US BANCORP \DE\
Form S-4/A
June 03, 2010

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As filed with the Securities and Exchange Commission on June 3, 2010

Registration No. 333-166706

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Amendment No. 2
to
Form S-4
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

U.S. Bancorp
(Exact name of registrant as specified in its charter)

Delaware	**6711**	**41-0255900**
(State or other jurisdiction of incorporation or organization)	*(Primary Standard Industrial Classification Code Number)*	*(I.R.S. Employer Identification Number)*

800 Nicollet Mall
Minneapolis, Minnesota 55402
(651) 446-3000
(Address, including zip code, and telephone number, including area code, of registrant s principal executive offices)

Lee R. Mitau, Esq.
800 Nicollet Mall
Minneapolis, Minnesota 55402
(651) 466-3000
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

James J. Barresi, Esq.
Aaron A. Seamon, Esq.
Squire, Sanders & Dempsey L.L.P.
221 E. 4th Street, Suite 2900
Cincinnati, Ohio 45202
(513) 361-1200

Michael J. Schiavone, Esq.
Lona Nallengara, Esq.
Shearman & Sterling LLP
599 Lexington Avenue
New York, New York 10022
(212) 848-4000

Approximate date of commencement of proposed sale of the securities to the public: As soon as practicable after this registration statement becomes effective.

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

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer þ	Accelerated filer o	Non-accelerated filer o (Do not check if a smaller reporting company)	Smaller reporting company o

If applicable, place an X in the box to designate the appropriate rule provision relied upon in conducting this transaction:

Exchange Act Rule 13e-4(i) (Cross-Border Issuer Tender Offer) o

Exchange Act Rule 14d-1(d) (Cross-Border Third Party Tender Offer) o

CALCULATION OF REGISTRATION FEE

Title of Each Class of	**Proposed Maximum**	**Proposed Maximum Aggregate**	**Amount of Registration**

Securities to be Registered	Amount to be Registered(1)	Offering Price per Share(2)	Offering Price(2)	Fee(3)(4)
Depositary Shares, representing interests in shares of Series A Non-Cumulative Perpetual Preferred Stock, $100,000 liquidation preference per share	1,250,000	$ 1,000	$ 1,250,000,000	$ 89,125
Series A Non-Cumulative Perpetual Preferred Stock, $100,000 liquidation preference per share(5)	12,500			

(1) This Registration Statement registers the estimated maximum number of depositary shares, representing interests in shares of Series A Non-Cumulative Perpetual Preferred Stock, $100,000 liquidation preference per share (the Preferred Stock), of U.S. Bancorp (the Registrant), that may be issued in connection with the exchange offer (Exchange Offer) by the Registrant for 6.189% Fixed-to-Floating Rate Normal ITS issued by USB Capital IX (the Normal ITS).

(2) Estimated solely for purpose of calculating the registration fee pursuant to Rule 457(f)(2) under the Securities Act of 1933, as amended (the Securities Act).

(3) Computed in accordance with Section 6(b) of the Securities Act by multiplying .00007130 by the proposed maximum aggregate offering price.

(4) Paid at the time of initial filing of this Registration Statement on Form S-4 with the Securities and Exchange Commission on May 10, 2010.

(5) Each depositary share represents a 1/100th ownership interest in a share of Preferred Stock. Because no separate consideration will be received by the Registrant for the Preferred Stock, no registration fee is required with respect to these securities.

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

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The information in this Prospectus and Consent Solicitation Statement may change. We may not complete the exchange offer or issue these securities until the registration statement filed with the Securities and Exchange Commission is effective. This Prospectus and Consent Solicitation Statement is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

DATED JUNE 3, 2010

PRELIMINARY PROSPECTUS AND CONSENT SOLICITATION STATEMENT

Offer to Exchange
Up to 1,250,000 Depositary Shares, Each Representing a 1/100th Interest in a Share of Series A Non-Cumulative Perpetual Preferred Stock, $100,000 liquidation preference per share (the Depositary Shares)
for
Any and all of the 1,250,000 outstanding 6.189% Fixed-to-Floating Rate Normal ITS issued by USB Capital IX, each with a liquidation amount of $1,000 (the Normal ITS) CUSIP No. 91731K AA 8
and
Solicitation of Consents for Proposed Amendments to the Related Trust Agreement and Junior Subordinated Indenture

THE EXCHANGE OFFER AND THE CONSENT SOLICITATION WILL EXPIRE AT 11:59 P.M., NEW YORK CITY TIME, ON JUNE 7, 2010, UNLESS THE OFFER IS EXTENDED OR EARLIER TERMINATED BY US (THE EXPIRATION DATE). TENDERS MAY BE WITHDRAWN, AND CONSENTS MAY BE REVOKED, AT ANY TIME AT OR PRIOR TO THE EXPIRATION DATE.

