

CONTINENTAL AIRLINES INC /DE/

Form POS AM

March 01, 2004

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As filed with the Securities and Exchange Commission on March 1, 2004

Registration No. 333-108576

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Post-Effective Amendment No. 5

to

Form S-3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

Continental Airlines, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State of incorporation)

74-2099724
(I.R.S. Employer Identification No.)

**1600 Smith Street
Houston, Texas 77002
(713) 324-5000**

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

**Jennifer L. Vogel, Esq.
Senior Vice President,
General Counsel and Secretary
1600 Smith Street
Department HQSEO
Houston, Texas 77002
(713) 324-2950**

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

Copies to:

**Kevin P. Lewis
Vinson & Elkins L.L.P.
2300 First City Tower
Houston, Texas 77002-6760
(713) 758-2222**

Approximate date of commencement of proposed sale to the public: From time to time after the registration statement becomes effective.

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

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

box.

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

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

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

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 or until the registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

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

SUBJECT TO COMPLETION, DATED MARCH 1, 2004

PROSPECTUS

Continental Airlines, Inc.

\$175,000,000

5% Convertible Notes due 2023

This prospectus relates to the offering for resale of our 5% Convertible Notes due 2023 and the shares of our common stock issuable upon conversion of the notes. The notes were offered and issued on June 10, 2003 to qualified institutional buyers, as defined in, and in reliance on, Rule 144A under the Securities Act of 1933, as amended, or the Securities Act, in transactions exempt from, or not subject to, the registration requirements of the Securities Act. This prospectus will be used by selling securityholders to resell their notes and shares of our common stock issuable upon conversion of their notes. We will not receive any proceeds from sales by the selling securityholders.

We will pay interest at the rate of 5% per year on the principal amount from June 10, 2003, or from the most recent date to which interest has been paid or provided for, semiannually in arrears on June 15 and December 15 of each year, beginning December 15, 2003. The notes will mature on June 15, 2023.

Holder may convert all or a portion of their notes into shares of our common stock under the following circumstances: (1) at any time during or after any fiscal quarter commencing after June 30, 2003 if the closing sale price of our common stock for at least 20 trading days in a period of 30 consecutive trading days ending on the last trading day of the fiscal quarter prior to such quarter is greater than 120% of the conversion price per share of common stock on such last day; (2) subject to certain exceptions, during the five business day period after any five consecutive trading day period in which the trading price per \$1,000 principal amount of the notes for each day of the five trading day period was less than 98% of the product of the closing sale price of our common stock and the number of shares issuable upon conversion of \$1,000 principal amount of the notes; (3) if the notes have been called for redemption; or (4) upon the occurrence of specified corporate transactions described in this prospectus.

The conversion rate is 50 shares of our common stock per \$1,000 principal amount of the notes, subject to adjustment. Upon conversion, we may at our option choose to deliver, in lieu of our common stock, cash or a combination of cash and common stock as described herein.

Beginning June 18, 2010, we may redeem all or a portion of the notes for cash for a price equal to 100% of the principal amount of the notes to be redeemed plus accrued and unpaid interest, if any.

Holder may require us to repurchase all or a portion of their notes on June 15, 2010, June 15, 2013 and June 15, 2018 at a repurchase price equal to 100% of the principal amount of the notes to be repurchased plus accrued and unpaid interest, if any. We may at our option choose to pay the repurchase price for any such notes in cash or in shares of common stock (valued as described herein) or any combination thereof. Should we be required to repurchase the notes at any of the redemption dates, it is our policy that we would satisfy the requirement in cash.

The notes represent our unsubordinated, unsecured obligations. The notes rank equally with all of our other existing and future unsecured and unsubordinated indebtedness. However, the notes are effectively subordinated to all of our existing and future secured debt to the extent of the security on such other debt and to all existing and future obligations of our subsidiaries.

Our common stock is listed on the New York Stock Exchange and trades under the symbol CAL. On February 26, 2004, the last reported sale price of our common stock on the New York Stock Exchange was \$14.86 per share.

Investing in the notes involves risks. See Risk Factors beginning on page 4.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

, 2004

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You should rely only on the information contained in this prospectus and those documents incorporated by reference herein. We have not authorized anyone to provide you with different information. This prospectus does not constitute an offer to sell, or a solicitation of an offer to purchase, the securities offered by this prospectus in any jurisdiction to or from any person to whom or from whom it is unlawful to make such offer or solicitation of an offer in such jurisdiction. You should not assume that the information contained in this prospectus or any document incorporated by reference is accurate as of any date other than the date on the front cover of the applicable document.

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ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission, or the SEC, utilizing a shelf registration process or continuous offering process. Under this shelf registration process, the selling securityholders may, from time to time, sell the securities described in this prospectus in one or more offerings. This prospectus provides you with a general description of the securities which may be offered by the selling securityholders. Each time a selling securityholder sells securities, the selling securityholder is required to provide you with this prospectus and, in certain cases, a prospectus supplement containing specific information about the selling securityholder and the terms of the securities being offered. That prospectus supplement may include additional risk factors or other special considerations applicable to those securities. Any prospectus supplement may also add, update, or change information in this prospectus. If there is any inconsistency between the information in this prospectus and any prospectus supplement, you should rely on the information in that prospectus supplement. You should read both this prospectus and any prospectus supplement together with additional information described under **Where You Can Find More Information**.

As used in this prospectus, the terms **company**, **we**, **our**, **ours** and **us** may, depending on the context, refer to Continental Airlines, Inc. or one or more of its consolidated subsidiaries or to all of them taken as a whole. When we refer to **common stock** throughout this prospectus, we include all rights attaching to our common stock under any stockholder rights plan in effect at the relevant time.

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WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any document we file at the SEC's public reference rooms at 450 Fifth Street, N.W., Room 1024, Washington, DC 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference rooms. Our SEC filings are also available to the public over the Internet at the SEC's website at <http://www.sec.gov>.

The SEC allows us to incorporate by reference into this prospectus the information we file with them, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be a part of this prospectus, and information that we file later with the SEC will automatically update and supersede this information. We incorporate by reference the following documents we have already filed and any future filings we make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act), other than Current Reports (or portions thereof) furnished under Items 9 or 12 of Form 8-K, until the offering of the notes is completed.

