Hercules Capital, Inc.
Form POS EX
April 30, 2019

As filed with the Securities and Exchange Commission on April 30, 2019

Securities Act File No. 333-231089

U.S. SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM N-2

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

(Check appropriate box or boxes)

Pre-Effective Amendment No.

Post-Effective Amendment No. 1

Hercules Capital, Inc.

(formerly known as Hercules Technology Growth Capital, Inc.)

(Exact name of Registrant as specified in charter)

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400 Hamilton Avenue, Suite 310

Palo Alto, CA 94301

(Address of Principal Executive Offices)

Registrant's Telephone Number, including Area Code: (650) 289-3060

Scott Bluestein

Interim Chief Executive Officer

Hercules Capital, Inc.

400 Hamilton Avenue, Suite 310

Palo Alto, CA 94301

(Name and address of agent for service)

COPIES TO:

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Jay Alicandri

Dechert LLP

1095 Avenue of the Americas

New York, NY 10036

APPROXIMATE DATE OF PROPOSED PUBLIC OFFERING:

From time to time after the effective date of this Registration Statement.

If any securities being registered on this form will be offered on a delayed or continuous basis in reliance on Rule 415 under the Securities Act of 1933, other than securities offered in connection with a dividend reinvestment plan, check the following box.

It is proposed that this filing will become effective (check appropriate box): when declared effective pursuant to section 8(c).

EXPLANATORY NOTE

This Post-Effective Amendment No. 1 to the Registration Statement on Form N-2 (File No. 333-231089) of Hercules Capital, Inc. (the "Registration Statement") is being filed pursuant to Rule 462(d) under the Securities Act of 1933, as amended (the "Securities Act"), solely for the purpose of refiling exhibit n.2 to correct an error in the dating of the exhibit. Accordingly, this Post-Effective Amendment No. 1 consists only of a facing page, this explanatory note and Part C of the Registration Statement on Form N-2 setting forth the exhibits to the Registration Statement. This Post-Effective Amendment No. 1 does not modify any other part of the Registration Statement. Pursuant to Rule 462(d) under the Securities Act, this Post-Effective Amendment No. 1 shall become effective immediately upon filing with the Securities and Exchange Commission. The contents of the Registration Statement are hereby incorporated by reference

PART C—OTHER INFORMATION

Item 25. Financial Statements and Exhibits

1. Financial Statements

The consolidated financial statements as of December 31, 2018 and December 31, 2017 and for each of the three years in the period ended December 31, 2018 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) as of December 31, 2018 have been incorporated by reference in this registration statement in "Part A—Information Required in a Prospectus."

2. Exhibits

Exhibit Number	Description
a.1	Articles of Amendment and Restatement.(2)
a.2	Articles of Amendment, dated March 6, 2007.(10)
a.3	Articles of Amendment, dated April 5, 2011.(17)
a.4	Articles of Amendment, dated April 3, 2015.(29)
a.5	Articles of Amendment, dated February 23, 2016.(34)
b	Amended and Restated Bylaws of Hercules Capital, Inc.(34)
d.1	Specimen certificate of the Company's common stock, par value $.001 per share.(3)
d.2	Form of Indenture and related exhibits.(18)
d.3	Form of Warrant Agreement.(18)

d.4	Form of Subscription Agent Agreement.[18]
d.5	Form of Subscription Certificate.[18]
d.6	Statement of Eligibility of Trustee on Form T-1.[64]
d.7	Indenture, dated March 6, 2012 between the Registrant and U.S. Bank National Association.[19]
d.8	First Supplemental Indenture, dated April 17, 2012 between the Registrant and U.S. Bank, National Association.[19]
d.9	Second Supplemental Indenture, dated as of September 24, 2012, between the Registrant and U.S. Bank, National Association.[21]
d.10	Third Supplemental Indenture, dated as of July 14, 2014, between the Registrant and U.S. Bank, National Association.[26]
d.11	Form of 7.00% Senior Note due 2019, dated as of April 17, 2012 (Existing April 2019 Note) (included as part of Exhibit (d)(8)).[19]
d.12	Form of 7.00% Senior Note due 2019, dated as of July 6, 2012 (Additional April 2019 Note).[20]
d.13	Form of 7.00% Senior Note due 2019, dated as of July 12, 2012 (Over-Allotment April 2019 Note).[23]

Exhibit Number	Description
d.14	Form of 7.00% Senior Note due 2019, dated as of September 24, 2012 (September 2019 Note) (included as part of Exhibit (d)(9)).(21)
d.15	Form of 7.00% Senior Note due 2019, dated as of October 2, 2012 (Over-Allotment September 2019 Note).(22)
d.16	Form of 7.00% Senior Note due 2019, dated as of October 17, 2012 (Over-Allotment II September 2019 Note).(24)
d.17	Form of 6.25% Note due 2024, dated July 14, 2014 (July 2024 Note) (included as part of Exhibit (d)(10)).(26)
d.18	Form of 6.25% Note due 2024, dated August 11, 2014 (Over-Allotment July 2024 Note).(27)
d.19	Form of 6.25% Note due 2024, dated May 2, 2016 (Additional July 2024 Note).(38)
d.20	Form of 6.25% Note due 2024, June 27, 2016 (Additional July 2024 Note).(39)
d.21	Form of 6.25% Note due 2024, July 5, 2016 (Additional July 2024 Note).(40)
d.22	Form of 6.25% Note due 2024, October 11, 2016 (Additional July 2024 Note).(43)
d.23	Indenture, dated January 25, 2017, between Hercules Capital, Inc. and U.S. Bank, National Association, as Trustee(45)
d.24	Form of 4.375% Convertible Note Due 2022 (included as part of Exhibit d.23)(45)
d.25	Fourth Supplemental Indenture, dated as of October 23, 2017, between the Registrant and U.S. Bank, National Association.(48)
d.26	Form of 4.625% Note due 2022, dated October 23, 2017 (included as part of Exhibit (d)(25)).(48)
d.27	Fifth Supplemental Indenture, dated as of April 26, 2018, between the Registrant and U.S. Bank, National Association.(53)
d.28	Form of 5.25% Note due 2025, dated April 23, 2018 (included as part of Exhibit (d)(27)).(53)
d.29	Sixth Supplemental Indenture, dated as of September 24, 2018, between the Registrant and U.S. Bank, National Association.(57)
d.30	Form of 6.25% Note due 2033, dated September 24, 2018 (included as part of Exhibit (d)(29)).(57)
e	Form of Dividend Reinvestment Plan.(4)
f.1	

	Loan Sale Agreement between Hercules Funding LLC and Hercules Technology Growth Capital, Inc. dated as of August 1, 2005.(5)
f.2	Indenture between Hercules Funding Trust I and U.S. Bank National Association dated as of August 1, 2005.(5)
f.3	Note Purchase Agreement among Hercules Funding Trust I, Hercules Funding I LLC, Hercules Technology Growth Capital, Inc. and Citigroup Global Markets Realty Corp. dated as of August 1, 2005.(5)
f.4	First Omnibus Amendment by and among Hercules Funding Trust I, Hercules Funding I, LLC, Hercules Technology Growth Capital, Inc., U.S. Bank National Association, Lyon Financial Services, Inc. and Citigroup Global Markets Realty Corp. dated March 6, 2006.(6)

Exhibit Number	Description
f.5	Intercreditor Agreement among Hercules Technology Growth Capital, Inc., Alcmene Funding, L.L.C. and Citigroup Global Markets Realty Corp. dated as of March 6, 2006.(6)
f.6	Warrant Participation Agreement between the Company and Citigroup Global Markets Realty Corp. dated as of August 1, 2005.(7)
f.7	Second Amendment to Warrant Participation Agreement dated as of October 16, 2006.(7)
f.8	Second Omnibus Amendment by and among Hercules Funding Trust I, Hercules Funding I, LLC, Hercules Technology Growth Capital, Inc., U.S. Bank National Association, Lyon Financial Services, Inc. and Citigroup Global Markets Realty Corp. dated December 6, 2006.(8)
f.9	Amended and Restated Sale and Servicing Agreement by and among Hercules Funding Trust I, Hercules Funding I LLC, the Company, U.S. Bank National Association, Lyon Financial Services, Inc., Citigroup Global Markets Inc., and Deutsche Bank AG dated as of May 2, 2007.(11)
f.10	Fourth Amendment to the Warrant Participation Agreement by and among Hercules Technology Growth Capital, Inc. and Citigroup Global Markets Realty Corp., dated as of May 2, 2007.(12)
f.11	Amended and Restated Note Purchase Agreement by and among Hercules Funding Trust I, Hercules Funding I LLC, Hercules Technology Growth Capital, Inc. and Citigroup Global Markets, Inc. dated as of May 2, 2007.(12)
f.12	First Amendment to Amended and Restated Note Purchase Agreement by and among Hercules Funding Trust I, Hercules Funding I LLC, Hercules Technology Growth Capital, Inc. and Citigroup Global Markets, Inc. dated as of May 7, 2008.(14)
f.13	Second Amendment to Amended and Restated Sale and Servicing Agreement by and among Hercules Funding Trust I, Hercules Funding I LLC, Hercules Technology Growth Capital, Inc., U.S. Bank National Association, Lyon Financial Services, Inc., Citigroup Global Markets Inc., and Deutsche Bank AG dated as of May 7, 2008.(14)
f.14	Form of SBA Debenture.(15)
f.15	Amended and Restated Loan and Security Agreement by and among Hercules Funding II, LLC, the Lenders thereto and Wells Fargo Capital Finance, LLC, dated as of June 29, 2015.(31)
f.16	Amended and Restated Sales and Servicing Agreement among Hercules Funding II, LLC, Hercules Technology Growth Capital, Inc. and Wells Fargo Capital Finance, LLC, dated as of June 29, 2015.(31)
f.17	Amended and Restated Loan and Security Agreement by and between Hercules Technology Growth Capital, Inc. and Union Bank, N.A. dated November 2, 2011.(16)
f.18	

	Indenture by and between Hercules Capital Funding Trust 2012-1 and U.S. Bank National Association, dated as of December 19, 2012.(25)
f.19	Amended and Restated Trust Agreement by and between Hercules Capital Funding 2012-1 LLC and Wilmington Trust, National Association, dated as of December 19, 2012.(25)
f.20	Sale and Servicing Agreement by and between Hercules Capital Funding 2012-1 LLC, Hercules Capital Funding Trust 2012-1 LLC, Hercules Technology Growth Capital, Inc. and U.S. Bank National Association, dated as of December 19, 2012.(25)
f.21	Sale and Contribution Agreement by and between Hercules Technology Growth Capital, Inc. and Hercules Capital Funding 2012-1 LLC, dated as of December 19, 2012.(25)