We are offering to exchange up to 1,250,000 Depositary Shares for any and all of the 1,250,000 outstanding Normal ITS issued by USB Capital IX (the Trust), on the terms and subject to the conditions set forth in this Prospectus and Consent Solicitation Statement and in the accompanying letter of transmittal and consent (the Letter of Transmittal and Consent). We refer to this offer as the Exchange Offer.

For each Normal ITS that we accept for exchange in accordance with the terms of the Exchange Offer, the tendering holder will receive one Depositary Share. Each Depositary Share represents a 1/100th ownership interest in a share of our Series A Non-Cumulative Perpetual Preferred Stock, $100,000 liquidation preference per share (the Preferred Stock). We will also pay cash in an amount equal to any accrued and unpaid distributions on each Normal ITS accepted in the Exchange Offer up to, but excluding, the settlement date (defined below), which, assuming the Exchange Offer expires on the current Expiration Date of June 7, 2010, will be $9.46 for each Normal ITS. Each share of Preferred Stock will be identical in all respects to the Preferred Stock to be issued upon settlement of the stock purchase contracts forming part of the Normal ITS, except that non-cumulative dividends, if declared, will accrue on the Preferred Stock underlying the Depositary Shares at a rate of 7.189% *per annum* until the later of April 15, 2011 and the stock purchase date (defined below). During that same period, holders of the Normal ITS will be entitled to receive distributions at a rate of 6.189% *per annum*.

In conjunction with the Exchange Offer, we are also hereby soliciting (the Consent Solicitation) consents (the Consents) from holders of at least a majority in liquidation amount of the Normal ITS (which corresponds to at least a majority of the Normal ITS) to the Proposed Amendments (defined below). Holders of Normal ITS may deliver

Consents in respect of their Normal ITS in the Consent Solicitation without also tendering such Normal ITS into the Exchange Offer. Such holders will be eligible to receive a cash consent fee of $1.25 (the Consent Fee) for each Normal ITS for which a Consent is properly received and not properly withdrawn at or prior to the Expiration Date. However, such holders will not receive the Depositary Shares to be issued in the Exchange Offer and will only receive the Consent Fee. The Consent Fee is equal to 0.125% of the liquidation amount of each Normal ITS.

We encourage you to read and carefully consider this Prospectus and Consent Solicitation Statement in its entirety, in particular the risk factors beginning on page 24.

The Normal ITS are listed on the New York Stock Exchange under the symbol USBTP. We intend to apply for listing of the Depositary Shares on the New York Stock Exchange under the symbol USB Pr A. If approved for listing, we expect trading of the Depositary Shares on the New York Stock Exchange to commence within a 30-day period after the initial delivery of the Depositary Shares.

None of U.S. Bancorp, the trustees of the Trust, the Dealer Managers, the Information and Exchange Agent or any other person is making any recommendation as to whether you should tender your Normal ITS or consent to the Proposed Amendments. You must make your own decision after reading this Prospectus and Consent Solicitation Statement and the documents incorporated by reference herein and consulting with your advisor.

The Depositary Shares are not savings accounts, deposits or other obligations of any of our bank or non-bank subsidiaries and are not insured by the Federal Deposit Insurance Corporation or any other governmental agency.

Neither the Securities and Exchange Commission (the SEC), any state securities commission, the Federal Deposit Insurance Corporation, nor any other regulatory body has approved or disapproved of the Exchange Offer or of the securities to be issued in the Exchange Offer or determined if this Prospectus and Consent Solicitation Statement is truthful or complete. Any representation to the contrary is a criminal offense.

Lead Dealer Manager and Structuring Advisor	*Co-Dealer Manager*
Deutsche Bank Securities	**U.S. Bancorp Investments, Inc.**

, 2010

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Normal ITS validly tendered and not withdrawn will be subject to proration as described in this Prospectus and Consent Solicitation Statement if we determine there is any likelihood that the New York Stock Exchange continued-listing condition described below may not be satisfied based on consultation with the New York Stock Exchange. Any proration will not revoke a holder s Consents to the Proposed Amendments. If proration occurs, a holder will receive the Consent Fee with respect to all validly tendered Normal ITS that were not accepted for exchange in the Exchange Offer due to such proration.