Annual Report on Form 10-K for the year ended December 31, 2003;

Current Reports on Form 8-K filed January 6, 2004, January 16, 2004 and February 3, 2004;

The description of our common stock contained in our Registration Statement on Form 8-A/A, as filed with the SEC on February 6, 2001; and

The description and terms of the preferred share purchase rights associated with our common stock contained in our registration statement on Form 8-A/A, as filed with the SEC on January 22, 2001.

You may obtain any of these incorporated documents from us without charge, excluding any exhibits to these documents unless the exhibit is specifically incorporated by reference in such document, from our website (www.continental.com) or by requesting them from us in writing or by telephone at the following address:

Continental Airlines, Inc.

1600 Smith Street
Dept. HQSLG
Houston, Texas 77002
Attention: Secretary
Telephone: (713) 324-2950

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SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus and the documents we incorporate by reference may contain forward-looking statements within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act. Forward-looking statements include any statements that predict, forecast, indicate or imply future results, performance or achievements, and may contain the words believe, anticipate, expect, estimate, project, will be, will continue, will result or words or phrases of similar meaning.

Any such forward-looking statements are not assurances of future performance and involve risks and uncertainties. Actual results may vary materially from anticipated results for a number of reasons, including those stated in our SEC reports incorporated in this prospectus by reference or as stated in Risk Factors .

All forward-looking statements attributable to us are expressly qualified in their entirety by the cautionary statements above.

You should not place undue reliance on these forward-looking statements. We caution that the foregoing list of important factors is not exhaustive. We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

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SUMMARY

This summary contains basic information about us and the notes. Because it is a summary, it does not contain all of the information that you should consider before investing. You should read this entire prospectus carefully, including the section entitled Risk Factors and our financial statements and the related notes, contained elsewhere or incorporated by reference in this prospectus, before making an investment decision.

Our Company

We are a major United States air carrier engaged in the business of transporting passengers, cargo and mail. We are the fifth largest United States airline (as measured by the number of scheduled miles flown by revenue passengers, known as revenue passenger miles, in 2003) and together with ExpressJet Airlines, Inc. (ExpressJet), from which we purchase seat capacity, and our wholly owned subsidiary, Continental Micronesia, Inc., we served 228 airports worldwide at December 31, 2003. As of December 31, 2003, we flew to 127 domestic and 101 international destinations and offered additional connecting service through alliances with domestic and foreign carriers. We directly served 16 European cities, seven South American cities, Tel Aviv, Hong Kong and Tokyo as of December 31, 2003. In addition, we provide service to more destinations in Mexico and Central America than any other United States airline, serving 31 cities. Through our Guam hub, Continental Micronesia provides extensive service in the western Pacific, including service to more Japanese cities than any other United States carrier.

Our executive offices are located at 1600 Smith Street, Houston, Texas 77002. Our primary telephone number is (713) 324-2950. Our Internet address is www.continental.com. Information on our website is not incorporated into this prospectus and is not a part of this prospectus.

The Offering

Notes	\$175,000,000 aggregate principal amount of 5% Convertible Notes due 2023. Each note was issued at a price of \$1,000 per note and has a principal amount of \$1,000.
Maturity	June 15, 2023.
Interest	The notes bear interest at the rate of 5% per year on the principal amount beginning June 10, 2003, or from the most recent date to which interest has been paid or provided for. Interest is payable semiannually in arrears on June 15 and December 15 of each year, beginning December 15, 2003. The interest rate is calculated using a 360-day year composed of twelve 30-day months.
Conversion Rights	Holder may convert all or a portion of their notes, in multiples of \$1,000 principal amount, into common stock only if at least one of the conditions described below is satisfied. For each \$1,000 principal amount of notes surrendered for conversion, if the conditions for conversion are satisfied, a holder will receive 50 shares of our common stock, subject to adjustment. When we refer to common stock throughout this prospectus, we include all rights attaching to our common stock under any stockholder rights plan in effect at the relevant time. In lieu of delivering shares of our common stock upon conversion of all or any portion of the notes, we may elect to pay cash or a combination of cash and shares of our common stock for the notes surrendered.

Holder may surrender notes for conversion into shares of our common stock at any time during or after any fiscal quarter commencing after June 30, 2003 if the closing sale price of our

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common stock for at least 20 trading days in a period of 30 consecutive trading days ending on the last trading day of the preceding fiscal quarter is more than 120% of the conversion price per share of common stock on such last day. If the foregoing condition is satisfied, then the notes will be convertible at any time at the option of the holder, through maturity. The conversion price per share as of any day will equal the principal amount of a note, divided by the conversion rate, subject to any adjustments to the conversion rate through that day.

Holders may also surrender notes for conversion during the five business day period after any five consecutive trading day period in which the trading price per \$1,000 principal amount of notes for each day of that period was less than 98% of the product of the closing sale price for our common stock for each day of that period and the number of shares of common stock issuable upon conversion of \$1,000 principal amount of notes; provided that if on the date of any such conversion that is on or after June 15, 2018, the closing sale price of our common stock is greater than the conversion price, then holders will receive, in lieu of common stock based on the conversion price, cash or common stock or a combination of cash and common stock, at our option, with a value equal to the principal amount of such notes plus accrued and unpaid interest, as of the conversion date.

Notes called for redemption may be surrendered for conversion until the close of business on the business day immediately preceding the redemption date. In addition, if we make a distribution to our stockholders with a per share value of more than 12.5% of the closing sale price of our common stock on the date immediately preceding the declaration of such distribution, or if we are a party to certain consolidations, mergers or binding share exchanges, notes may be surrendered for conversion, as provided in Description of Notes Conversion Rights. The ability to surrender notes for conversion will expire at the close of business on the business day immediately preceding the final maturity date.

Ranking	The notes represent our unsubordinated, unsecured obligations and rank equal in right of payment to all of our existing and future unsecured and unsubordinated debt. However, the notes are effectively subordinated to all of our existing and future secured debt to the extent of the collateral securing such debt and to all existing and future liabilities of our subsidiaries. See Description of Notes Ranking of the Notes.
Sinking Fund	None.
Redemption of Notes at Our Option	We may redeem for cash all or a portion of the notes at any time on or after June 18, 2010, at a redemption price equal to 100% of the principal amount, plus accrued and unpaid interest, if any. See Description of Notes Redemption of Notes at Our Option.
Repurchase at Option of the Holder on Specified Dates	Holders may require us to repurchase the notes on June 15 of 2010, 2013 and 2018 at a repurchase price equal to 100% of their principal amount, plus accrued and unpaid interest, if any. We may

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at our option choose to pay the repurchase price for any such notes in cash or in shares of common stock (valued as described herein) or any combination thereof. Should we be required to repurchase the notes at any of the redemption dates, it is our policy that we would satisfy the requirement in cash. See Description of Notes Repurchase at Option of the Holder on Specified Dates.