Exhibit Number	Description
f.22	Note Purchase Agreement by and between the Hercules Technology Growth Capital, Inc., Hercules Capital Funding 2012-1 LLC, as Trust Depositor, Hercules Capital Funding Trust 2012-1, as Issuer, and Guggenheim Securities, LLC, as Initial Purchaser, dated as of December 12, 2012.(25)
f.23	Administration Agreement by and between Hercules Capital Funding Trust 2012-1LLC, Hercules Technology Growth Capital, Inc., Wilmington Trust, National Association, and U.S. Bank National Association, dated as of December 19, 2012.(25)
f.24	Indenture by and among Hercules Capital Funding Trust 2014-1 and U.S. Bank National Association, dated as of November 13, 2014.(28)
f.25	Amended and Restated Trust Agreement by and among Hercules Capital Funding 2014-1 LLC and Wilmington Trust, National Association, dated as of November 13, 2014.(28)
f.26	Sale and Servicing Agreement by and among Hercules Capital Funding Trust 2014-1, Hercules Technology Growth Capital, Inc., Hercules Capital Funding 2014-1 LLC and U.S. Bank National Association, dated as of November 13, 2014.(28)
f.27	Sale and Contribution Agreement by and among Hercules Technology Growth Capital, Inc. and Hercules Capital Funding 2014-1 LLC, dated as of November 13, 2014.(28)
f.28	Note Purchase Agreement among Hercules Technology Growth Capital, Inc., Hercules Capital Funding 2014-1 LLC, Hercules Capital Funding Trust 2014-1 and Guggenheim Securities, LLC, dated as of November 4, 2014.(28)
f.29	Administration Agreement among Hercules Technology Growth Capital, Inc., Hercules Capital Funding Trust 2014-1, Wilmington Trust National Association and U.S. Bank National Association, dated November 13, 2014.(28)
f.30	First Amendment to Amended and Restated Loan and Security Agreement by and among Hercules Funding II LLC and Wells Fargo Capital Finance, LLC (f/k/a Wells Fargo Foothill, LLC), dated as of December 16, 2015.(33)
f.31	First Amendment and Waiver to Second Amended and Restated Loan and Security Agreement by and among Hercules Technology Growth Capital, Inc. and MUFG Union Bank, N.A., dated as of November 3, 2015.(32)
f.32	Second Amendment to Amended and Restated Loan and Security Agreement by and among Hercules Funding II LLC and Wells Fargo Capital Finance, LLC (f/k/a Wells Fargo Foothill, LLC), dated as of March 8, 2016.(35)
f.33	Third Amendment to Amended and Restated Loan and Security Agreement by and among Hercules Funding II LLC and Wells Fargo Capital Finance, LLC (f/k/a Wells Fargo Foothill, LLC), dated as of April 7, 2016.(36)

f.34	Loan and Security Agreement by and among Hercules Funding III, LLC, as borrower, MUFG Union Bank, N.A., as the arranger and administrative agent, and the lenders party thereto from time to time, dated as of May 5, 2016.(37)
f.35	Sale and Servicing Agreement by and among Hercules Funding III LLC, as borrower, Hercules Capital, Inc., as originator and servicer, and MUFG Union Bank, N.A., as agent, dated as of May 5, 2016.(37)
f.36	First Amendment to Loan and Security Agreement by and among Hercules Funding III LLC, as borrower, MUFG Union Bank, N.A., as the arranger and administrative agent, and the lenders party thereto from time to time, dated as of July 14, 2016.(41)
f.37	Fourth Amendment to Amended and Restated Loan and Security Agreement by and among Hercules Funding II LLC and Wells Fargo Capital Finance, LLC (f/k/a Wells Fargo Foothill, LLC), dated as of April 3, 2017.(46)
f.38	Second Amendment to the Loan and Security Agreement, dated as of May 25, 2018, by and among Hercules Funding III, LLC, as borrower, MUFG Union Bank, N.A., as the arranger and administrative agent, and the lenders party thereto.(55)

Exhibit Number	Description
f.39	Indenture, dated as of November 1, 2018, between Hercules Capital Funding Trust 2018-1, as Issuer, and U.S. Bank National Association, as Trustee.(59)
f.40	Amended and Restated Trust Agreement, dated as of November 1, 2018, between Hercules Capital Funding 2018-1 LLC, as Trust Depositor, and Wilmington Trust, National Association, as Owner Trustee.(59)
f.41	Indenture, dated as of January 22, 2019, between Hercules Capital Funding Trust 2019-1, as Issuer, and U.S. Bank National Association, as Trustee.(61)
f.42	Amended and Restated Trust Agreement, dated as of January 22, 2019, between Hercules Capital Funding 2019-1 LLC, as Trust Depositor, and Wilmington Trust, National Association, as Owner Trustee.(61)
f.43	Fifth Amendment to the Amended and Restated Loan and Security Agreement, dated as of July 31, 2018, by and among Hercules Funding II LLC as borrower, Wells Fargo Capital Finance, LLC (f/k/a Wells Fargo Foothill, LLC), as Administrative Agent, and the Lenders party thereto from time to time.(58)
f.44	Sixth Amendment to the Amended and Restated Loan and Security Agreement, dated as of October 26, 2018, by and among Hercules Funding II LLC as borrower, Wells Fargo Capital Finance, LLC (f/k/a Wells Fargo Foothill, LLC), as Administrative Agent, and the Lenders party thereto from time to time.(58)
f.45	Seventh Amendment to the Amended and Restated Loan and Security Agreement, dated as of January 11, 2019, by and among Hercules Funding II LLC as borrower, Wells Fargo Capital Finance, LLC (f/k/a Wells Fargo Foothill, LLC), as Administrative Agent, and the Lenders party thereto from time to time.(60)
f.46	Sale and Servicing Agreement, dated as of November 1, 2018, by and among Hercules Capital Funding Trust 2018-1, as Issuer, Hercules Capital, Inc., as Seller and Servicer, Hercules Capital Funding 2018-1 LLC, as Trust Depositor, and U.S. Bank National Association, as Trustee, Backup Servicer, Custodian and Paying Agent.(59)
f.47	Sale and Contribution Agreement, dated as of November 1, 2018, between Hercules Capital, Inc., as Seller, and Hercules Capital Funding 2018-1 LLC, as Trust Depositor.(59)
f.48	Note Purchase Agreement, dated as of October 25, 2018, by and among Hercules Capital, Inc., as Originator and Servicer, Hercules Capital Funding 2018-1 LLC, as Trust Depositor, Hercules Capital Funding Trust 2018-1, as Issuer, and Guggenheim Securities, LLC, as Initial Purchaser.(59)
f.49	Administration Agreement, dated November 1, 2018, by and among Hercules Capital, Inc., as Administrator, Hercules Capital Funding Trust 2018-1, as Issuer, Wilmington Trust, National Association, as Owner Trustee, and U.S. Bank National Association, as Trustee.(59)
f.50	Sale and Servicing Agreement, dated as of January 22, 2019, by and among Hercules Capital Funding Trust 2019-1, as Issuer, Hercules Capital, Inc., as Seller and Servicer, Hercules Capital Funding 2019-1 LLC, as Trust Depositor, and U.S. Bank National Association, as Trustee, Backup Servicer, Custodian and Paying Agent.(61)

f.51	Sale and Contribution Agreement, dated as of January 22, 2019, between Hercules Capital, Inc., as Seller, and Hercules Capital Funding 2019-1 LLC, as Trust Depositor.(61)
f.52	Note Purchase Agreement, dated as of January 14, 2019, by and among Hercules Capital, Inc., as Originator and Servicer, Hercules Capital Funding 2019-1 LLC, as Trust Depositor, Hercules Capital Funding Trust 2019-1, as Issuer, and Guggenheim Securities, LLC, as Initial Purchaser.(61)
f.53	Administration Agreement, dated January 22, 2019, by and among Hercules Capital, Inc., as Administrator, Hercules Capital Funding Trust 2019-1, as Issuer, Wilmington Trust, National Association, as Owner Trustee, and U.S. Bank National Association, as Trustee.(61)
f.54	Loan and Security Agreement, dated as of February 20, 2019, by and among Hercules Funding IV LLC, as borrower, MUFG Union Bank, N.A., as the arranger and administrative agent, and the lenders party thereto from time to time.(63)

Exhibit Number	Description
f.55	Sale and Servicing Agreement, dated as of February 20, 2019, by and among Hercules Funding IV LLC, as borrower, Hercules Capital, Inc., as originator and servicer, and MUFG Union Bank, N.A., as agent.(63)
h.1	Form of Equity Underwriting Agreement.(30)
h.2	Form of Debt Underwriting Agreement.(30)
h.3	Equity Distribution Agreement, dated as of September 8, 2017, by and among the Registrant and JMP Securities LLC.(47)
h.4	Underwriting Agreement, dated as of June 22, 2016, by and among the Registrant and the Underwriters named therein.(39)
h.5	Debt Distribution Agreement, dated as of October 11, 2016, by and among the Registrant and FBR Capital Markets & Co.(43)
h.6	Underwriting Agreement, dated as of October 18, 2017, by and among the Registrant and the Underwriters named therein.(48)
h.7	Underwriting Agreement, dated as of April 23, 2018, by and among the Registrant and the Underwriters named therein.(53)
h.8	Underwriting Agreement, dated as of June 12, 2018, by and among the Registrant and the Underwriters named therein.(56)
h.9	Underwriting Agreement, dated as of September 19, 2018, by and among the Registrant and the Underwriters named therein.(57)
i.1	Hercules Capital, Inc. Amended and Restated 2004 Equity Incentive Plan.(44)
i.2	Hercules Technology Growth Capital, Inc. 2006 Non-Employee Director Plan (2007 Amendment and Restatement).(13)
i.3	Form of Incentive Stock Option Award under the 2004 Equity Incentive Plan.(2)
i.4	Form of Nonstatutory Stock Option Award under the 2004 Equity Incentive Plan.(2)
i.5	Form of Restricted Stock Award Agreement.(44)
i.6	Form of Performance Restricted Stock Unit Award Agreement.(44)
i.7	Form of Retention Performance Stock Unit Award Agreement.(54)
i.8	Form of Cash Retention Bonus Award Agreement.(54)

i.9 Hercules Capital, Inc. Amended and Restated 2018 Equity Incentive Plan.(62)

i.10 Hercules Capital, Inc. 2018 Non-Employee Director Plan.(62)

i.11 Form of Restricted Stock Unit Award Agreement.(62)

i.12 Form of Restricted Stock Award Agreement (2018 Equity Incentive Plan).(62)

i.13 Form of Restricted Stock Award Agreement (Director Plan).(62)

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However, the adjustment referred to in this clause will generally not be made if as of the closing of the offer, the offering documents disclose a plan or an intention to cause us to engage in a consolidation or merger, a binding share exchange or a sale of all or substantially all of our assets.

To the extent that we have a rights agreement in effect upon conversion of the notes into common stock, you will receive, in addition to the common stock, the rights under the rights agreement that attach to our common stock unless the rights have separated from the common stock at the time of conversion, in which case the conversion rate will be adjusted as described above in the fourth bullet point under the caption " Conversion Rate Adjustments," subject to readjustment in the event of the expiration, termination or redemption of such rights.

In the event of:

any reclassification of our common stock;

a consolidation, merger or combination involving us; or

a sale or conveyance to another person or entity of all or substantially all of our property and assets;

in which holders of our common stock would be entitled to receive stock, other securities, other property, assets or cash for their common stock, upon conversion of your notes you will be entitled to receive the same type of consideration which you would have been entitled to receive if you had converted the notes into our common stock immediately prior to any of these events.

You may in certain situations be deemed to have received a distribution subject to U.S. federal income tax as a dividend in the event of any taxable distribution to holders of common stock or in certain other situations requiring a conversion rate adjustment. See "U.S. Federal Tax Considerations."

We may, from time to time, increase the conversion rate if our board of directors has made a determination that this increase would be in our best interests. Any such determination by our board will be conclusive. In addition, we may increase the conversion rate if our board of directors deems it advisable to avoid or diminish any income tax to holders of common stock resulting from any stock or rights distribution. See "U.S. Federal Tax Considerations."

We will not be required to make an adjustment in the conversion rate unless the adjustment would require a change of at least 1% in the conversion rate. However, we will carry forward any adjustments that are less than 1% of the conversion rate. Except as described above in this section, we will not adjust the conversion rate for any issuance of our common stock or convertible or exchangeable securities or rights to purchase our common stock or convertible or exchangeable securities.

The conversion rate was increased from 15.6863 to 23.52945 shares of common stock per $1,000 principal amount of notes upon the completion on November 20, 2003 of the three-for-two split of our common stock described under "Prospectus Summary Recent Developments."

Optional Redemption by JetBlue

On or after July 18, 2006, we may redeem the notes in whole or in part at any time at a redemption price of 100% of the principal amount of the notes being redeemed, plus accrued and unpaid interest to, but excluding, the redemption date, if the closing price of our common stock on the Nasdaq National Market has exceeded 150% of the conversion price for at least 20 trading days in the consecutive 30 trading day period ending as of the date we give notice of the redemption or within two business days prior to giving such notice. In addition, beginning July 18, 2008, we may redeem the notes in whole or in part at any time at a price of 100% of the principal amount of notes to be redeemed, plus accrued but unpaid interest to, but excluding, the redemption date. If the redemption date is an interest payment date, interest shall be paid to the record holder on the relevant record date. We are required to give notice of redemption by mail to holders not more than 60 but not less than 30 days prior to the redemption date.

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 multiples of $1,000 by lot, pro rata or by another method the trustee considers fair and appropriate. If a portion of your notes is selected for partial redemption and you convert a portion of your notes, the converted portion will be deemed to be included in the portion selected for redemption.