In the Consent Solicitation, upon the terms and subject to the conditions specified in this Prospectus and Consent Solicitation Statement, we are soliciting Consents from holders of at least a majority in liquidation amount of the Normal ITS (which corresponds to at least a majority of the Normal ITS) to the following proposed amendments (the Proposed Amendments):

proposed amendments to the trust agreement of the Trust that would allow us to retire the Normal ITS that we acquire in the Exchange Offer and authorize the trustees of the Trust to approve the proposed amendments to the collateral agreement and stock purchase contract agreement described below,

proposed amendments to the indenture pursuant to which the junior subordinated notes which currently underlie the Normal ITS were issued that we believe will facilitate the remarketing of the junior subordinated notes, and

proposed amendments to the collateral agreement and stock purchase contract agreement relating to the Normal ITS that would allow for the settlement of the Exchange Offer and the related cancellation of the junior subordinated notes and stock purchase contracts that correspond to the Normal ITS acquired in the Exchange Offer.

For more information on the Consent Solicitation and the Proposed Amendments, see The Exchange Offer and the Consent Solicitation The Consent Solicitation.

Holders that validly tender their Normal ITS pursuant to the Exchange Offer will be required to, and will be deemed to have, validly delivered their Consents. Holders of Normal ITS may validly deliver their Consents without tendering the related Normal ITS. If the requisite Consents are received and the Proposed Amendments become operative, we will pay each holder of Normal ITS that validly delivers and does not validly revoke Consents in respect of such Normal ITS, without also tendering its Normal ITS into the Exchange Offer, the Consent Fee of $1.25 for each Normal ITS for which a Consent is properly received and not properly withdrawn at or prior to the Expiration Date. Such holders, however, will not receive the Depositary Shares to be issued in the Exchange Offer and will only receive the Consent Fee. The Consent Fee is equal to 0.125% of the liquidation amount of each Normal ITS.

The purpose of the Exchange Offer is to improve our capital structure by replacing the Normal ITS, which are hybrid securities, with the Preferred Stock, which is a more traditional form of equity capital. In addition, by retiring the junior subordinated notes that correspond to the Normal ITS that we acquire in the Exchange Offer, we believe we will facilitate any future remarketing of the junior subordinated notes. We aim to further facilitate any such remarketing by adopting the Proposed Amendments in the Consent Solicitation.

The Exchange Offer and the Consent Solicitation will expire at 11:59 p.m., New York City time, on June 7, 2010 (unless we extend it). We refer to such date and time (as it may be extended) as the Expiration Date. **You may withdraw any Normal ITS that you tender at any time prior to the Expiration Date (and, if not previously accepted for exchange, after the expiration of 40 business days commencing on May 10, 2010). A valid withdrawal of the Normal ITS will be deemed a revocation of any related Consents. Consents delivered that are**

accompanied by a tender of Normal ITS may only be validly revoked by validly withdrawing the corresponding previously-tendered Normal ITS at or prior to the Expiration Date. Any Consents delivered that are not accompanied by a tender of Normal ITS may be revoked at any time at or prior to the Expiration Date.

The Depositary Shares will be issued, and Consent Fees will be paid, on the settlement date for the Exchange Offer, assuming that the conditions to such payments are satisfied. Subject to the terms and conditions of the Exchange Offer, the settlement date for the Exchange Offer will occur promptly following the Expiration Date. Assuming that the Exchange Offer and Consent Solicitation are not extended, we expect that the settlement date will be on or about the third business day following the Expiration Date.

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The Exchange Offer is subject to the conditions set forth below in the section entitled The Exchange Offer and the Consent Solicitation Conditions of the Exchange Offer, including, among other things:

- the SEC having declared effective the registration statement of which this Prospectus and Consent Solicitation Statement forms a part (which condition cannot be waived by us),
- the receipt of valid Consents from holders of at least a majority in aggregate liquidation amount of the outstanding Normal ITS approving the Proposed Amendments, and
- the continued listing of the Normal ITS on the New York Stock Exchange after the settlement date (which condition cannot be waived by us).