Repurchase at Option of the Holder
Upon a Change in Control

In certain circumstances involving a change in control (as described under Description of Notes Repurchase at Option of the Holder Upon a Change in Control) prior to maturity, holders may require us to purchase all or a portion of their notes for cash at a repurchase price equal to 100% of their principal amount, plus accrued and unpaid interest, if any. See Description of Notes Repurchase at Option of the Holder Upon a Change in Control.

DTC Eligibility

The notes were issued in fully registered book entry form and are represented by one permanent global note without coupons. The global note was deposited with a custodian for and registered in the name of a nominee of The Depository Trust Company in New York, New York. Beneficial interests in the global note are shown on, and transfers thereof will be effected only through, records maintained by DTC and its direct and indirect participants, and your interest in the global note may not be exchanged for certificated notes, except in limited circumstances described herein. See Description of Notes Book-Entry System.

Trading

We do not intend to list the notes on any national securities exchange. However, the notes and the common stock issuable upon conversion of the notes are eligible for trading in PORTAL.

Common Stock

Our common stock is listed on the New York Stock Exchange under the symbol CAL .

Use of Proceeds

We will not receive any of the proceeds from the sale of notes or the common stock contemplated by this prospectus.

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RISK FACTORS

You should read carefully this entire prospectus and the documents incorporated by reference in this prospectus before investing in the notes.

This prospectus includes Forward-Looking Statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. All statements other than statements of historical facts included or incorporated by reference in this prospectus, including statements regarding our future financial position, are forward-looking statements. Although we believe that the expectations reflected in such forward-looking statements are reasonable, we cannot assure you that such expectations will be correct. Important factors that could cause actual results to differ materially from such expectations are disclosed below and elsewhere in this prospectus. See Special Note Regarding Forward-Looking Statements.

Before you invest in the notes, you should consider the risks, uncertainties and factors that may adversely affect us that are discussed under the captions Risk Factor Relating to Terrorist Attacks and International Hostilities, Risk Factors Relating to the Company and Risk Factors Relating to the Airline Industry in our Annual Report on Form 10-K for the year ended December 31, 2003, which is incorporated by reference in this prospectus, as well as the following additional risk factors.

Risks Related to the Notes

The notes are unsecured and effectively subordinated to our secured debt and to all obligations of our subsidiaries.

The notes represent our unsubordinated, unsecured obligations and rank equal in right of payment to all of our other existing and future unsecured and unsubordinated debt. However, the notes are effectively subordinated to all of our existing and future secured debt, to the extent of the security on such other debt and to all existing and future obligations of our subsidiaries. As of December 31, 2003, we and our subsidiaries had approximately \$6.0 billion (including current maturities) of long-term debt and capital lease obligations outstanding, of which \$5.0 billion was secured by our assets and the assets of our subsidiaries. In addition, we have entered into guarantees for approximately \$1.6 billion aggregate principal amount of tax-exempt special facilities revenue bonds and related interest. These bonds, issued by various airport municipalities, are payable solely from our rentals paid under long-term agreements with the respective governing bodies.

In the event of any distribution of our assets in any foreclosure, dissolution, winding-up, liquidation, reorganization, or other bankruptcy proceeding, holders of secured indebtedness will have prior claim to those of our assets that constitute their collateral. Holders of the notes will participate ratably with all holders of our unsecured indebtedness that is deemed to be of the same class as the notes, and potentially with all of our other general creditors, based upon the respective amounts owed to each holder or creditor, in our remaining assets. In any of the foregoing events, we cannot assure you that there will be sufficient assets to pay amounts due on the notes. As a result, holders of notes may receive less, ratably, than holders of secured indebtedness.

We are not restricted by the notes from incurring indebtedness, and our subsidiaries may incur significant indebtedness without guaranteeing the notes. In addition, the notes do not restrict the ability of us or our subsidiaries to incur liens.

We may not have the financial resources to repurchase the notes upon the occurrence of a change in control or at the option of a holder.

In the event of a change in control under the indenture governing the notes, we will have to offer to repurchase all outstanding notes at a purchase price equal to 100% of the principal amount plus accrued and unpaid interest, if any. In addition, holders may require us to repurchase their notes on June 15 of 2010, 2013 and 2018. It is possible that we will not have, nor have access to, sufficient funds at the time of any such repurchase request or change of control to make the required repurchase of the notes. In addition, our ability to repurchase the notes in cash in such event may be limited by law, by the indenture, by the terms of other agreements relating to our outstanding debt and by debt and agreements which may be entered into, replaced,

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supplemented or amended from time to time. Further, certain important corporate events, such as leveraged recapitalizations that would increase the level of our indebtedness, would not constitute a change of control under the indenture. See Description of Notes Repurchase at Option of the Holder and Repurchase at Option of the Holder Upon a Change in Control.

There is no public market for the notes.

There is no established trading market for the notes. The notes are eligible for trading in PORTAL, but no market for the notes may develop, and any market that develops may not last. We do not intend to apply for listing of the notes on any securities exchange or other stock market.

USE OF PROCEEDS

We will not receive any of the proceeds from the sale of the notes or the common stock contemplated by this prospectus. See Selling Securityholders for a list of those entities receiving proceeds from the sale of the notes or the underlying common stock.

RATIO OF EARNINGS TO FIXED CHARGES

The ratios of our earnings to our fixed charges for each of the years 1999 through 2003 were:

Year Ended December 31,				
2003	2002	2001	2000	1999
1.16	(1)	(1)	1.51	1.80

(1) For the years ended December 31, 2002 and 2001, earnings were inadequate to cover fixed charges and the coverage deficiency was \$640 million and \$145 million, respectively.

For purposes of the ratios, earnings means the sum of:

our pre-tax income (loss) adjusted for undistributed income of companies in which we have a minority equity interest; and

our fixed charges, net of interest capitalized.

Fixed charges represent:

the interest we pay on borrowed funds;

the amount we amortize for debt discount, premium and issuance expense and interest previously capitalized; and

that portion of rentals considered to be representative of interest expense.