We may not redeem the notes if we have failed to pay any interest on the notes and such failure to pay is continuing.

Repurchase at Option of the Holder

You have the right to require us to repurchase the notes on July 15 of 2008, 2013, 2018, 2023 and 2028. We will be required to repurchase any outstanding note for which you deliver 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 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 its principal amount, plus accrued and unpaid interest to, but excluding, the repurchase date.

Your right to require us to repurchase notes is exercisable by delivering a written repurchase notice to the paying agent within 20 business days of the repurchase date. The paying agent initially will be the trustee.

The repurchase notice must state:

- if certificated notes have been issued, the note certificate numbers (or, if your notes are not certificated, your repurchase notice must comply with appropriate DTC procedures);
- the portion of the principal amount of notes to be repurchased, which must be in $1,000 multiples; and
- that the notes are to be repurchased by us pursuant to the applicable provisions of the notes and the indenture.

You 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 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 your notes are not certificated, your 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 addresses shown in the register of the registrar. We will also give notice to beneficial owners to the extent required by applicable law. This notice will state, among other things, the procedures that holders must follow to require us to repurchase their notes.

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 endorsements, to the paying agent at its office in Wilmington, Delaware, 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 or securities sufficient to pay the

repurchase price of the note on the business day following the repurchase date, then, on and after that 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 agreements governing our other indebtedness. 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.

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

Repurchase at Option of the Holder Upon a Designated Event

If a designated event occurs at any time prior to the maturity of the notes, you may require us to repurchase your notes, in whole or in part, on a repurchase date that is 30 days after the date of our notice of the designated event. The notes will be repurchased in integral multiples of $1,000 principal amount.

We will repurchase the notes at a price equal to 100% of the principal amount to be repurchased, plus accrued interest to, but excluding, the repurchase date. If the repurchase date is an interest payment date, we will pay interest to the record holder on the relevant record date.

We will mail to all record holders a notice of a designated event within 10 days after it has occurred. We are also required to deliver to the trustee a copy of the designated event notice. If you elect to have your notes repurchased, you must deliver to us or our designated agent, on or before the 30th day after the date of our designated event notice, your repurchase notice and any notes to be repurchased, duly endorsed for transfer. We will promptly pay the purchase price for notes surrendered for repurchase following the repurchase date.

A "designated event" will be deemed to have occurred upon a fundamental change or a termination of trading.

A "fundamental change" is any transaction or event (whether by means of an exchange offer, liquidation, tender offer, consolidation, merger, binding share exchange, combination, reclassification, recapitalization or otherwise) in connection with which all or substantially all of our common stock is exchanged for, converted into, acquired for or constitutes solely the right to receive, consideration which does not consist of all or substantially all common stock that:

- is listed on, or immediately after the transaction or event will be listed on, a United States national securities exchange, or
- is approved, or immediately after the transaction or event will be approved, for quotation on the Nasdaq National Market or any similar United States system of automated dissemination of quotations of securities prices.

A "termination of trading" will be deemed to have occurred if our common stock (or other common stock into which the notes are then convertible) is neither listed for trading on a United States national securities exchange nor approved for trading on the Nasdaq National Market.

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

These designated event repurchase rights could discourage a potential acquirer. However, this designated event repurchase feature is not the result of management's knowledge of any specific effort to obtain control of us by means of a merger, tender offer or solicitation, or part of a plan by management to adopt a series of anti-takeover provisions. The term "designated event" is limited to specified transactions and may not include other events that might adversely affect our financial condition or business operations. Our obligation to offer to repurchase the notes upon a designated event would not necessarily afford you protection in the event of a highly leveraged transaction, reorganization, merger or similar transaction involving us.

We may be unable to repurchase the notes in the event of a designated event. If a designated event were to occur, we may not have enough funds to pay the purchase price for all tendered notes. Any future credit agreements or other agreements relating to our indebtedness could contain provisions prohibiting repurchase of the notes under certain circumstances or could provide that a designated event constitutes an event of default under that agreement. If any agreement governing our indebtedness prohibits or otherwise restricts us from repurchasing the notes at a time when we become obligated to do so, we could seek the consent of the lenders to repurchase the notes or attempt to refinance this debt. If we do not obtain such a consent or refinance the debt, we would not be permitted to repurchase the notes without potentially causing a default under this debt. Our failure to repurchase tendered notes would constitute an event of default under the indenture, which might constitute a default under the terms of our other indebtedness.

Consolidation, Merger and Sale of Assets

The indenture provides that we may not consolidate with or merge with or into any other person or convey, transfer or lease our properties and assets substantially as an entirety to another person, unless among other items:

- we are the surviving person, or the resulting, surviving or transferee person, if other than us is organized and existing under the laws of the United States, any state thereof or the District of Columbia;
- the successor person assumes all of our obligations under the notes, the indenture and the registration rights agreement; and
- we or such successor person will not be in default under the indenture immediately after the transaction.

When such a person assumes our obligations in such circumstances, subject to certain exceptions, we shall be discharged from all obligations under the notes and the indenture.

Events of Default; Notice and Waiver

The following are events of default under the indenture:

- we fail to pay principal of any note when due upon redemption, repurchase or otherwise;
- we fail to pay any interest and liquidated damages, if any, on any note when due and such failure continues for a period of 30 days;

we fail to perform any other covenant or warranty that we have made in the indenture for 60 days after written notice as provided in the indenture; and

certain events of bankruptcy, insolvency or reorganization affecting us.

The trustee may withhold notice to the holders of the notes of any default, except defaults in payment of principal, interest or liquidated damages, if any, on the notes. However, the trustee must consider it to be in the interest of the holders of the notes to withhold this notice.

If an event of default occurs and is continuing, either the trustee or the holders of at least 25% in aggregate principal amount of the outstanding notes may declare the principal and accrued interest and liquidated damages, if any, on the outstanding notes to be immediately due and payable, *provided, however*, that after such declaration of acceleration, but before a judgment or decree based on acceleration, the holders of a majority in aggregate principal amount of the outstanding notes may, under certain circumstances, rescind and annul such acceleration if all events of default, other than the non-payment of principal, interest or liquidated damages, if any, on the notes that became due as a result of the acceleration have been cured or waived as provided in the indenture. For information as to waiver of defaults, see " Modification and Waiver" below. In the case of an event of default relating to our bankruptcy or insolvency, however, acceleration will occur automatically.

Payments of principal or interest on the notes that are not made when due will accrue interest at the annual rate of 1% above the then applicable interest rate from the required payment date.

The holders of a majority of outstanding notes will have the right to direct the time, method and place of any proceedings for any remedy available to the trustee, subject to limitations specified in the indenture.

No holder of any note will have any right to institute any proceeding with respect to the indenture or for any remedy under the indenture, unless:

such holder has previously given the trustee written notice of a continuing event of default;

the holders of at least 25% in aggregate principal amount of outstanding notes have made a written request, and offered reasonable indemnity, to the trustee to institute such proceeding as trustee;

the trustee has not received from the holders of a majority in aggregate principal amount of the outstanding notes a direction inconsistent with such request; and

the trustee has failed to institute such proceeding within 60 days after receipt.

However, such limitations do not apply to a suit instituted by a holder of a note for enforcement of payment of the principal of, or interest on, such note on or after the respective due dates expressed in such note or conversion of such note in accordance with its terms.

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

Modification and Waiver

Except as otherwise described below, the consent of the holders of a majority in aggregate principal amount of the outstanding notes is required to modify or amend the indenture. A modification or amendment requires the consent of the holder of each outstanding note affected thereby if it would:

change the stated maturity of the principal amount of, or any installment of any interest on, any note;

reduce the amount payable upon redemption or repurchase of any note;

reduce the principal amount of, or interest on, any note;

adversely change our obligation to repurchase any note at the option of a holder;

change the place or currency of payment of principal of, or interest on, any note;

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

reduce the conversion rate, other than in accordance with the provisions of the indenture, or otherwise impair the right of a holder to convert any note;

reduce the above-stated percentage of the outstanding notes necessary to modify or amend the indenture;

reduce the percentage of the aggregate principal amount of outstanding notes necessary for waiver of compliance with certain provisions of the indenture or for waiver of certain defaults;

change any obligation of ours to maintain an office or agency in the places and for the purposes specified in the indenture; or

modify any provisions of the indenture relating to the modification and amendment of the indenture or the waiver of past defaults or covenants, except as otherwise specified.

We are permitted to modify certain provisions of the indenture without the consent of the holders of the notes.

The holders of a majority in aggregate principal amount of the outstanding notes may waive our compliance with certain restrictive provisions of the indenture. Subject to the foregoing, the holders of a majority in aggregate principal amount of the outstanding notes may waive any past default under the indenture, except a default in the payment of principal or interest.

Form, Denomination and Registration

The notes were issued:

in fully registered form;

without interest coupons; and

in denominations of $1,000 principal amount and integral multiples of $1,000.

Global Note, Book-Entry Form

Notes are evidenced by one or more global notes. We have deposited the global note or notes with DTC and registered the global notes in the name of Cede & Co. as DTC's nominee. Except as set forth below, a global note may be transferred, in whole or in part, only to another nominee of DTC or to a successor of DTC or its nominee.

Beneficial interests in a global note may be held through organizations that are participants in DTC (called "participants"). Transfers between participants will be effected in the ordinary way in accordance with DTC rules and will be settled in clearing house funds. The laws of some states require that certain persons take physical delivery of securities in definitive form. As a result, the ability to transfer beneficial interests in the global note to such persons may be limited.

Beneficial interests in a global note held by DTC may be held only through participants, or certain banks, brokers, dealers, trust companies and other parties that clear through or maintain a custodial relationship with a participant, either directly or indirectly (called "indirect participants"). So long as

Cede & Co., as the nominee of DTC, is the registered owner of a global note, Cede & Co. for all purposes will be considered the sole holder of such global note. Except as provided below, owners of beneficial interests in a global note will:

- not be entitled to have certificates registered in their names;
- not receive physical delivery of certificates in definitive registered form; and
- not be considered holders of the global note.

We will pay interest on and the redemption price and the repurchase price of a global note to Cede & Co., as the registered owner of the global note, by wire transfer of immediately available funds on each interest payment date or the redemption or repurchase date, as the case may be. Neither we, the trustee nor any paying agent will be responsible or liable:

- for the records relating to, or payments made on account of, beneficial ownership interests in a global note; or
- for maintaining, supervising or reviewing any records relating to the beneficial ownership interests.

Neither we, the trustee, registrar, paying agent nor conversion agent will have any responsibility for the performance by DTC or its participants or indirect participants of their respective obligations under the rules and procedures governing their operations. DTC has advised us that it will take any action permitted to be taken by a holder of notes, including the presentation of notes for conversion, only at the direction of one or more participants to whose account with DTC interests in the global note are credited, and only in respect of the principal amount of the notes represented by the global note as to which the participant or participants has or have given such direction.

DTC has advised us that it is:

- a limited purpose trust company organized under the laws of the State of New York, and a member of the Federal Reserve System;
- a "clearing corporation" within the meaning of the Uniform Commercial Code; and
- a "clearing agency" registered pursuant to the provisions of Section 17A of the Exchange Act.

DTC was created to hold securities for its participants and to facilitate the clearance and settlement of securities transactions between participants through electronic book-entry changes to the accounts of its participants. Participants include securities brokers, dealers, banks, trust companies and clearing corporations and other organizations. Some of the participants or their representatives, together with other entities, own DTC. Indirect access to the DTC system is available to others such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a participant, either directly or indirectly.

DTC has agreed to the foregoing procedures to facilitate transfers of interests in a global note among participants. However, DTC is under no obligation to perform or continue to perform these procedures, and may discontinue these procedures at any time.

We will issue notes in definitive certificate form only if:

- DTC notifies us that it is unwilling or unable to continue as depositary or DTC ceases to be a clearing agency registered under the Exchange Act and a successor depositary is not appointed by us within 90 days;

an event of default shall have occurred and the maturity of the notes shall have been accelerated in accordance with the terms of the notes and any holder shall have requested in writing the issuance of definitive certificated notes; or

we have determined in our sole discretion that notes shall no longer be represented by global notes.