Our obligation to consummate the exchange of Depositary Shares for Normal ITS is not subject to any minimum tender condition. We reserve the right, subject to applicable law, to terminate or extend the Exchange Offer and the Consent Solicitation if any condition of the Exchange Offer is not satisfied or waived by the Expiration Date and otherwise to amend the terms of the Exchange Offer in any respect.

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This Prospectus and Consent Solicitation Statement is part of a registration statement on Form S-4 that we have filed with the SEC. You should carefully read this Prospectus and Consent Solicitation Statement, together with the registration statement, the exhibits thereto and the additional information described below under Where You Can Find More Information, prior to deciding whether or not to tender your Normal ITS.

This Prospectus and Consent Solicitation Statement incorporates by reference important business and financial information about us that is not included in or delivered with this Prospectus and Consent Solicitation Statement. This information is available without charge to you upon written or oral request. If you would like a copy of any of this information, please submit your request to U.S. Bancorp, 800 Nicollet Mall, Minneapolis, Minnesota 55402, Attention: Investor Relations Department ((612) 303-0799 or (866) 775-9668). In order to ensure timely delivery of such documents, you must request this information no later than five business days before the date you must make your investment decision. Accordingly, you should make any request for documents by May 28, 2010 to ensure timely delivery of documents prior to the Expiration Date.

We have not authorized anyone to provide any information or to make any representations other than those contained in this Prospectus and Consent Solicitation Statement. We take no responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. You should assume that the information contained or incorporated by reference in this Prospectus and Consent Solicitation Statement is accurate only as of the date hereof or as of the date of the document incorporated by reference, as applicable. We are not making an offer of these securities in any jurisdiction where such offer is not permitted.

IMPORTANT

All of the Normal ITS were issued in book-entry form, and all of the Normal ITS are currently represented by one or more global certificates held for the account of The Depository Trust Company (DTC). You may tender your Normal ITS by transferring the Normal ITS through DTC s Automated Tender Offer Program (ATOP) or following the other procedures described below under the section entitled The Exchange Offer and the Consent Solicitation Procedures for Participating in the Exchange Offer and the Consent Solicitation.

We are not providing for guaranteed delivery procedures and therefore you must allow sufficient time for the necessary tender procedures to be completed during normal business hours of DTC at or prior to the Expiration Date of the Exchange Offer. If you hold your Normal ITS through a broker, dealer, commercial bank, trust company or other nominee, you should consider that such entity may require you to take action with respect to the Exchange Offer a number of days before the Expiration Date in order for such entity to tender Normal ITS on your behalf at or prior to the Expiration Date. Tenders not received by D.F. King & Co., Inc., as information and exchange agent for the Exchange Offer (the Information and Exchange Agent), at or prior to the Expiration Date will be disregarded and of no effect.

Unless otherwise indicated or unless the context requires otherwise, all references to we, us, our or similar references mean U.S. Bancorp.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any document we file at the SEC s public reference room at 100 F Street, N.E., Washington, D.C. 20549. You can also request copies of the documents, upon payment of a duplicating fee, by writing the Public Reference Section of the SEC. Please call the SEC at 1-800-SEC-0330 for further information on the public reference room. These SEC filings are also available to the public from the SEC s web site at http://www.sec.gov.

The SEC allows us to incorporate by reference the information we file with the SEC, which means that we can disclose important information to you by referring you to those documents. The information we incorporate by reference is considered to be part of this Prospectus and Consent Solicitation Statement. Information that we file later with the SEC will automatically update information in this Prospectus and Consent Solicitation Statement. We also filed a Schedule TO, as amended from time to time, pursuant to Rule 13e-1 under the Exchange Act (the Schedule TO) in connection with the Exchange Offer. We will amend the Schedule TO to report any material changes to the information set forth therein, including to incorporate by reference any additional documents filed by us after the date hereof pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act. In all cases, you should rely on the later information over different information included in this Prospectus and Consent Solicitation Statement. We incorporate by reference the documents listed below and any documents subsequently filed (but not documents that are furnished, unless expressly incorporated herein by a reference in such furnished document) with the SEC under Section 13(a), 13(c), 14 or 15(d) of the Exchange Act on or after the date of this Prospectus and Consent Solicitation Statement and before the completion of the Exchange Offer:

Annual Report on Form 10-K for the year ended December 31, 2009;

Quarterly Report on Form 10-Q for the quarter ended March 31, 2010; and

Current Reports on Form 8-K filed on January 20, 2010 (two reports), February 4, 2010, February 18, 2010, March 10, 2010, April 20, 2010 (two reports), April 22, 2010 and May 10, 2010.