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Our common stock (Class B common stock) is quoted on the New York Stock Exchange under the symbol CAL. The table below shows the high and low sales prices for our common stock for the period indicated below:

	<u>High</u>	<u>Low</u>
Fiscal 2004		
First Quarter (through February 26, 2004)	\$ 18.70	\$ 13.85
Fiscal 2003		
Fourth Quarter	\$ 21.70	\$ 14.49
Third Quarter	18.87	12.05
Second Quarter	15.90	5.30
First Quarter	9.39	4.16
Fiscal 2002		
Fourth Quarter	\$ 9.85	\$ 3.59
Third Quarter	16.00	4.80
Second Quarter	30.50	14.46
First Quarter	35.25	25.74

DIVIDEND POLICY

We have paid no cash dividends on our common stock and have no current intention of doing so. Certain of our credit agreements restrict our and some of our subsidiaries' ability to pay cash dividends or repurchase capital stock by imposing minimum unrestricted cash requirements on us and limiting the amount of any dividends and repurchases when aggregated with other payments or distributions. Any future determination to pay cash dividends will be at the discretion of our board of directors, subject to applicable limitations under Delaware law, and will be dependent upon our results of operations, financial condition, contractual restrictions and other factors deemed relevant by our board of directors.

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DESCRIPTION OF NOTES

We issued the notes under an indenture, dated as of June 10, 2003, between us, as issuer, and J. P. Morgan Trust Company, National Association, as successor trustee to Bank One, N.A. The following summarizes the material provisions of the notes. We refer to the indenture as the indenture. The following description does not purport to be complete and is subject to, and qualified by reference to, all of the provisions of the indenture and the notes, which we urge you to read because they, and not this description, define your rights as a note holder. A copy of the indenture has been filed with the registration statement relating to this prospectus. As used in this description of notes, the words we, us and our refer only to Continental Airlines, Inc. and do not include any current, former or future subsidiary of Continental Airlines, Inc.

General

The notes are limited to \$175,000,000 aggregate principal amount. The notes will mature on June 15, 2023. The principal amount, and the issue price, of each note is \$1,000. The notes are payable at the principal corporate trust office of the paying agent, which is currently an office or agency of the trustee, or an office or agency maintained by us for such purpose, in the Borough of Manhattan, The City of New York.

The notes bear interest at the rate of 5% per year on the principal amount from June 10, 2003, or from the most recent date to which interest has been paid or provided for. Interest is payable semiannually in arrears on June 15 and December 15, commencing on December 15, 2003, to holders of record at the close of business on the June 1 and December 1 immediately preceding such interest payment date. Each payment of interest on the notes will include interest accrued through the day before the applicable interest payment date (or purchase, redemption or, in certain circumstances, conversion date, as the case may be). Any payment required to be made on any day that is not a business day will be made on the next succeeding business day. The interest rate is calculated using a 360-day year composed of twelve 30-day months.

Maturity, conversion, repurchase by us at the option of a holder or redemption of a note at our option will cause the interest, if any, to cease to accrue on such note. We may not reissue a note that has matured or been converted, repurchased by us at your option, redeemed or otherwise cancelled, except for registration of transfer, exchange or replacement of such note.

Notes may be presented for conversion at the office of the conversion agent and for exchange or registration of transfer at the office of the registrar. The conversion agent and the registrar are currently the trustee. No service charge will be made for any registration of transfer or exchange of notes. However, the holder will be required to pay any tax, assessment or other governmental charge payable as a result of such transfer or exchange.

The indenture does not limit the amount of other indebtedness or securities that may be issued by us or any of our subsidiaries. The indenture does not contain any financial covenants or restrictions on the payment of dividends, the incurrence of senior debt or the issuance or repurchase of our securities (other than the notes). The indenture contains no covenants or other provisions to afford protection to holders of notes in the event of a highly leveraged transaction or a change in control except to the extent described under Repurchase at Option of the Holder Upon a Change in Control.

Methods of Receiving Payments on the Notes

Each installment of semiannual interest on any note shall be paid in same-day funds by transfer to an account maintained by the payee located inside the United States, if the trustee shall have received proper wire transfer instructions from such payee not later than the related record date or, if no such instructions have been received, by check drawn on a bank in New York City mailed to the payee at its address set forth on the registrar's books.

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Paying Agent and Registrar for the Notes

The trustee is currently acting as paying agent and registrar. We may change the paying agent or registrar without prior notice to the holders of the notes, and we or any of our subsidiaries may act as paying agent or registrar.

Ranking of the Notes

The notes represent our unsubordinated, unsecured obligations and rank equal in right of payment to all of our other existing and future unsecured and unsubordinated indebtedness. However, the notes are effectively subordinated to all of our existing and future secured indebtedness to the extent of the security on such other debt and to all existing and future obligations of our subsidiaries.

As of December 31, 2003, we and our subsidiaries had:

approximately \$6.0 billion (including current maturities) of long-term debt and capital lease obligations, including outstanding debt and capital lease obligations of approximately \$5.0 billion that are effectively senior to the notes;

entered into guarantees for \$1.6 billion aggregate principal amount of tax-exempt special facilities revenue bonds and related interest; and

\$792 million of stockholders' equity.

Holders of the notes are creditors of only Continental Airlines, Inc. and not our subsidiaries. The ability of our creditors, including you, to participate in any distribution of assets of any of our subsidiaries upon liquidation or bankruptcy will be subject to the prior claims of that subsidiary's creditors, including trade creditors, and any prior or equal claim of any equity holder of that subsidiary. As a result, you may receive less, proportionately, than our secured creditors and the creditors of our subsidiaries. See **Risk Factors**. The notes are unsecured and effectively subordinated to our secured debt and to all obligations of our subsidiaries.

Conversion Rights

Holders may convert all or a portion of their notes, in multiples of \$1,000 principal amount, into common stock only if at least one of the conditions described below under **Events Permitting Conversion** is satisfied. In addition, a holder may convert a note until the close of business on the business day immediately preceding the redemption date if we call a note for redemption. A note for which a holder has delivered a repurchase notice or a notice requiring us to repurchase such note upon a Change in Control (as defined below) may be surrendered for conversion only if such notice is withdrawn in accordance with the indenture.

The initial conversion rate is 50 shares of common stock per \$1,000 principal amount of each note, subject to adjustment upon the occurrence of the events described below. A holder of a note otherwise entitled to a fractional share will receive cash equal to the applicable portion of the closing sale price of our common stock on the trading day immediately preceding the conversion date. Upon a surrender of notes for conversion, we will have the option to deliver cash or a combination of cash and shares of our common stock as described below. The ability to surrender notes for conversion will expire at the close of business on the business day immediately preceding the final maturity date.