Registration Rights of the Noteholders

At the closing of private offering of the notes on July 15, 2003, we entered into a registration rights agreement with the initial purchasers of the notes pursuant to which we are filing the shelf registration statement of which this prospectus is a part with the SEC covering resales of the "registrable securities." Pursuant to the registration rights agreement, we also agreed to use our reasonable best efforts to cause the shelf registration statement to become effective no later than January 11, 2004 (i.e., within 180 days of the closing date of the private offering) and to use our reasonable best efforts to keep the shelf registration statement effective until the earlier of:

all of the registrable securities have been sold pursuant to the shelf registration statement; or

the expiration of the holding period under Rule 144(k) under the Securities Act, or any successor provision.

When we use the term "registrable securities" in this section, we are referring to the notes and our common stock issuable upon conversion of the notes until the earliest of:

the effective registration under the Securities Act and the resale of the securities in accordance with the registration statement;

the expiration of the holding period under Rule 144(k) under the Securities Act; or

the sale to the public pursuant to Rule 144 under the Securities Act, or any similar provision then in force, but not Rule 144A.

We may suspend the use of this prospectus under certain circumstances relating to pending corporate developments, public filings with the SEC and similar events. Any suspension period shall not:

exceed 30 days in any three-month period; or

an aggregate of 90 days for all periods in any 12-month period.

Notwithstanding the foregoing, we will be permitted to suspend the use of this prospectus for up to 60 days in any three-month period under certain circumstances relating to possible acquisitions, financings or other similar transactions.

We will pay predetermined liquidated damages if the shelf registration statement is not timely filed or made effective or if this prospectus is unavailable for periods in excess of those permitted above:

on the notes at an annual rate equal to 0.5% of the aggregate principal amount of the notes outstanding until the registration statement is filed or made effective or during the additional period this prospectus is unavailable; and

on the common stock that has been converted, at an annual rate equal to 0.5% of an amount equal to $1,000 divided by the conversion rate during such periods.

A holder who elects to sell registrable securities pursuant to the shelf registration statement is required to:

be named as a selling securityholder in this prospectus;

deliver a prospectus and, if applicable, a prospectus supplement, to purchasers; and

be subject to the provisions of the registration rights agreement, including indemnification provisions.

Under the registration rights agreement, we have agreed to:

- pay all expenses of the shelf registration statement, other than selling expenses of holders and certain legal expenses of holders;
- provide each registered holder copies of this prospectus and, if applicable, a prospectus supplement, when requested;
- notify holders when the shelf registration statement has become effective; and
- take other reasonable actions as are required to permit unrestricted resales of the registrable securities in accordance with the terms and conditions of the registration rights agreement.

The plan of distribution of this prospectus will permit resales of registrable securities by selling security holders though brokers and dealers. See "Plan of Distribution."

Rule 144A Information Request

We have agreed that if, at any time that the notes or the underlying common stock are "restricted securities" within the meaning of the Securities Act and we are not subject to the information reporting requirements of the Exchange Act, we will furnish to holders of the notes or the underlying common stock and to prospective purchasers designated by them the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act to permit compliance with Rule 144A in connection with resales of the notes or the underlying common stock.

Information Concerning the Trustee

We have appointed Wilmington Trust Company, the trustee under the indenture, as paying agent, conversion agent, note registrar and custodian for the notes. The trustee or its affiliates may provide banking and other services to us in the ordinary course of their business.

The indenture contains certain limitations on the rights of the trustee, if it or any of its affiliates is then our creditor, to obtain payment of claims in certain cases or to realize on certain property received on any claim as security or otherwise. The trustee and its affiliates will be permitted to engage in other transactions with us. However, if the trustee or any affiliate continues to have any conflicting interest and a default occurs with respect to the notes, the trustee must eliminate such conflict or resign.

DESCRIPTION OF CAPITAL STOCK

The following descriptions of our common stock and preferred stock summarize the material terms and provision of these types of securities. For the complete terms of our common stock and preferred stock, please refer to our amended and restated certificate of incorporation, amended and restated bylaws, amended and restated registration rights agreement and stockholder rights agreement that are incorporated by reference into the registration statement of which this prospectus is a part or may be incorporated by reference in this prospectus. The terms of these securities may also be affected by the General Corporation Law of the State of Delaware. The summary below is qualified in its entirety by reference to our amended and restated certificate of incorporation, amended and restated bylaws, amended and restated registration rights agreement and stockholder rights agreement.

Authorized Capitalization

Our capital structure consists of 500,000,000 authorized shares of common stock, par value $.01 per share, and 25,000,000 shares of undesignated preferred stock, par value $.01 per share. As of March 31, 2004, an aggregate of 102,469,269 shares of our common stock were issued and outstanding, and no shares of preferred stock were issued and outstanding. These numbers of shares have been adjusted to give effect to the three-for-two split of our common stock completed on November 20, 2003 described under "Prospectus Summary Recent Developments."

Common Stock

The holders of our common stock are entitled to such dividends as our board of directors may declare from time to time from legally available funds subject to the preferential rights of the holders of any shares of our preferred stock that we may issue in the future. The holders of our common stock are entitled to one vote per share on any matter to be voted upon by stockholders, subject to the restrictions described below under the caption "Anti-Takeover Effects of Certain Provisions of Delaware Law and Our Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws-Limited Voting by Foreign Owners."

Our amended and restated certificate of incorporation does not provide for cumulative voting in connection with the election of directors. Accordingly, directors will be elected by a plurality of the shares voting once a quorum is present. No holder of our common stock has any preemptive right to subscribe for any shares of capital stock issued in the future.

Upon any voluntary or involuntary liquidation, dissolution or winding up of our affairs, the holders of our common stock are entitled to share, on a pro rata basis, all assets remaining after payment to creditors and subject to prior distribution rights of any shares of preferred stock that we may issue in the future. All of the outstanding shares of common stock are, and the shares of common stock issuable upon the conversion of the notes will be, fully paid and non-assessable.

Preferred Stock

No shares of our preferred stock are currently outstanding. Under our amended and restated certificate of incorporation, our board of directors, without further action by our stockholders, is authorized to issue shares of preferred stock in one or more classes or series. The board may fix or alter the rights, preferences and privileges of the preferred stock, along with any limitations or restrictions, including voting rights, dividend rights, conversion rights, redemption privileges and liquidation preferences of each class or series of preferred stock. The preferred stock could have voting or conversion rights that could adversely affect the voting power or other rights of holders of our common stock. The issuance of preferred stock could also have the effect, under certain circumstances, of delaying, deferring or preventing a change of control of our company. We currently have no plans to issue any shares of preferred stock.

Registration Rights

We have entered into an amended and restated registration rights agreement with some of the holders of our common stock, including holders of common stock issued upon the conversion of preferred stock immediately following our initial public offering in April 2002, entitling these holders to registration rights with respect to their shares. Any group of holders of at least 60% of the securities with registration rights can require us to register all or part of their shares at any time after October 11, 2002, so long as the thresholds in the amended and restated registration rights agreement are met with respect to the amount of securities to be sold. After we have completed two such registrations we are no longer subject to these demand registration rights. In addition, holders of the securities with registration rights may also require us to include their shares in future registration statements that we file, subject to cutback at the option of the underwriters of such an offering. Subject to our eligibility to do so, holders of at least 60% of registrable securities may also require us, twice in any 12 month period and a total of three times, to register their shares with the SEC on Form S-3. Upon any of these registrations, these shares will be freely tradable in the public market without restriction.

As of July 10, 2003 (which is one year and 90 days after the registration statement for our initial public offering was declared effective), those stockholders party to the amended and restated registration rights agreement who, together with their affiliates, hold less than two percent of our issued and outstanding shares of common stock, ceased to have any registration rights under the agreement with respect to their shares. They may continue, however, to sell their shares pursuant to Rule 144 under the Securities Act.

Any of the terms and provisions of the amended and restated registration rights agreement may be modified, amended or waived pursuant to a written agreement signed by us, the stockholders party to the agreement holding at least $66^{2}/_{3}\%$ of the common stock held by all such stockholders and our management stockholders party to the agreement holding at least a majority of the common stock held by all such management stockholders, provided that such amendment, modification or waiver does not disproportionately affect any stockholder that is a party to the agreement. Accordingly, on July 2, 2003, we entered into a waiver and amendment to the amended and restated registration rights agreement pursuant to which the requisite stockholders party to the agreement, among other things, waived their registration rights in connection with the registration statement of which this prospectus is a part and agreed that no registration rights otherwise available to holders under the agreement were exercisable with respect to this offering.

Anti-Takeover Effects of Certain Provisions of Delaware Law and Our Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws

Effect of Delaware Anti-takeover Statute. We are subject to Section 203 of the Delaware General Corporation Law, an anti-takeover law. In general, Section 203 prohibits a Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years following the date that the stockholder became an interested stockholder, unless:

prior to that date, the board of directors of the corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;

upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the number of shares of voting stock outstanding (but not the voting stock owned by the interested stockholder) those shares owned by persons who are directors and also officers and by excluding employee stock plans in which employee participants do not have the right to

determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

on or subsequent to that date, the business combination is approved by the board of directors of the corporation and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least $66^2/_3\%$ of the outstanding voting stock that is not owned by the interested stockholder.

Section 203 defines "business combination" to include the following:

any merger or consolidation involving the corporation and the interested stockholder;

any sale, transfer, pledge or other disposition of 10% or more of the assets of the corporation involving the interested stockholder;

subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;

any transaction involving the corporation that has the effect of increasing the proportionate share of the stock of any class or series of the corporation beneficially owned by the interested stockholder; or

the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation.

In general, Section 203 defines an interested stockholder as any entity or person beneficially owning 15% or more of the outstanding voting stock of the corporation, or who beneficially owns 15% or more of the outstanding voting stock of the corporation at anytime within a three year period immediately prior to the date of determining whether such person is an interested stockholder, and any entity or person affiliated with or controlling or controlled by any of these entities or persons.

Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws Provisions. Our amended and restated certificate of incorporation and amended and restated bylaws include provisions that may have the effect of discouraging, delaying or preventing a change in control or an unsolicited acquisition proposal that a stockholder might consider favorable, including a proposal that might result in the payment of a premium over the market price for the shares held by stockholders. These provisions are summarized in the following paragraphs.

Classified Board of Directors. Our amended and restated certificate of incorporation and amended and restated bylaws provide for our board to be divided into three classes of directors serving staggered, three year terms. The classification of the board has the effect of requiring at least two annual stockholder meetings, instead of one, to replace a majority of the members of the board of directors.

Supermajority Voting. Our amended and restated certificate of incorporation requires the approval of the holders of at least $66^2/_3\%$ of our combined voting power to effect certain amendments to our amended and restated certificate of incorporation. Our amended and restated bylaws may be amended by either a majority of the board of directors, or the holders of $66^2/_3\%$ of our voting stock.

Authorized but Unissued or Undesignated Capital Stock. Our authorized capital stock consists of 500,000,000 shares of common stock and 25,000,000 shares of preferred stock. The authorized but unissued (and in the case of preferred stock, undesignated) stock may be issued by the board of directors in one or more transactions. In this regard, our amended and restated certificate of incorporation grants the board of directors broad power to establish the rights and preferences of authorized and unissued preferred stock. The issuance of shares of preferred stock pursuant to the board of director's authority described above could decrease the amount of earnings and assets available for distribution to holders of common stock and adversely affect the rights and powers, including voting rights, of such holders and may have the effect of delaying, deferring or preventing a

change in control. The board of directors does not currently intend to seek stockholder approval prior to any issuance of preferred stock, unless otherwise required by law.

Special Meetings of Stockholders. Our amended and restated bylaws provide that special meetings of our stockholders may be called only by our board of directors, by our Chairman of the board of directors or by our Chief Executive Officer.

No Stockholder Action by Written Consent. Our amended and restated certificate of incorporation and amended and restated bylaws provide that an action required or permitted to be taken at any annual or special meeting of our stockholders may only be taken at a duly called annual or special meeting of stockholders. This provision prevents stockholders from initiating or effecting any action by written consent, and thereby taking actions opposed by the board.

