates shall be deemed to be Representatives of the Company, and Tengelmänn and its controlled and controlling Affiliates shall be deemed to be Representatives of Parent and Merger Sub.

“SEC” means the Securities and Exchange Commission.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“SOX” means the Sarbanes-Oxley Act of 2002.

“Subsidiary” of any Person means, on any date, any Person (i) the accounts of which would be consolidated with and into those of the applicable Person in such Person’s consolidated financial statements if such financial statements were prepared in accordance with GAAP or (ii) of which (A) securities or other ownership interests representing more than 50% of the equity or (B) more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests, as of such date, are owned, controlled or held by the applicable Person or one or more Subsidiaries of such Person.

“Superior Proposal” means any bona fide Company Proposal (provided that the applicable percentages in the definition of “Company Proposal” shall be 50% as opposed to 20%) which the Board of Directors of the Company determines in good faith (after consultation with its financial advisors and outside counsel) (i) is reasonably likely to be consummated taking into the account the Third Party or 13D Group making such Company Proposal and all financial, legal, regulatory and other aspects of such Company Proposal and (ii) would, if consummated, reasonably be expected to result in a transaction that is more favorable to the stockholders of the Company than the Merger, taking into account all financial, legal, regulatory and other aspects of such Company Proposal and of this Agreement.

“Tax” means any foreign, federal, state or local income, sales and use, excise, franchise, real and personal property, gross receipt, capital stock, production, business and occupation, disability, estimated, employment, payroll, severance or withholding tax or other tax, duty, fee, impost, levy, assessment or charge imposed by any taxing authority, and any interest or penalties and other additions to tax related thereto.

“Tax Returns” means any return, report, declaration, information return or other document required to be filed with any Tax authority with respect to Taxes, including any amendments thereof.

“Tengelmänn” means Tengelmänn Warenhandelsgesellschaft KG.

“Tengelmänn Voting Agreement” means the Stockholder Voting Agreement between the Company and Tengelmänn dated as of the date of this Agreement.

“Third Party” means any Person other than Parent, the Company or any of their respective Affiliates.

“Threshold Amount” means \$36.0 million.

“Trade Secrets” means all proprietary, confidential information, formulas, processes, data, know-how, devices or compilations of information used in a business that confer a competitive advantage over those in similar businesses who do not possess them or know how to use them.

“Trademarks” means all trademarks, trademark rights, trade names, trade name rights, brands, logos, trade dress, business names and Internet domain names, together with the goodwill associated with any of the foregoing, all registrations and applications for registration of the foregoing.

“Trading Day” means (i) for so long as Parent Common Stock is listed or admitted for trading on the NYSE or another national securities exchange, a day on which the NYSE or such other national securities exchange is open for business and trading in Parent Common Stock is not suspended or restricted or (ii) if Parent Common Stock ceases to be so listed, any day other than a Saturday or S