To exercise its conversion right, a holder must:

complete and manually sign a conversion notice, a form of which is on the back of the note, and deliver the conversion notice to the conversion agent;

surrender the note to the conversion agent;

if required by the conversion agent, furnish appropriate endorsements and transfer documents; and

if required, pay all transfer or similar taxes.

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On conversion of a note, a holder will not receive, except as described below, any cash payment of accrued interest. Delivery to the holder of the full number of shares of common stock (or, at our option, cash in lieu thereof) into which \$1,000 principal amount of the note is convertible, together with any cash payment of such holder's fractional shares, will be deemed to satisfy:

our obligation to pay the principal amount of the note; and

except as described below, our obligation to pay accrued but unpaid interest attributable to the period from the most recent interest payment date through the conversion date.

As a result, accrued interest will be deemed to be paid in full rather than cancelled, extinguished or forfeited, except as described below. Holders of notes at the close of business on a record date will receive payment of interest payable on the corresponding interest payment date notwithstanding the conversion of such notes at any time after the close of business on such record date. Notes surrendered for conversion by a holder during the period from the close of business on any record date to the opening of business on the next interest payment date, except for notes to be redeemed within this period or on the next interest payment date, must be accompanied by payment of an amount equal to the interest that the holder is to receive on the principal amount of notes so converted.

In lieu of delivery of shares of our common stock upon notice of conversion of any notes, we may elect to pay holders surrendering notes an amount in cash per \$1,000 principal amount per note equal to the average sale price of our common stock for the five consecutive trading days immediately following either (a) the date of our notice of our election to deliver cash as described below if we have not given notice of redemption, or (b) the conversion date, in the case of conversion following our notice of redemption specifying that we intend to deliver cash upon conversion, in either case multiplied by the conversion rate in effect on that date. We will inform the holders through the trustee no later than two business days following the conversion date of our election to deliver shares of our common stock or to pay cash in lieu of delivery of the shares, unless we have already informed holders of our election in connection with our optional redemption of the notes as described under **Redemption of Notes at Our Option**. If we elect to deliver all of such payment in shares of our common stock, the shares will be delivered through the conversion agent no later than the fifth business day following the conversion date. If we elect to pay all or a portion of such payment in cash, the payment, including any delivery of our common stock, will be made to holders surrendering notes no later than the tenth business day following the applicable conversion date. If an Event of Default, as described under **Events of Default** below (other than a Default (as defined below) in a cash payment upon conversion of the notes), has occurred and is continuing, the indenture will not permit us to pay cash upon conversion of any notes or portion of a note (other than cash for fractional shares).

For a discussion of the tax treatment of a holder receiving shares of our common stock or cash upon surrendering notes for conversion, see **Certain United States Federal Income Tax Considerations – Consequences to U.S. Holders, Exchange of Notes into Common Stock, Cash or a Combination Thereof**.

We will adjust the initial conversion rate for certain events, including:

- (1) the payment of dividends or distributions payable in our common stock on our common stock;
- (2) the issuance to all holders of our common stock of certain rights or warrants to purchase our common stock (or securities convertible into our common stock) at less than (or having a conversion price per share less than) the current market price of our common stock; *provided, however*, that if the rights or warrants are exercisable only upon the occurrence of a triggering event, then the conversion price will not be adjusted until such triggering event occurs;
- (3) subdivisions and combinations of our common stock;
- (4) the payment of dividends or distributions to all holders of our common stock consisting of our indebtedness, securities or capital stock (including dividends or other distributions of shares of capital stock of any class or series, or similar equity interests, of or relating to a subsidiary or other business unit of Continental Airlines, Inc.), cash or assets, excluding any rights, warrants, dividends or distributions referred to in paragraphs (1) and (2) above and dividends and distributions paid exclusively in cash;

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(5) distributions consisting exclusively of cash (excluding any cash portion of distributions referred to in the preceding paragraph and excluding cash distributed upon certain mergers or consolidations) to all holders of our common stock in an aggregate amount that, combined together with (i) other such all-cash distributions made within the preceding 12 months in respect of which no adjustment to the conversion rate has been made and (ii) any cash and the fair market value of other consideration payable in respect of any tender offer by us or any of our subsidiaries for common stock concluded within the preceding 12 months in respect of which no adjustment to the conversion rate has been made, exceeds 12.5% of our market capitalization (being the product of the then current market price of the common stock and the number of shares of common stock then outstanding) on the record date for such distribution; and

(6) the successful completion of a tender offer made by us or any of our subsidiaries for our common stock which involves an aggregate consideration that, together with (i) any cash and other consideration payable in any other previous successfully completed tender offer made by us or any of our subsidiaries for our common stock expiring within the 12 months preceding the expiration of the first tender offer referred to in this paragraph in respect of which no adjustment to the conversion rate has been made and (ii) the aggregate amount of any such all-cash distributions referred to in the preceding paragraph to all holders of common stock within the 12 months preceding the expiration of the first tender offer referred to in this paragraph in respect of which no adjustments to the conversion rate have been made, exceeds 12.5% of our market capitalization on the expiration of such tender offer; *provided*, that for purposes of this paragraph, purchases pursuant to a stock buyback program shall not constitute a tender offer.

The conversion rate will not be adjusted for the issuance of our common stock (or securities convertible into or exchangeable for our common stock), except as described above. For example, the conversion rate will not be adjusted upon the issuance of shares of our common stock:

under any present or future plan providing for the reinvestment of dividends or interest payable on our securities;

in connection with the investment of additional optional amounts in shares of our common stock under any plan described in the preceding bullet point;

under any present or future employee benefit plan or program of ours; or

pursuant to any option, warrant or right or exercisable, exchangeable or convertible security outstanding as of the date the notes are first issued.

We may from time to time, to the extent permitted by law, increase the conversion rate of the notes by any amount. We may make such increases in the conversion rate, in addition to those set forth above, as our board of directors deems advisable to avoid or diminish any income tax to holders of our common stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes.

We will not make an adjustment in the conversion rate unless such adjustment would require a change of at least 1% in the conversion rate then in effect at such time. We will carry forward and take into account in any subsequent adjustment any adjustment that would otherwise be required to be made.