Notice Procedures. Our amended and restated bylaws establish advance notice procedures with regard to all stockholder proposals to be brought before meetings of our stockholders, including proposals relating to the nomination of candidates for election as directors, the removal of directors and amendments to our amended and restated certificate of incorporation or amended and restated bylaws. These procedures provide that notice of such stockholder proposals must be timely given in writing to our Secretary prior to the meeting. Generally, to be timely, notice must be received at our principal executive offices not less than 150 days prior to the meeting. The notice must contain certain information specified in the amended and restated bylaws.

Other Anti-Takeover Provisions. Our 2002 Stock Incentive Plan, or 2002 Plan, contains provisions which may have the effect of discouraging, delaying or preventing a change in control or unsolicited acquisition proposals. In the event that we are acquired by a merger, a sale by our stockholders of more than 50% of our outstanding voting stock or a sale of all or substantially all of our assets, each outstanding option under the discretionary option grant program under our 2002 Plan which (i) will not be assumed by the successor corporation or otherwise continued in effect, (ii) will not be replaced with a cash incentive program of a successor corporation of the type described in the 2002 Plan, or (iii) will not otherwise be precluded based on other limitations imposed at the time such option was granted, will automatically accelerate in full, and all unvested shares under the discretionary option grant and stock issuance programs will immediately vest, except to the extent (a) our repurchase rights with respect to those shares are to be assigned to the successor corporation or otherwise continue in effect, or (b) accelerated vesting otherwise is precluded by other limitations imposed at the time of grant. However, our compensation committee will have complete discretion to structure any or all of the options under the discretionary option grant program so those options will immediately vest in the event we are acquired, whether or not those options are assumed by the successor corporation or otherwise continued in effect. Alternatively, our compensation committee may condition such accelerated vesting upon the subsequent termination of the optionee's service with us or the acquiring entity. The vesting of outstanding shares or share rights under the stock issuance program may also be accelerated upon similar terms and conditions.

Our compensation committee may grant options and structure repurchase rights so that the shares subject to those options or repurchase rights will vest in connection with a hostile takeover, whether accomplished through a tender offer for more than 50% of our outstanding voting stock or a change in the majority of our board through one or more contested elections for board membership. Such accelerated vesting may occur either at the time of such hostile takeover or upon the subsequent termination of the individual's service. The vesting of outstanding shares or share rights under the stock issuance program may also be accelerated upon similar terms and conditions.

All of the options and unvested shares under our predecessor 1999 Stock Option/Stock Issuance Plan, which were transferred to our 2002 Plan immediately following our initial public offering in April 2002, will immediately vest in the event we are acquired by a merger or a sale of substantially all our assets or more than 50% of our outstanding voting stock.

In addition, should we be acquired by merger or sale of substantially all of our assets or more than 50% of our outstanding voting securities, then all outstanding purchase rights under our crewmember stock purchase plan will automatically be exercised immediately prior to the effective date of the acquisition. The purchase price in effect for each participant will be equal to 85% of the market value per share on the start date of the offering period in which the participant is enrolled at the time the acquisition occurs or, if lower, 85% of the fair market value per share immediately prior to the acquisition.

Limitation of Director Liability. Our amended and restated certificate of incorporation and amended and restated bylaws limit the liability of our directors (in their capacity as directors but not in their capacity as officers) to us or our stockholders to the fullest extent permitted by Delaware law. Specifically, our amended and restated certificate of incorporation provides that our directors will not be personally liable for monetary damages for breach of a director's fiduciary duty as a director, except for liability:

for any breach of the director's duty of loyalty to us or our stockholders;

for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;

under Section 174 of the Delaware General Corporation Law, which relates to unlawful payments of dividends or unlawful stock repurchases or redemptions; or

for any transaction from which the director derived an improper personal benefit.

Indemnification Arrangements. Our amended and restated bylaws provide that our directors and officers shall be indemnified and provide for the advancement to them of expenses in connection with actual or threatened proceedings and claims arising out of their status as such to the fullest extent permitted by the Delaware General Corporation Law. We have entered into indemnification agreements with each of our directors and executive officers that provide them with rights to indemnification and expense advancement to the fullest extent permitted under the Delaware General Corporation Law.

Limited Voting by Foreign Owners. To comply with restrictions imposed by federal law on foreign ownership of U.S. airlines, our amended and restated certificate of incorporation and amended and restated bylaws restrict voting of shares of our capital stock by non-U.S. citizens. The restrictions imposed by federal law currently require that no more than 25% or our voting stock be owned by persons who are not U.S. citizens. If non-U.S. citizens at any time own more than 25% of our voting stock, the voting rights of the stock in excess of the 25% shall be automatically suspended. Our amended and restated bylaws provide that no shares of our capital stock may be voted by or at the direction of non-U.S. citizens unless such shares are registered on a separate stock record, which we refer to as the foreign stock record. Our amended and restated bylaws further provide that no shares of our capital stock will be registered on the foreign stock record if the amount so registered would exceed the foreign ownership restrictions imposed by federal law. We are currently in compliance with these ownership restrictions.

Stockholder Rights Agreement

On February 11, 2002, our board of directors authorized us to enter into a stockholder rights agreement. The following is a summary of the material terms of this agreement. The statements below are only a summary, and we refer you to the stockholder rights agreement, a copy of which is filed as Exhibit 4.3 to our Annual Report on Form 10-K for the year ended December 31, 2002, filed on February 18, 2003. Each statement is qualified in its entirety by such reference.

Under the stockholder rights agreement, one stockholder right is attached to each share of common stock. The stockholder rights are transferable only with the common stock until they become exercisable, are redeemed or expire.

Each right entitles the holder to purchase one one-thousandth of a share of our Series A participating preferred stock at an exercise price of $53.33, which gives effect to adjustments for both our December 2002 three-for-two common stock split and our three-for- two common stock split completed on November 20, 2003 described under "Prospectus Summary Recent Developments," subject to further adjustment. The rights will separate from the common stock upon the earlier of:

- the tenth business day after a person or group has acquired, or obtained the right to acquire, beneficial ownership of 15% or more of the outstanding shares of our common stock, such person or group referred to as an "acquiring person," or such later date as determined by our board of directors; and

- the tenth business day after a person or group commences or announces its intent to commence a tender or exchange offer, the consummation of which would result in such person or group becoming an acquiring person.

The term "acquiring person" expressly excludes Chase New Air Investors (GC), LLC, Quantum Industrial Partner LDC, and the Weston Presidio funds (although the Western Presidio funds are no longer stockholders of our company) and their respective affiliates, unless Chase New Air Investors and the Weston Presidio funds and their respective affiliates beneficially own in the aggregate more than 25% of our outstanding common stock, and in the case of Quantum Industrial Partners LDC, unless Quantum and its affiliates beneficially own in the aggregate more than 30% of our common stock.

If any person or group becomes an acquiring person, instead of thousandths of shares of preferred stock, each stockholder right, other than any stockholder rights held by the acquiring person or group, will then represent the right to receive upon exercise an amount of common stock having a market value equal to twice the exercise price, subject to certain exceptions.

If after a person or group becomes an acquiring person, we are acquired in a merger or other business combination or 50% or more of our consolidated assets or earnings power are sold or transferred, each stockholder right will then represent the right to receive upon exercise an amount of common stock of the other party to the merger or other business combination having a value equal to twice the exercise price.

In addition, at any time after any person or group becomes an acquiring person, but before that person or group becomes the beneficial owner of 50% or more of the outstanding common stock, our board of directors may at its option exchange the stockholder rights, in whole or in part, for common stock at an exchange ratio of one share of common stock per right, subject to adjustment as described in the agreement.

The exercise price payable, the number of thousandths of shares of preferred stock and the amount of common stock, cash or securities or assets issuable upon exercise of, or exchange for, stockholder rights and the number of outstanding rights are subject to adjustment to prevent dilution if certain events occur.

Our board of directors may redeem the stockholder rights in whole, but not in part, for one cent ($.01) per right, as adjusted to reflect any preferred stock split, stock dividend or similar transaction, at any time before the earlier of April 1, 2012 and the tenth business day after the first date of public announcement that a person or group has become an acquiring person. Unless earlier redeemed by us, exercised or exchanged, the stockholder rights will expire on April 1, 2012.

Our transfer agent, EquiServe Trust Company, N.A., is the rights agent under the stockholder rights agreement.

The stockholder rights will not prevent a takeover of us. However, the rights may render an unsolicited takeover of us more difficult or less likely to occur, even though such takeover may offer stockholders opportunity to sell their shares at a price above the prevailing market and/or may be favored by a majority of the stockholders.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is EquiServe Trust Company, N.A.

U. S. FEDERAL TAX CONSIDERATIONS

General

This is a summary of certain U.S. federal income tax consequences relevant to a holder of notes. All references to "holders" (including U.S. Holders and Non-U.S. Holders) are to beneficial owners of notes. The discussion below deals only with notes held as capital assets and does not purport to deal with persons in special tax situations, including, for example, financial institutions, insurance companies, regulated investment companies, dealers in securities or currencies, tax exempt entities, persons holding notes in a tax-deferred or tax-advantaged account, or persons holding notes as a hedge against currency risks, as a position in a "straddle" or as part of a "hedging" or "conversion" transaction for tax purposes. Except where specifically indicated below, we do not address all of the tax consequences that may be relevant to a holder. In particular, we do not address:

- the U.S. federal income tax consequences to shareholders in, or partners or beneficiaries of, an entity that is a holder of notes;
- the U.S. federal estate, gift or alternative minimum tax consequences of the purchase, ownership or disposition of notes;
- U.S. Holders (as defined below) who hold the notes whose functional currency is not the U.S. dollar;
- any state, local or foreign tax consequences of the purchase, ownership or disposition of notes; or
- any U.S. federal, state, local or foreign tax consequences of owning or disposing of the common stock.

Persons considering the purchase of notes should consult their own tax advisors concerning the application of the U.S. federal income tax laws to their particular situations as well as any consequences of the purchase, ownership and disposition of the notes arising under the laws of any other taxing jurisdiction. This summary is based upon laws, regulations, rulings and decisions now in effect all of which are subject to change (including retroactive changes in effective dates) or possible differing interpretations. No rulings have been sought or are expected to be sought from the Internal Revenue Service, or the IRS, with respect to any of the U.S. federal income tax consequences discussed below. As a result, there is a possibility that the IRS will disagree with the tax characterizations and the tax consequences described below.

For purposes of this discussion, a "U.S. Holder" is a beneficial owner of a note that, for U.S. federal income tax purposes, is:

- a citizen or resident alien individual of the U.S.;
- a corporation (or other entity treated as a corporation for U.S. federal income tax purposes) organized under the laws of the U.S. or any political subdivision thereof;
- an estate whose income is subject to U.S. federal income tax regardless of its source; or
- a trust if (1) a U.S. court can exercise primary supervision over the trust's administration and one or more U.S. persons are authorized to control all substantial decisions of the trust or (2) the trust has a valid election in effect under applicable Treasury regulations to be treated as a U.S. person.

A "Non-U.S. Holder" is a beneficial owner of a note that is not a U.S. Holder. If a partnership holds notes, the tax treatment of a partner generally will depend upon the status of the partner and upon the activities of the partnership. Partners of partnerships holding notes should consult their own tax advisor.

We urge prospective investors to consult their own tax advisors with respect to the tax consequences to them of the purchase, ownership and disposition of the notes and the underlying

common stock in light of their own particular circumstances, including the tax consequences under state, local, foreign and other tax laws and the possible effects of changes in U.S. federal or other tax laws.

U.S. Holders

The following discussion is a summary of certain U.S. federal income tax consequences that will apply to you if you are a U.S. Holder.

Payments of Interest on the Notes

Stated Interest. Qualified stated interest is stated interest that is unconditionally payable in cash or property (other than debt instruments of the issuer) at least annually at a single rate that appropriately takes into account the length of intervals between payments. Payments of cash interest on the notes will constitute qualified stated interest and generally will be taxable to a U.S. Holder as ordinary interest income at the time such interest is accrued or received in accordance with the U.S. Holder's regular method of accounting for U.S. federal income tax purposes.

Market Discount. If a U.S. Holder acquires a note for an amount that is less than its stated principal amount, the amount of such difference is treated as "market discount" for U.S. federal income tax purposes, unless such difference is less than $^1/_4$ of one percent of the stated principal amount multiplied by the remaining number of complete years to maturity from the date of acquisition.