You may request a copy of these filings, at no cost, by writing or telephoning us at the following address:

U.S. Bancorp
800 Nicollet Mall
Minneapolis, Minnesota 55402
Attention: Investor Relations Department
(612) 303-0799 or (866) 775-9668

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FORWARD-LOOKING STATEMENTS

This Prospectus and Consent Solicitation Statement contains or incorporates by reference forward-looking statements about U.S. Bancorp. Statements that are not historical or current facts, including statements about beliefs and expectations, are forward-looking statements and are based on the information available to, and assumptions and estimates made by, management as of the date made. These forward-looking statements cover, among other things, anticipated future revenue and expenses and the future plans and prospects of U.S. Bancorp. Forward-looking statements involve inherent risks and uncertainties, and important factors could cause actual results to differ materially from those anticipated. Global and domestic economies could fail to recover from the recent economic downturn or could experience another severe contraction, which could adversely affect our revenues and the values of our assets and liabilities. Global financial markets could experience a recurrence of significant turbulence, which could reduce the availability of funding to certain financial institutions and lead to a tightening of credit, a reduction of business activity, and increased market volatility. Stress in the commercial real estate markets, as well as a delay or failure of recovery in the residential real estate markets, could cause additional credit losses and deterioration in asset values. In addition, our business and financial performance could be impacted as the financial industry restructures in the current environment, by increased regulation of financial institutions or other effects of recently enacted or future legislation, and by changes in the competitive landscape. Our results could also be adversely affected by continued deterioration in general business and economic conditions; changes in interest rates; deterioration in the credit quality of our loan portfolios or in the value of the collateral securing those loans; deterioration in the value of securities held in our investment securities portfolio; legal and regulatory developments; increased competition from both banks and non-banks; changes in customer behavior and preferences; effects of mergers and acquisitions and related integration; effects of critical accounting policies and judgments; and management s ability to effectively manage credit risk, market risk, operational risk, legal risk, and regulatory and compliance risk.

For discussion of these and other risks that may cause actual results to differ from expectations, refer to our Annual Report on Form 10-K for the year ended December 31, 2009, which is incorporated herein by reference, including the sections entitled Risk Factors and Corporate Risk Profile contained in Exhibit 13, and all subsequent filings with the Securities and Exchange Commission under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934.

QUESTIONS AND ANSWERS ABOUT THE EXCHANGE OFFER AND THE CONSENT SOLICITATION

The following are certain questions regarding the Exchange Offer and the Consent Solicitation that you may have as a holder of the Normal ITS and the answers to those questions. To fully understand the Exchange Offer and the Consent Solicitation and the considerations that may be important to your decision whether to participate, you should carefully read this Prospectus and Consent Solicitation Statement in its entirety, including the section below entitled Risk Factors, as well as the information incorporated by reference herein. For further information about us, see the section above entitled Where You Can Find More Information.

Who is making the Exchange Offer?

U.S. Bancorp, the issuer of the Preferred Stock that will underlie the Depositary Shares, is making the Exchange Offer to holders of Normal ITS issued by the Trust.

What is the purpose of the Exchange Offer?

We are conducting the Exchange Offer in order to improve our capital structure by replacing the Normal ITS, which are hybrid securities, with the Preferred Stock, which is a more traditional form of equity capital. In addition, by retiring the junior subordinated notes that correspond to the Normal ITS that we acquire in the Exchange Offer, we believe we will facilitate any future remarketing of the junior subordinated notes underlying the Normal ITS. We intend to further facilitate any future remarketing by adopting the Proposed Amendments in the Consent Solicitation.

The Normal ITS represent undivided beneficial interests in the Trust. The sole assets and only source of funds to make payments on the Normal ITS are junior subordinated notes that we issued to the Trust, which we refer to as the Underlying Notes, and certain stock purchase contracts, which we refer to as the stock purchase contracts, pursuant to which the Trust is obligated to purchase shares of Preferred Stock from us on a date, which we refer to as the Stock Purchase Date, that we expect to be April 15, 2011 but which could be deferred for quarterly periods until as late as April 15, 2012.