In the event that we pay a dividend or make a distribution on shares of our common stock consisting of capital stock of, or similar equity interests in, a subsidiary or other business unit of ours, the conversion rate will be adjusted based on the market value of the securities so distributed relative to the market value of our common stock, in each case based on the average closing prices of those securities for the 10 trading days commencing on and including the fifth trading day after the date on which ex-dividend trading commences for such dividend or distribution on the principal United States securities exchange or market on which the securities are then listed or quoted.

In the event that we elect to make a distribution to all holders of shares of our common stock pursuant to clause (2) or clause (4) of the fifth preceding paragraph, which has a per share value equal to more than

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12.5% of the closing sale price of our shares of common stock on the day preceding the declaration date for such distribution, we will be required to give notice to the holders of notes at least 20 days prior to the date for such distribution and, upon the giving of such notice, the notes may be surrendered for conversion at any time until the close of business on the business day prior to the date of distribution or until we announce that such distribution will not take place.

Holders of the notes may, in certain circumstances, be deemed to have received a distribution subject to U.S. federal income tax as a dividend upon:

a taxable distribution to holders of common stock which results in an adjustment of the conversion rate;

an increase in the conversion rate at our discretion; or

failure to adjust the conversion rate in some instances.

See Certain United States Federal Income Tax Considerations Consequences to U.S. Holders Constructive Dividend.

If we are a party to a consolidation, merger or binding share exchange or a transfer of all or substantially all of our assets, the right to convert a note into common stock may be changed into a right to convert it into the kind and amount of securities, cash or other assets of Continental Airlines, Inc. or those of another person which the holder would have received if the holder had converted the notes immediately prior to the transaction. However, if such transaction constitutes a Change in Control as defined below, the notes will cease to be convertible after the fifteenth day following the actual effective date of the transaction giving rise to such Change in Control.

The conversion agent will, on our behalf, determine if the notes are convertible and notify the trustee and us accordingly. If one or more of the conditions to the conversion of the notes has been satisfied, we will promptly notify the holders of the notes thereof and use our reasonable best efforts to post this information on our website or otherwise publicly disclose this information.

A trading day is any day on which the New York Stock Exchange is open for trading or, if the applicable security is quoted on the Nasdaq National Market, a day on which trades may be made on such market or, if the applicable security is not so listed, admitted for trading or quoted, any business day.

Events Permitting Conversion

Conversion Based on Common Stock Price. Holders may surrender notes for conversion at any time during or after any fiscal quarter commencing after June 30, 2003 if the sale price of our common stock (as defined below) for at least 20 trading days in a period of 30 consecutive trading days ending on the last trading day of the preceding fiscal quarter is more than 120% of the conversion price (as defined below) per share of common stock on the last day of such preceding fiscal quarter. If the foregoing condition is satisfied, then the notes will be convertible at any time thereafter at the option of the holder, through maturity. Upon a surrender of notes for conversion, in lieu of delivery of shares of our common stock, we will have the right to deliver cash or a combination of cash and common stock, as described above.

The conversion price per share as of any day will equal the principal amount of a note, divided by the conversion rate on that day. The sale price of our common stock on any trading day means the closing per share sale price (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on such date on the principal national securities exchange on which the common stock is listed or, if our common stock is not listed on a national securities exchange, as reported by the Nasdaq National Market or otherwise as provided in the indenture.

Conversion Based on Trading Price of Notes. Subject to the exception in the paragraph below, holders may also surrender notes for conversion prior to maturity during the five business day period after any five consecutive trading day period in which the trading price per \$1,000 principal amount of notes, as determined following a request by a holder of notes in accordance with the procedures described below, for

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each day of that period was less than 98% of the product of the closing sale price of our common stock and the number of shares issuable upon conversion of \$1,000 principal amount of notes (the trading price condition). Upon a surrender of notes for conversion, in lieu of delivery of shares of our common stock, we will have the right to deliver cash or a combination of cash and common stock, as described above.

Notwithstanding the foregoing paragraph, if on the date of any conversion pursuant to the trading price condition that is on or after June 15, 2018, the closing sale price of our common stock is greater than the conversion price, then holders will receive, in lieu of common stock based on the conversion price, cash or common stock or a combination of cash and common stock, at our option, with a value equal to the principal amount of such notes plus accrued and unpaid interest, as of the conversion date (Principal Value Conversion). We will notify holders that surrender their notes for conversion, if it is a Principal Value Conversion, by the second trading day following the date of conversion, whether we will pay them all or a portion of the principal amount plus accrued and unpaid interest in cash, common stock or a combination of cash and common stock, and in what percentage. Any common stock delivered upon a Principal Value Conversion will be valued at the greater of the conversion price on the conversion date and the applicable stock price as of the conversion date. We will pay such holders any portion of the principal amount plus accrued and unpaid interest to be paid in cash and deliver common stock with respect to any portion of the principal amount plus accrued and unpaid interest to be paid in common stock no later than the third business day following the determination of the applicable stock price.

The applicable stock price means, in respect of a date of determination, the average of the closing sales price per share of common stock over the five-trading day period starting the third trading day following such date of determination.

The trading price of the notes on any date of determination means the average of the secondary market bid quotations obtained by the trustee for \$10 million principal amount of the notes at approximately 3:30 p.m., New York City time, on such determination date from three independent nationally recognized securities dealers we select; *provided* that if three such bids cannot reasonably be obtained by the trustee, but two such bids are obtained, then the average of the two bids shall be used, and if only one such bid can reasonably be obtained by the trustee, that one bid shall be used. If the trustee cannot reasonably obtain at least one bid for \$10 million principal amount of the notes from a nationally recognized securities dealer, then the trading price per \$1,000 principal amount of notes will be deemed to be less than 98% of the product of the closing sale price of our common stock and the number of shares issuable upon conversion of \$1,000 principal amount of the notes.

In connection with any conversion upon satisfaction of the above trading pricing condition, the trustee will have no obligation to determine the trading price of the notes unless we have requested such determination; and we shall have no obligation to make such request unless a holder of the notes provides us with reasonable evidence that the trading price per \$1,000 principal amount of notes would be less than 98% of the product of the closing sale price of our common stock and the number of shares of common stock issuable upon conversion of \$1,000 principal amount of the notes. At such time, we shall instruct the trustee to determine the trading price of the notes beginning on the next trading day and on each successive trading day until the trading price per \$1,000 principal amount of the notes is greater than 98% of the product of the closing sale price of our common stock and the number of shares issuable upon conversion of \$1,000 principal amount of the notes.