A U.S. Holder that purchases a note with market discount is required to treat any principal payment or any payment that is not qualified stated interest on, or any gain upon the sale, exchange, or retirement (including redemption or repurchase) of a note, as ordinary income to the extent of the accrued market discount on the note that has not previously been included in gross income. If a U.S. Holder disposes of the note in certain otherwise nontaxable transactions, accrued market discount is includible in gross income by the U.S. Holder, as ordinary income, as if such U.S. Holder had sold the note at its then fair market value. If a note with accrued market discount that has not previously been included in gross income is converted into common stock, the amount of such accrued market discount generally will be taxable as ordinary income upon disposition of the common stock received upon conversion.

In general, the amount of market discount that has accrued is determined on a ratable basis. A U.S. Holder may, however, elect to determine the amount of accrued market discount on a constant yield to maturity basis. This election is made on a note-by-note basis and is irrevocable.

A U.S. Holder may not be allowed to deduct immediately a portion of the interest expense on any indebtedness incurred or continued to purchase or to carry notes with market discount. A U.S. Holder may, however, elect to include market discount in gross income currently as it accrues, rather than upon a disposition of the note, in which case the interest deferral rule will not apply. An election to include market discount in gross income on an accrual basis will apply to all debt instruments acquired by the U.S. Holder on or after the first day of the first taxable year to which such election applies and is irrevocable without the consent of the IRS. A U.S. Holder's tax basis in a note will be increased by the amount of market discount included in such U.S. Holder's gross income under such an election.

Amortizable Bond Premium. If a U.S. Holder purchases a note for an amount that, when reduced by the value of the conversion feature, is in excess of the sum of all amounts payable on the note other than payments of qualified stated interest, such U.S. Holder will be considered to have purchased such note at a "premium." The value of the conversion feature is the excess, if any, of the note's purchase price over what the note's fair market value would be if there were no conversion feature (determined in any reasonable manner). If the amount of premium exceeds the sum of all amounts payable on the note other than payments of qualified stated interest, the amount of the excess will be treated as "amortizable bond premium" and such U.S. Holder may elect to amortize the bond premium as an offset to qualified stated interest, using a constant yield to maturity method over the remaining term of

the note, subject to special provisions for debt instruments with early call dates. A U.S. Holder that elects to amortize bond premium must reduce such U.S. Holder's tax basis in the note by the amount of premium used to offset qualified stated interest income as set forth above. An election to amortize bond premium applies to all taxable debt obligations held during or after the taxable year for which the election is made and may be revoked only with the consent of the IRS.

Election to Treat All Interest as Original Issue Discount. U.S. Holders may elect to include in gross income all interest that accrues on a note, including stated interest, market discount and original issue discount, by using the constant yield to maturity method as generally determined in computing original issue discount. Accordingly, a holder will be required to include amounts treated as original issue discount in ordinary income, as determined under the constant yield method, over the period that he holds notes in advance of the receipt of the cash attributable thereto. Any amount treated as original issue discount included in income will generally increase the a holder's adjusted tax basis in the notes. Such an election for a note with amortizable bond premium results in a deemed election to amortize bond premium for all taxable debt instruments owned and later acquired by the U.S. Holder with premium and may be revoked only with the permission of the IRS. Similarly, such an election for a note with market discount results in a deemed election to accrue market discount in income currently for such note and for all other debt instruments acquired by the U.S. Holder with market discount on or after the first day of the taxable year to which such election first applies, and may be revoked only with the permission of the IRS. A U.S. Holder's tax basis in a note is increased by each accrual of the amounts treated as original issue discount under the constant yield election described in this paragraph.

Treatment of Liquidated Damages. If our obligations under the registration rights agreement are not satisfied, then liquidated damages are payable in respect of the notes as described in "Description of Notes Registration Rights of the Noteholders" above. Such liquidated damages could be treated as additional interest payable with respect to the notes. According to applicable Treasury regulations, the possibility of liquidated damages being payable will not affect the amount of interest income recognized by a U.S. Holder in advance of the payment of any liquidated damages, if there is only a remote chance as of the date the notes were issued that a U.S. Holder will receive liquidated damages. We believe that the likelihood that liquidated damages will become payable due to a failure to register the notes is remote. Accordingly, we intend to take the position that a U.S. Holder should be required to include such liquidated damages as ordinary income at the time they are paid or accrued in accordance with such U.S. Holder's regular method of accounting for U.S. federal income tax purposes. However, the IRS may take the position that such liquidated damages should be accrued into gross income like original issue discount, regardless of the U.S. Holder's method of tax accounting, which could affect the timing of both a U.S. Holder's recognition of income and the availability of our deduction with respect to such liquidated damages.

Sale, Exchange, Redemption or Other Taxable Disposition

Upon the sale, repurchase by us at the option of a holder or exchange (other than a conversion) of a note, the redemption of a note for cash or other taxable disposition, a U.S. Holder generally will recognize gain or loss. The amount of gain or loss on a taxable sale, repurchase by us at the option of a holder, exchange (other than a conversion), redemption or other taxable disposition will be equal to the difference between (a) the amount of cash plus the fair market value of any other property received by the U.S. Holder (other than amounts attributable to accrued but unpaid interest not previously included in gross income, which is taxable as ordinary interest income), and (b) the U.S. Holder's adjusted tax basis in the note. A U.S. Holder's adjusted tax basis in a note will generally be equal to the original purchase price for the note increased by the market discount and reduced by payments received in respect of the note other than qualified stated interest. Subject to the discussion above under " Market Discount," such gain or loss generally will be capital gain or loss, and will constitute long-term capital gain or loss if the notes are held for more than one year. Certain U.S. Holders (including individuals) are eligible for preferential rates of U.S. federal income taxation in

respect of long-term capital gains. The deductibility of capital losses is subject to limitations under the Code.

Conversion of the Notes

A U.S. Holder generally will not recognize gain or loss on the conversion of notes into common stock, except for any cash received in lieu of a fractional share of common stock as described below. Any gain so recognized generally will be capital gain. A U.S. Holder's tax basis in the common stock received upon conversion will be the same as its adjusted tax basis in the notes at the time of conversion, reduced by any basis attributable to fractional shares and increased, for a cash method U.S. Holder, by any accrued but unpaid interest that is required to be recognized by such U.S. Holder upon conversion. For U.S. federal income tax purposes, a U.S. Holder's holding period for the common stock generally will include its holding period for the notes converted.

Any cash received in lieu of a fractional share of common stock upon conversion should be treated as a payment in exchange for the fractional share of common stock. Accordingly, a U.S. Holder will recognize capital gain or loss (measured by the difference between the cash received for the fractional share and the U.S. Holder's adjusted tax basis in the fractional share), and the discussion above under " Sale, Exchange, Redemption or Other Taxable Disposition" generally will apply.

Constructive Dividends

If at any time we were to make a distribution of property to our stockholders that would be taxable to the stockholders as a dividend for U.S. federal income tax purposes and, in accordance with the antidilution provisions of the notes, the conversion rate of the notes is increased, such increase might be deemed to be the payment of a taxable dividend to holders of the notes. For example, an increase in the conversion rate in the event of distributions of our evidences of indebtedness or our assets or an increase in the event of a cash dividend could result in deemed dividend treatment to holders of the notes, but generally an increase in the event of stock dividends or the distribution of rights to subscribe for common stock will not.

Backup Withholding Tax and Information Reporting

Payments of principal and interest on, and the proceeds of dispositions of, the notes may be subject to information reporting and U.S. federal backup withholding tax if the U.S. Holder thereof fails to supply an accurate taxpayer identification number or otherwise fails to comply with applicable U.S. information reporting or certification requirements. Any amounts so withheld will be allowed as a credit against such U.S. Holder's U.S. federal income tax liability.

Non-U.S. Holders

The following is a summary of certain U.S. federal tax consequences that will apply to you if you are a Non-U.S. Holder.

Non-U.S. Holders should consult their own tax advisors to determine the U.S. federal, state, local, foreign and other tax consequences that may be relevant to them.

Payments with Respect to the Notes

All payments on the notes to a Non-U.S. Holder, including a payment in common stock pursuant to a conversion, and any gain realized on a sale or exchange of the notes, will be exempt from U.S. federal income or withholding tax, provided that:

(i) such Non-U.S. Holder does not own, actually or constructively, 10% or more of the total combined voting power of all classes of our stock entitled to vote, and is not a controlled foreign corporation related, directly or indirectly, to us through stock ownership;

(ii) the beneficial owner of a note certifies on IRS Form W-8BEN (or successor form), under penalties of perjury, that it is not a U.S. person and provides its name and address or otherwise satisfies applicable documentation requirements;

(iii) such payments and gain are not effectively connected with the conduct by such Non-U.S. Holder of a trade or business in the U.S. (or, where a tax treaty applies, are attributable to a U.S. permanent establishment);

(iv) in the case of a non-U.S. Holder who is an individual, such non-U.S. Holder is not present in the U.S. for 183 days or more in the taxable year of a sale, exchange, redemption or other disposition; and

(v) we are not and have not been a "U.S. real property holding corporation, or USRPHC, for federal income tax purposes.

We believe that we are not and will not become a USRPHC; however, no assurance can be given in this regard. In general, if we are determined to be a USRPHC, then non-U.S. Holders may be subject to U.S. income tax on the sale, exchange, redemption or other disposition of a note (possibly on the conversion of a note into common stock) or the underlying common stock, and possibly to withholding up to a rate of 10% on any such disposition. However, a non-U.S. Holder will not be subject to these special rules even if we are determined to be a USRPHC, provided that such non-U.S. Holder did not at any time during the five years ending on the date of sale or disposition actually or constructively own more than 5% of our outstanding common stock (including any common stock that may be received on conversion of a note) or more than 5% in principal amount of the notes.

If a Non-U.S. Holder of the notes is engaged in a trade or business in the U.S., and if interest on the notes is effectively connected with the conduct of such trade or business (and if required by an applicable income tax treaty, is attributable to a U.S. permanent establishment), the Non-U.S. Holder, although exempt from the withholding tax discussed in the preceding paragraphs, will generally be subject to regular U.S. federal income tax on interest and on any gain realized on the sale, exchange, conversion or redemption of the notes in the same manner as if it were a U.S. Holder. In lieu of the certificate described in the preceding paragraph, such a Non-U.S. Holder will be required to provide to the withholding agent a properly executed IRS Form W-8ECI (or successor form) in order to claim an exemption from withholding tax. In addition, if such a Non-U.S. Holder is a foreign corporation, such holder may be subject to a branch profits tax equal to 30% (or such lower rate provided by an applicable treaty) of its effectively connected earnings and profits for the taxable year, subject to certain adjustments.

Adjustments to Conversion Ratio

A Non-U.S. Holder may be subject to U.S. federal withholding tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty on income attributable to an adjustment to the conversion rate of the notes.

Backup Withholding Tax and Information Reporting

In general, a Non-U.S. Holder will not be subject to backup withholding and information reporting with respect to payments made by us with respect to the notes if the Non-U.S. Holder has provided us with an IRS Form W-8BEN described above and we do not have actual knowledge or reason to know that such Non-U.S. Holder is a U.S. person. In addition, no backup withholding will be required regarding the proceeds of the sale of notes made within the U.S. or conducted through certain U.S. financial intermediaries if the payor receives that statement described above and does not have actual knowledge or reason to know that the Non-U.S. Holder is a U.S. person or the Non-U.S. Holder otherwise establishes an exemption.

SELLING SECURITY HOLDERS

We originally issued the notes to the initial purchasers, Morgan Stanley & Co. Incorporated, Raymond James & Associates, Inc. and Blaylock & Partners, L.P., in a private placement on July 15, 2003. The notes were resold by the initial purchasers in the United States to qualified institutional buyers pursuant to Rule 144A under the Securities Act. Selling security holders, including their transferees, pledgees, donees or successors, may from time to time offer and sell the notes and the underlying common stock pursuant to this prospectus or any applicable prospectus supplement.

The table below sets forth the name of each selling security holder, the principal amount of notes and number of shares of common stock beneficially owned by each selling security holder, and the number of shares of common stock issuable upon conversion of those notes that may be offered from time to time under this prospectus by the selling security holders named in the table.

Because the selling security holders may offer all or some portion of the notes or underlying shares of common stock listed below, we have assumed for purposes of this table that the selling security holders will sell all of the notes and all of the underlying shares of common stock offered by this prospectus pursuant to this prospectus. See "Plan of Distribution." In addition, the selling security holders listed in the table below may have acquired, sold or transferred, in transactions exempt from the registration requirements of the Securities Act, some or all of the notes since the date on which they provided to us the information presented in the table. Consequently, the principal amount of notes and number of underlying shares of common stock set forth opposite the names of certain of these selling security holders in the table may no longer accurately reflect the principal amount of notes and number of underlying shares of common stock that are currently beneficially owned by such selling security holders.

We have prepared the table below based on information given to us by those selling security holders who have supplied us with this information prior to the date of post-effective amendment no. 5 to the registration statement of which this prospectus is a part and we have not sought to verify or update such information. Based upon information provided to us by the selling security holders, none of the selling security holders nor any of their affiliates, officers, directors or principal equity holders has held any position or office or had any other material relationship with us or our affiliates within the past three years.

					Common Stock Owned Upon Completion of the Offering	
Name of Beneficial Owner	**Principal Amount of Notes Beneficially Owned and Offered**	**Percentage of Notes Outstanding(1)**	**Shares of Common Stock Beneficially Owned Prior to the Offering(2)**	**Conversion Shares of Common Stock Offered(3)**	**Number of Shares**	**Percentage(4)**
Alexandra Global Master Fund Ltd	$ 5,000,000	2.86%		117,647		
Amaranth LLC	5,000,000	2.86%	8,550	117,647	8,550	*
Arbitex Master Fund, L.P.	6,500,000	3.71%		152,941		
ATSF Transamerica Convertible Securities	6,950,000	3.97%		163,529		
B.C. McCabe Foundation	175,000	*		4,117		
BMO Nesbitt Burns Inc.	3,000,000	1.71%		70,588		
BTES Convertible ARB	50,000	*		1,176		
BTOP Growth vs. Value	200,000	*		4,705		

Clinton Multistrategy Master Fund, Ltd.	6,045,000	3.45%	142,235
Clinton Riverside Convertible Portfolio Limited	12,305,000	7.03%	289,529
CNH CA Master Account, L.P.	5,000,000	2.86%	117,647
DBAG London	3,600,000	2.06%	84,706
Deutsche Bank Securities Inc.	300,000	*	7,058
DKR SoundShore Opportunity Holding Fund Ltd.	1,000,000	*	23,529
Gaia Offshore Master Fund Ltd.	1,300,000	*	30,588
Goldman, Sachs & Co.	1,340,000	*	31,529
Grace Convertible Arbitrage Fund, LTD	9,500,000	5.43%	223,529
Guggenheim Portfolio Co. XV, LLC	1,000,000	*	23,529
IDEX Transamerica Convertible Securities Fund	3,050,000	1.74%	71,764
ING Convertible Fund	990,000	*	23,294
ING VP Convertible Fund	10,000	*	235
Lehman Brothers, Inc.	300,000	*	7,058
Keyspan Foundation	50,000	*	1,176
Lexington Vantage Fund c/o TQA Investors LLC	25,000	*	588
Lord Abbett Investment Trust L.A. Convertible Fund	375,000	*	8,823
Lyzor/Gaia II Fund Ltd.	300,000	*	7,058
Marisco Capital Management, LLC	15,000,000	8.57%	352,941
Meadow IAM Limited	220,000	*	5,176

National Fuel Gas Company Retirement Plan	125,000	*		2,941		
Newport Alternative Income Fund	625,000	*		14,705		
Nomura Securities International, Inc.	4,000,000	2.29%	346	94,117	346	*
OIP Limited	1,490,000	*		35,058		
Oxford, Lord Abbett & Co.	1,425,000	*		33,529		
Polygon Global Opportunities Master Fund	1,150,000	*		27,058		
Putnam Convertible Income-Growth Trust	3,600,000	2.06%		84,706		
Ramius, LP	100,000	*		2,352		
Ramius Capital Group	1,000,000	*		23,529		
Ramius Master Fund, Ltd.	2,480,000	1.42%		58,353		
Ramius Partners II, LP	200,000	*		4,705		
RBC Alternative Assets L.P.	125,000	*		2,941		
RCG Baldwin, LLP	400,000	*		9,411		
RCG Latitude Master Fund, Ltd.	5,970,000	3.41%		140,470		
RCG Multi Strategy Master Fund, Ltd.	2,350,000	1.34%		55,294		
Royal Bank of Canada	2,500,000	1.43%	150	58,823	150	*
Sage Capital	2,975,000	1.70%		70,000		
SAM Investments LDC	25,000,000	14.29%		588,236		
SG Cowen Securities Corporation	4,500,000	2.57%		105,882		
Silver Creek II Limited	1,870,000	1.07%		44,000		
Silver Creek Limited Partnership	4,015,000	2.29%		94,470		
Sphinx Fund	55,000	*		1,294		
Susquehanna Capital Group	9,000,000	5.14%		211,765		
TCW Group Inc.	4,640,000	2.65%		109,176		

Total Fina Elf Finance U.S.A. Inc.	200,000	*		4,705		
TQA Master Fund, LTD	1,875,000	1.07%		44,117		
TQA Master Plus Fund, LTD	1,250,000	*		29,411		
TQA Special Opportunities Master Fund, LTD	1,625,000	*		38,235		
Transamerica Life Insurance and Annuities Co.	3,000,000	1.71%		70,588		
Transamerica Occidental Life	2,000,000	1.14%		47,058		
Tykhe Fund Ltd	6,000,000	3.43%		141,176		
UBS Securities LLC	30,000	*		705		
Wachovia Capital Markets LLC	1,650,000	*		38,823		
Wells Fargo Bank, N.A.	6,000,000	3.43%		141,176		
Windmill Master Fund, LP	8,000,000	4.57%		188,235		
Xavex Convertible Arbitrage 5 Fund	1,000,000	*		23,529		
Xavex Convertible Arbitrage 7 Fund	500,000	*		11,764		
Zurich Institutional Benchmarks Master Fund, LTD	500,000	*		11,764		
Totals	$ 201,810,000(5)	115.32%(5)	9,046(6)	4,748,443(5)	9,046	*

* Less than 1%.

(1) Calculated based on $175,000,000 aggregate principal amount of the notes issued and outstanding.

(2) Shares in this column do not include shares of common stock issuable upon conversion of the notes listed in the column to the right. These share numbers have been adjusted to give effect to the three-for-two split of our common stock completed on November 20, 2003 described under "Prospectus Summary Recent Developments."

(3) Assumes conversion of all of the holder's notes at a conversion rate of 23.52945 shares of common stock per $1,000 principal amount of the notes, not including fractional shares for which we will pay cash as described under "Description of Notes Conversion of Notes." However, this conversion rate is subject to adjustment as described under "Description of Notes Conversion of Notes." As a result, the number of shares of common stock issuable upon conversion of the notes was increased from 15.6863 to 23.52945 shares of common stock per $1,000 principal amount of notes upon the completion on November 20, 2003 of the three-for-two split of our common stock described under "Prospectus Summary Recent Developments" and may further increase or decrease in the future.

(4) Calculated based on 102,469,269 shares of our common stock outstanding as of March 31, 2004.

(5) Only $175,000,000 aggregate principal amount of the notes are issued and outstanding. The additional principal amount of notes and underlying shares of common stock set forth in this table are attributable to a portion of the notes being shown as beneficially owned by more than one selling security holder due to acquisitions, sales and transfers of these notes, in

transactions exempt from the registration requirements of the Securities Act, by holders subsequent to the dates on which they provided to us the information presented in the table.

(6) Assumes that all other holders of notes or future transferees do not beneficially own any shares of our common stock other than the shares issuable upon conversion of the notes.

To the extent that any of the selling security holders identified above are broker-dealers, they are deemed to be, under interpretations of the SEC, "underwriters" within the meaning of the Securities Act.

With respect to selling security holders that are affiliates of broker-dealers, we believe that such entities acquired their notes and underlying common stock in the ordinary course of business and, at the time of the purchase of the notes and the underlying common stock, such selling security holders had no agreements or understandings, directly or indirectly, with any person to distribute the notes or underlying common stock. To the extent that we become aware that such entities did not acquire their notes or underlying common stock in the ordinary course of business or did have such an agreement or understanding, we will file a post-effective amendment to the registration statement of which this prospectus is a part to designate such affiliate as an "underwriter" within the meaning of the Securities Act.

Only selling security holders identified above who beneficially own the notes and the underlying shares of common stock set forth opposite each such selling security holder's name in the foregoing table on the date of post-effective amendment no. 5 to the registration statement of which this prospectus is a part may sell such securities pursuant to the registration statement. Prior to any use of this prospectus in connection with an offering of notes or underlying shares of common stock by any holder not identified above, the registration statement of which this prospectus is a part will be further amended by a post-effective amendment to set forth the name of and aggregate amount of notes and shares of underlying common stock beneficially owned by the selling security holder intending to sell such notes or underlying common stock. The prospectus, as amended, will also disclose whether any selling security holder selling notes or underlying shares of common stock in connection with such prospectus has held any position or office with, has been employed by or otherwise has had a material relationship with us during the three years prior to the date of the prospectus, if such information has not already been disclosed herein.

PLAN OF DISTRIBUTION

We will not receive any of the proceeds of the sale of the notes and the underlying common stock offered by this prospectus. The notes and the underlying common stock may be sold from time to time to purchasers:

- directly by the selling security holders; or
- through underwriters, broker-dealers or agents who may receive compensation in the form of discounts, concessions or commissions from the selling security holders or the purchasers of the notes and the underlying common stock.

The selling security holders and any underwriters, broker-dealers or agents who participate in the distribution of the notes and the underlying common stock may be deemed to be "underwriters" within the meaning of the Securities Act. As a result, any profits on the sale of the underlying common stock by selling security holders and any discounts, commissions or concessions received by any such broker-dealers or agents may be deemed to be underwriting discounts and commissions under the Securities Act. If the selling security holders were deemed to be underwriters, the selling security holders may be subject to statutory liabilities including, but not limited to, those of Sections 11, 12 and 17 of the Securities Act and Rule 10b-5 under the Exchange Act.

If the notes and the underlying common stock are sold through underwriters or broker-dealers, the selling security holders will be responsible for underwriting discounts or commissions or agent's commissions.

The notes and the underlying common stock may be sold in one or more transactions at:

- fixed prices;
- prevailing market prices at the time of sale;
- prices related to the prevailing market prices;
- varying prices determined at the time of sale; or
- negotiated prices.

These sales may be effected in transactions:

- on any national securities exchange or quotation service on which the notes and underlying common stock may be listed or quoted at the time of the sale, including the Nasdaq National Market in the case of the common stock;
- in the over-the-counter market;
- in transactions otherwise than on such exchanges or services or in the over-the-counter market; or
- through the writing of options, whether the options are listed on an options exchange or otherwise.

These transactions may include block transactions or crosses. Crosses are transactions in which the same broker acts as an agent on both sides of the transaction.

In connection with the sales of the notes and the underlying common stock or otherwise, the selling security holders may enter into hedging transactions with broker-dealers or other financial institutions. These broker-dealers may in turn engage in short sales of the notes and the underlying common stock in the course of hedging their positions. The selling security holders may also sell the notes and the underlying common stock short and deliver notes and the underlying common stock to

close out short positions, or loan or pledge notes and the underlying common stock to broker-dealers that, in turn, may sell the notes and the underlying common stock.

To our knowledge, there are currently no plans, arrangements or understandings between any selling security holders and any underwriter, broker-dealer or agent regarding the sale of the notes and the underlying common stock by the selling security holders. Selling security holders may decide not to sell all or a portion of the notes and the underlying common stock offered by them pursuant to this prospectus or may decide not to sell notes or the underlying common stock under this prospectus. In addition, any selling security holder may transfer, devise or give the notes and the underlying common stock by other means not described in this prospectus. Any notes or underlying common stock covered by this prospectus that qualify for sale pursuant to Rule 144 or Rule 144A under the Securities Act, or Regulation S under the Securities Act, may be sold under Rule 144 or Rule 144A or Regulation S rather than pursuant to this prospectus.