Conversion Based on Redemption. A holder may surrender for conversion a note called for redemption at any time prior to the close of business on the business day immediately preceding the redemption date, even if it is not otherwise convertible at such time. A note for which a holder has delivered a repurchase notice or a notice requiring us to redeem such note upon a Change in Control may be surrendered for conversion only if such notice is withdrawn in accordance with the indenture. Upon a surrender of notes for conversion, in lieu of delivery of shares of our common stock, we will have the right to deliver cash or a combination of cash and common stock, as described above.

Conversion Upon Occurrence of Certain Corporate Transactions. If we are party to a consolidation, merger or binding share exchange or a transfer of all or substantially all of our assets pursuant to which our

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common stock would be converted into cash, securities or other property, reclassified or changed, a note may be surrendered for conversion at any time from and after the date which is 15 days prior to the anticipated effective date of the transaction until 15 days after the actual effective date of such transaction. Upon a surrender of notes for conversion, in lieu of delivery of shares of our common stock, we will have the right to deliver cash or a combination of cash and common stock, as described above. At the effective date of any such transaction, the right to convert a note into common stock will be changed into a right to convert it into the kind and amount of securities, cash or other of our assets or another person which the holder would have received if the holder had converted the holder's notes into shares of our common stock immediately prior to the transaction. If such transaction also constitutes a Change in Control, the holder will be able to require us to purchase all or a portion of such holder's notes as described under **Repurchase at Option of the Holder Upon a Change in Control**.

Conversion Upon Occurrence of Specified Distributions. The notes will also be convertible upon the occurrence of certain distributions resulting in an adjustment to the conversion rate as described above.

Redemption of Notes at Our Option

No sinking fund is provided for the notes. Prior to June 18, 2010, we cannot redeem the notes at our option. Beginning on June 18, 2010, we may redeem the notes for cash, as a whole at any time or from time to time in part. We will give not less than 30 days or more than 60 days notice of redemption by mail to holders of notes.

If redeemed at our option, the notes will be redeemed at a redemption price equal to 100% of the principal amount, plus accrued and unpaid interest, if any.

If less than all of the outstanding notes are to be redeemed, the trustee will select the notes to be redeemed in principal amounts of \$1,000 or integral multiples of \$1,000 principal amount. In this case, the trustee may select the notes by lot, pro rata or by any other method the trustee considers fair and appropriate. If a portion of a holder's notes is selected for partial redemption and the holder converts a portion of the notes, the converted portion will be deemed to be the portion selected for redemption.

Repurchase at Option of the Holder on Specified Dates

Holders have the right to require us to repurchase the notes on June 15 of 2010, 2013 and 2018. We will be required to repurchase any outstanding note for which a holder delivers a written repurchase notice to the paying agent. This notice must be delivered during the period beginning at any time from the opening of business on the date that is 20 business days prior to the repurchase date until the close of business on the third business day prior to the repurchase date. If a repurchase notice is given and withdrawn during that period, we will not be obligated to repurchase the notes listed in the notice. Our repurchase obligation will be subject to certain additional conditions.

The repurchase price payable for a note will be equal to 100% of the principal amount plus accrued and unpaid interest, if any, on such notes to, but excluding, the repurchase date. We may, at our option, elect to pay the repurchase price in cash, in shares of our common stock or in any combination of cash and common stock. For a discussion of the tax treatment of holders receiving cash, shares of our common stock or both, see **Certain United States Federal Income Tax Considerations** **Consequences to U.S. Holders** **Exchange of Notes into Common Stock, Cash or a Combination Thereof**.

Should we be required to repurchase the notes at any of the redemption dates, it is our policy that we would satisfy the requirement in cash.

However, if, as permitted by the indenture, we elect to pay the repurchase price, in whole or in part, in shares of our common stock, the number of shares to be delivered in exchange for the portion of the repurchase price to be paid in our common stock will be equal to that portion of the repurchase price divided by 97.5% of the average closing sale price of our common stock for the five trading days ending on the third business day prior to the applicable repurchase date (appropriately adjusted to take into account the occurrence of certain events that would result in an adjustment of the conversion rate with respect to our

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common stock). We will not, however, deliver fractional shares in repurchases using shares of our common stock as consideration. Holders who would otherwise be entitled to receive fractional shares will instead receive cash in an amount equal to the market price of a share of our common stock multiplied by such fraction.

Because the market price of our common stock will be determined prior to the applicable repurchase date, holders bear the market risk that our common stock will decline in value between the date the market price is calculated and the repurchase date.

The paying agent is currently the trustee.

The repurchase notice must state:

(1) if certificated notes have been issued, the note certificate numbers (or, if a holder's notes are not certificated, such holder's repurchase notice must comply with appropriate DTC procedures);

(2) the portion of the principal amount of notes to be repurchased, which must be in \$1,000 multiples; and

(3) that the notes are to be repurchased by us pursuant to the applicable provisions of the notes and the indenture.

Holders may withdraw any written repurchase notice by delivering a written notice of withdrawal to the paying agent prior to the close of business on the business day immediately preceding the repurchase date. The withdrawal notice must state:

the principal amount of the withdrawn notes;

if certificated notes have been issued, the certificate numbers of the withdrawn notes (or, if a holder's notes are not certificated, such holder's withdrawal notice must comply with appropriate DTC procedures); and

the principal amount, if any, which remains subject to the repurchase notice.

We must give notice of an upcoming repurchase date to all note holders not less than 20 business days prior to the repurchase date at their address shown in the register of the registrar. We will also give notice to beneficial owners as required by applicable law. This notice will state, among other things:

whether we will pay the repurchase price of the notes in cash, shares of our common stock, or both (in which case the relative percentages will be specified);

if we elect to pay all or a portion of the repurchase price in shares of our common stock, the method by which we are required to calculate market price of the common stock; and

the procedures that holders must follow to require us to repurchase their notes.

Our right to repurchase notes, in whole or in part, with shares of our common stock is subject to various conditions, including:

registration of the shares of our common stock to be issued upon repurchase under the Securities Act and the Exchange Act, if required;

qualification or registration of the shares of our common stock to be issued upon repurchase under applicable state securities laws, if necessary, or the availability of an exemption therefrom; and

listing of our common stock on a United States national securities exchange or quoted on an inter-dealer quotation system of any registered United States national securities association.