The aggregate proceeds to the selling security holders from the sale of the notes or the underlying common stock offered pursuant to this prospectus will be the purchase price of such securities less discounts and commissions, if any. Each of the selling security holders reserves the right to accept and, together with their agents from time to time, reject, in whole or part, any proposed purchase of notes or common stock to be made directly or through their agents. We will not receive any of the proceeds from this offering.

Our common stock is listed on the Nasdaq National Market under the symbol "JBLU." We do not intend to apply for listing of the notes on any securities exchange or for quotation through Nasdaq. The notes originally issued in the private offering are eligible for trading on the PORTAL market. However, notes sold pursuant to this prospectus will no longer be eligible for trading on the PORTAL market. Accordingly, no assurance can be given as to the development of liquidity or any trading market for the notes.

The selling security holders and any other persons participating in the distribution of the notes or underlying common stock will be subject to the Exchange Act and the rules and regulations thereunder. The Exchange Act rules include, without limitation, Regulation M, which may limit the timing of purchases and sales of any of the notes and the underlying common stock by the selling security holders and any such other person. In addition, Regulation M of the Exchange Act may restrict the ability of any person engaged in the distribution of the notes and the underlying common stock to engage in market-making activities with respect to the particular notes and underlying common stock being distributed for a period of up to five business days prior to the commencement of such distribution. This may affect the marketability of the notes and the underlying common stock and the ability to engage in market-making activities with respect to the notes and the underlying common stock.

If required with respect to a particular offering of the notes and the underlying common stock, the names of the selling security holders, the respective purchase prices and public offering prices, the names of any agent, dealer or underwriter, and any applicable commissions or discounts related to the particular offer will be set forth in an accompanying prospectus supplement or, if appropriate, a post-effective amendment to the registration statement of which this prospectus is a part.

Under the registration rights agreement entered into at the closing of the private offering of the Notes on July 15, 2003, we agreed to use our reasonable best efforts to keep the registration statement of which this prospectus is a part effective until the earlier of when all of the registrable securities have been sold pursuant to the registration statement or pursuant to Rule 144 or the expiration of the holding period under Rule 144(k) under the Securities Act or any successor provision.

We are permitted to prohibit offers and sales of securities pursuant to this prospectus under certain circumstances relating to pending corporate developments, public filings with the SEC and

other material events for a period not to exceed 30 days in the aggregate in any three-month period or 90 days in the aggregate in any 12-month period. Notwithstanding the foregoing, we will be permitted to suspend the use of the prospectus for up to 60 days in any three-month period under certain circumstances relating to possible acquisitions, financings or other similar transactions. We also agreed to pay liquidated damages to certain holders of the notes and shares of common stock issuable upon conversion of the notes if the registration statement of which this prospectus is a part is not timely filed or made effective or if the prospectus is unavailable for periods in excess of those permitted. See "Description of Notes Registration Rights of the Noteholders."

Under the registration rights agreement, we and the selling security holders have each agreed to indemnify the other against certain liabilities, including certain liabilities under the Securities Act, or will be entitled to contribution in connection with these liabilities.

We have agreed to pay substantially all of the expenses incidental to the registration, offering and sale of the notes and the underlying common stock to the public, other than selling and certain legal expenses of the selling security holders.

LEGAL MATTERS

The validity of the notes and the shares of our common stock issuable upon conversion of the notes offered is being passed upon for us by Nixon Peabody LLP, New York, New York.

EXPERTS

The consolidated financial statements and schedule of JetBlue Airways Corporation at December 31, 2003 and 2002, and for each of the three years in the period ended December 31, 2003, appearing in JetBlue Airways Corporation's Annual Report on Form 10-K for the year ended December 31, 2003, have been audited by Ernst & Young LLP, independent auditors, as set forth in their reports thereon included therein and incorporated herein by reference. Such consolidated financial statements and schedule are incorporated herein by reference in reliance upon such reports given on the authority of such firm as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, proxy statements and other information with the SEC under the Securities Exchange Act of 1934. You may read and copy any document we file at the SEC's Public Reference Room located at 450 Fifth Street, N.W., Washington, D.C. 20549. You may obtain information on the operation of the public reference room by calling the SEC at 1-800-SEC-0330. Our SEC filings also are available from the SEC's Internet site at http://www.sec.gov, which contains reports, proxy and information statements, and other information regarding issuers that file electronically.

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. Any statement contained or incorporated by reference in this prospectus shall be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained herein, or in any subsequently filed document which also is incorporated by reference herein, modifies or supersedes such earlier statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this prospectus. We incorporate by reference the documents listed below:

our Annual Report on Form 10-K for the fiscal year ended December 31, 2003, filed on February 11, 2004; and

our Current Report on Form 8-K, filed on March 31, 2004.

All documents we file pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this prospectus and before all of the common stock offered by this prospectus is sold are incorporated by reference in this prospectus from the date of filing of the documents, except for information furnished under Item 9 or 12 of Form 8-K, which is not deemed filed and not incorporated by reference herein. Information that we file with the SEC will automatically update and may replace information in this prospectus and information previously filed with the SEC.

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, by requesting them from us in writing or by telephone at the following address:

JetBlue Airways Corporation
118-29 Queens Boulevard
Forest Hills, New York 11375
Attention: Legal Department
(718) 709-3026

Documents may also be available on our website at *investor.jetblue.com*. Information contained on our website is not a prospectus and does not constitute part of this prospectus.

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 14. Other Expenses of Issuance and Distribution.

The following table sets forth the various expenses payable by the Registrant in connection with the distribution of the securities being registered. All of the amounts shown are estimated except the Securities and Exchange Commission registration fee.

SEC registration fee	$	14,158
Printing and engraving expenses		20,000
Legal fees and expenses		40,000
Accounting fees and expenses		15,000
Miscellaneous fees and expenses		10,842
Total	$	100,000

Item 15. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law authorizes a court to award or a corporation's board of directors to grant indemnification to directors and officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities (including reimbursement for expenses incurred) arising under the Securities Act of 1933, as amended (the "Securities Act"). Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. Article VIII, Section 6, of the Registrant's Bylaws provides for mandatory indemnification of its directors and officers and permissible indemnification of employees and other agents to the maximum extent permitted by the Delaware General Corporation Law. The Registrant's Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation") provides that, pursuant to Delaware law, its directors shall not be liable for monetary damages for breach of the directors' fiduciary duty as directors to the Company or its stockholders. This provision in the Certificate of Incorporation does not eliminate the directors' fiduciary duty, and in appropriate circumstances equitable remedies such as injunctive or other forms of non-monetary relief will remain available under Delaware law. In addition, each director will continue to be subject to liability for breach of the director's duty of loyalty to the Company for acts or omissions not in good faith or involving intentional misconduct, for knowing violations of law, for actions leading to improper personal benefit to the director, and for payment of dividends or approval of stock repurchases or redemptions that are unlawful under Delaware law. The provision also does not affect a director's responsibilities under any other law, such as the federal securities laws or state or federal environmental laws. The Registrant has entered into Indemnification Agreements with its officers and directors, a form of which is attached as Exhibit 10.20 to its Registration Statement on Form S-1, filed on February 12, 2002. The Indemnification Agreements provide the Registrant's officers and directors with further indemnification to the maximum extent permitted by the Delaware General Corporation Law. The Registrant maintains directors and officers liability insurance.

Item 16. Exhibits and Financial Statement Schedules.

(a)

Exhibits

The following exhibits are filed herewith or incorporated by reference.

Exhibit Number	Exhibit Description
4.1	Indenture, dated as of July 15, 2003, between JetBlue Airways Corporation and Wilmington Trust Company, as Trustee, relating to the 3 1/2% Convertible Notes due 2033 issued by JetBlue Airways Corporation.(1)
4.2	Registration Rights Agreement, dated as of July 15, 2003, among JetBlue Airways Corporation and Morgan Stanley & Co., Incorporated, Raymond James & Associates, Inc. and Blaylock & Partners, L.P.(1)
4.3	Form of 3 1/2% Convertible Note due 2033 (included in Exhibit 4.1).
4.4	Specimen Stock Certificate.(2)
4.5	Amended and Restated Registration Rights Agreement, dated as of August 10, 2000, by and among JetBlue Airways Corporation and the Stockholders named therein.(2)
4.6	Amendment No. 1, dated as of July 2, 2003, to Amended and Restated Registrations Rights Agreement, dated as of August 10, 2000, by and among JetBlue Airways Corporation and the Stockholders named therein.(3)
4.7	Stockholder Rights Agreement.(4)
4.8	Summary of Stockholder Rights Agreement.(2)
5.1	Opinion of Nixon Peabody LLP.(5)
12.1	Computation of Ratio of Earnings to Fixed Charges.(6)
23.1	Consent of Nixon Peabody LLP (included in Exhibit 5.1).(5)
23.2	Consent of Ernst & Young LLP.
24.1	Powers of Attorney (included on the signature page).
25.1	Statement of Eligibility of Wilmington Trust Company on Form T-1.(5)

(1) Previously filed with the SEC as an exhibit to and incorporated herein by reference from our Quarterly Report on Form 10-Q for the quarter ended June 30, 2003, filed on July 28, 2003.

(2) Previously filed with the SEC as an exhibit to and incorporated herein by reference from our Registration Statement on Form S-1, filed on February 12, 2002, as amended March 19, 2002, April 1, 2002 and April 10, 2002, File No. 333-82576.

(3) Previously filed with the SEC as an exhibit to and incorporated herein by reference from our Registration Statement on Form S-3, filed on July 3, 2003, as amended July 10, 2003, File No. 333-106781.

(4)

Previously filed with the SEC as an exhibit to and incorporated herein by reference from our Annual Report on Form 10-K for the year ended December 31, 2002, filed on February 18, 2003.

(5)

Previously filed with the SEC as an exhibit to this Registration Statement on Form S-3, filed on September 8, 2003, File No. 333-108616.

(6)

Previously filed with the SEC as an exhibit to and incorporated herein by reference from our Annual Report on Form 10-K for the year ended December 31, 2003, filed on February 11, 2004.

Item 17. Undertakings.

(a)

The undersigned registrant hereby undertakes:

(1)

To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i)

To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii)

To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii)

To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

(2)

That, for the purposes of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3)

To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b)

The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c)

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question of whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that is has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of New York, State of New York, on April 19, 2004.

JETBLUE AIRWAYS CORPORATION

By: /s/ HOLLY NELSON

Holly Nelson
Vice President and Controller

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints John Owen and Holly Nelson, and each or either of them, his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement on Form S-3 and to file same, with all exhibits thereto and, other documents in connection therewith, with the Securities and Exchange Commission, granting unto each said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the foregoing, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent or either of them, or their or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Name	Title	Date
/s/ DAVID NEELEMAN* David Neeleman	Chief Executive Officer and Director (Principal Executive Officer)	April 19, 2004
/s/ JOHN OWEN* John Owen	Chief Financial Officer (Principal Financial Officer)	April 19, 2004
/s/ HOLLY NELSON Holly Nelson	Vice President and Controller (Principal Accounting Officer)	April 19, 2004
/s/ DAVID BARGER* David Barger	Director	April 19, 2004
/s/ DAVID CHECKETTS* David Checketts	Director	April 19, 2004

/s/ KIM CLARK* Kim Clark	Director	April 19, 2004
/s/ JOY COVEY* Joy Covey	Director	April 19, 2004
/s/ MICHAEL LAZARUS* Michael Lazarus	Director	April 19, 2004
/s/ NEAL MOSZKOWSKI* Neal Moszkowski	Director	April 19, 2004
/s/ JOEL PETERSON* Joel Peterson	Director	April 19, 2004
/s/ ANN RHOADES* Ann Rhoades	Director	April 19, 2004
/s/ FRANK SICA* Frank Sica	Director	April 19, 2004

*By: /s/ HOLLY NELSON
Holly Nelson
Attorney-in-fact

EXHIBIT INDEX

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(5) Previously filed with the SEC as an exhibit to this Registration Statement on Form S-3, filed on September 8, 2003, File No. 333-108616.

(6)

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