If these conditions are not satisfied by a repurchase date, we will pay the repurchase price of the notes to be repurchased entirely in cash. We may not change the form or components or percentages of components of consideration to be paid for the notes once we have given the note holders the required notice, except as described in the preceding sentence.

Payment of the repurchase price for a note for which a repurchase notice has been delivered and not withdrawn is conditioned upon book-entry transfer or delivery of the note, together with necessary endorse-

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ments, to the paying agent at its office in the Borough of Manhattan, The City of New York, or any other office of the paying agent, at any time after delivery of the repurchase notice. Payment of the repurchase price for the note will be made promptly following the later of the repurchase date and the time of book-entry transfer or delivery of the note. If the paying agent holds money sufficient to pay the repurchase price of the note on the business day following the repurchase date, then, on and after the date:

the note will cease to be outstanding;

interest will cease to accrue; and

all other rights of the holder will terminate.

This will be the case whether or not book-entry transfer of the note has been made or the note has been delivered to the paying agent, and all other rights of the note holder will terminate, other than the right to receive the repurchase price upon delivery of the note.

Our ability to repurchase notes with cash may be limited by the terms of our then-existing borrowing agreements. Even though we become obligated to repurchase any outstanding note on a repurchase date, we may not have sufficient funds to pay the repurchase price on that repurchase date. See Risk Factors We may not have the financial resources to repurchase the notes upon the occurrence of a change in control or at the option of a holder.

We will comply with the provisions of Rule 13e-4 and any other tender offer rules under the Exchange Act that may be applicable in connection with any offer by us to repurchase the notes.

Repurchase at Option of the Holder Upon a Change in Control

If a Change in Control (as defined below) occurs, each holder of notes will have the right, at the holder's option, to require us to repurchase all of the holder's notes, or any portion of the principal amount thereof that is equal to \$1,000 or an integral multiple of \$1,000 in excess thereof. This option may be exercised 45 days after the date on which we notify the holders of any Change in Control. The repurchase price will be equal to 100% of the principal amount of the notes to be repurchased, together with any interest accrued but unpaid to, but excluding, the repurchase date.

Within 30 days after the occurrence of a Change in Control, we are obligated to give to all holders of the notes notice, as provided in the indenture, of the occurrence of a Change in Control and of the repurchase right arising therefrom. This company notice will be sufficiently given to holders of notes if in writing and mailed, first class postage prepaid, to each holder of a note affected by the event, at the address of such holder. We must also deliver a copy of the company notice to the trustee. To exercise the repurchase right, a holder of notes must deliver on or before the 30th day after the date of the company notice irrevocable written notice to the trustee of the holder's exercise of such right, together with the notes with respect to which the right is being exercised.

A Change in Control occurs in the following situations:

(i) the occurrence of a Non-Stock Fundamental Change (as defined below); or

(ii) any person, including any syndicate or group deemed to be a person under Section 13(d)(3) of the Exchange Act, acquires beneficial ownership, directly or indirectly, through a purchase, merger or other acquisition transaction or series of transactions, of shares of our capital stock entitling the person to exercise 90% or more of the total voting power of all shares of our capital stock that are entitled to vote generally in elections of directors unless such beneficial ownership results from, or arises in connection with, a Common Stock Fundamental Change (as defined below);

provided, however, that a Change in Control shall not be deemed to have occurred if either (a) the closing price per share of our common stock for five trading days within the period of 10 consecutive trading days ending immediately after the later of the Change in Control or the public announcement of the Change in Control (in the case of Change of Control under clause (ii) above) or ending immediately before the Change in Control (in the case of a Change in Control under clause (i) above) shall equal or exceed 105% of the conversion price of the notes in effect on each such trading day, or (b) all of the consideration (excluding cash payments for fractional shares) in the transaction constituting the Change in Control consists of common

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stock traded on a national securities exchange or quoted on the Nasdaq National Market and as a result of such transaction or transactions the notes become convertible solely into such common stock (excluding cash payments relating to fractional shares).

Fundamental Change means the occurrence of any transaction or event in connection with a plan under which all or substantially all of our common stock will be exchanged for, converted into, acquired for or constitute solely the right to receive securities, cash or other property (whether by means of an exchange offer, liquidation, tender offer, consolidation, merger, combination, reclassification, recapitalization or otherwise); provided that, in the case of a plan involving more than one of these transactions or events, the Fundamental Change will be deemed to have occurred when substantially all of our common stock will be exchanged for, converted into, or acquired for or constitute solely the right to receive securities, cash, or other property. Purchases pursuant to a stock buyback program shall not constitute a Fundamental Change.

Common Stock Fundamental Change means any Fundamental Change in which more than 25% of the value, as determined in good faith by our board of directors, of the consideration received by holders of our common stock consists of common stock that on or prior to the Entitlement Date has been admitted for listing or admitted for listing subject to notice of issuance on a national securities exchange or quoted on the Nasdaq National Market; provided, however, that a Fundamental Change will not be a Common Stock Fundamental Change unless either:

we continue to exist after the occurrence of a Fundamental Change and the outstanding notes continue to exist as outstanding notes, or

not later than the occurrence of such Fundamental Change, the outstanding notes are converted into or exchanged for notes of a corporation succeeding to our business (whether by operation of law or otherwise), which notes have terms substantially similar to the notes.

Entitlement Date means the record date for determination of the holders of our common stock entitled to receive securities, cash or other property in connection with a Fundamental Change or, if there is no record date, the date on which holders or our common stock will have the right to receive such securities, cash or other property.

Non-Stock Fundamental Change means any Fundamental Change other than a Common Stock Fundamental Change.

Our failure to repurchase the notes when required would result in an Event of Default with respect to the notes. See **Events of Default**.

We will comply with the provisions of Rule 13e-4 and any other tender offer rules under the Exchange Act that may be applicable in connection with any offer by us to repurchase the notes.

Our obligation to make an offer to repurchase the notes as a result of a Change in Control may be waived or modified at any time prior to the occurrence of such Change in Control with the written consent of the holders of a majority in aggregate principal amount of the outstanding notes.

The foregoing provisions would not be triggered in many transactions constituting a corporate change in control or necessarily afford holders of the notes protection in the event of highly leveraged or other transactions involving us that may adversely affect holders.

Merger and Sales of Assets by the Company

The indenture provides that we will not consolidate with or merge into any other entity or sell, convey, transfer, lease or otherwise dispose of all or substantially all our properties and assets unless:

the entity formed by such consolidation or into which we are merged or the entity which acquires or which leases our property and assets
sub