The Normal ITS are currently treated as a restricted form of tier 1 capital under the capital adequacy guidelines for bank holding companies as promulgated by the Board of Governors of the Federal Reserve System, which we refer to as the Federal Reserve. The Preferred Stock issued in connection with the Exchange Offer will be treated as an unrestricted form of tier 1 capital under such capital adequacy guidelines. These guidelines place greater limitations on the amount of restricted tier 1 capital that we may have.

The Underlying Notes are currently recorded as indebtedness on our balance sheet. Exchanging the Normal ITS for Preferred Stock in the Exchange Offer will result in an increase in our total shareholders equity, as a result of the increase to our equity in the form of preferred stock and a corresponding reduction to our outstanding indebtedness due to the cancellation of the aggregate principal amount of Underlying Notes corresponding to the Normal ITS that are exchanged. However, the issuance of Depositary Shares in exchange for Normal ITS will result in additional distributions being paid by us of $8.47 per Depositary Share from the settlement date until April 15, 2011. For additional information regarding the effects of the Exchange Offer on our capitalization, see the section below entitled Capitalization.

In order to provide the Trust with the funds necessary to pay the purchase price of the Preferred Stock under the stock purchase contracts, the Trust is obligated to attempt to sell the Underlying Notes in a process referred to as remarketing. Pursuant to a remarketing agreement, the Trust must first attempt to remarket the Underlying Notes approximately one month prior to the Stock Purchase Date and must continue to attempt to remarket the Underlying Notes on a quarterly basis until the earlier of a successful remarketing and March 15,

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2012, subject to certain limitations, conditions and other requirements. As a result of the Exchange Offer, we expect to reduce the number of Normal ITS that are outstanding and to retire the Underlying Notes corresponding to the Normal ITS that are accepted for exchange. This will reduce the aggregate principal amount of Underlying Notes that the Trust will be required to remarket, which we believe will facilitate the remarketing. A successful remarketing would benefit us because it would result in our receiving cash payments upon the settlement of the stock purchase contracts that correspond to the Normal ITS. If an attempted remarketing fails, our receipt of any cash proceeds from the sale of the remarketed Underlying Notes would be delayed, and if all remarketing attempts fail, the Underlying Notes would be returned to us in full satisfaction of the Trust s obligation to pay the purchase price for the Preferred Stock and we would not receive any cash proceeds from a sale of the remarketed Underlying Notes.

What is the purpose of the Consent Solicitation?

The purpose of the Consent Solicitation is to obtain Consents from the holders of Normal ITS to certain amendments, which we refer to as the Proposed Amendments, to the amended and restated trust agreement of the Trust, which we refer to as the Trust Agreement, the junior subordinated indenture governing the Underlying Notes, which we refer to as the Indenture, and the collateral agreement and stock purchase contract agreement relating to the Normal ITS. The proposed amendments to the Trust Agreement would allow us to retire the Normal ITS that we acquire in the Exchange Offer and would authorize the trustees of the Trust to approve the amendments and modifications to the collateral agreement and stock purchase contract agreement. The proposed amendments to the Indenture would permit additional flexibility in the terms, conditions and requirements applicable to the remarketing, which we believe will further facilitate a remarketing. The proposed amendments to the collateral agreement would allow the Underlying Notes corresponding to the Normal ITS acquired by us in the Exchange Offer to be released from their pledge and delivered to us for cancellation, and the proposed amendments to the stock purchase contract agreement would allow the cancellation of the stock purchase contracts corresponding to the Normal ITS acquired by us in the Exchange Offer and for the future issuance of Preferred Stock upon settlement of the Exchange Offer and the stock purchase contracts as a result of the Exchange Offer. Pursuant to the terms of the Trust Agreement and the Indenture, the Proposed Amendments require the receipt of Consents in respect of at least a majority in aggregate liquidation amount of the outstanding Normal ITS (which corresponds to at least a majority of the outstanding Normal ITS). For a more detailed description of the Consent Solicitation and the Proposed Amendments, see the sections below entitled The Exchange Offer and the Consent Solicitation Procedures for Participating in the Exchange Offer and the Consent Solicitation and The Proposed Amendments.

What securities are subject to the Exchange Offer and the Consent Solicitation?

We are offering to exchange the Normal ITS in the Exchange Offer and are soliciting Consents with respect to Normal ITS in the Consent Solicitation.

Each Normal ITS represents a beneficial interest in $1,000 principal amount of Underlying Notes and a 1/100th interest in a stock purchase contract, under which the Trust agrees to purchase, and we agree to sell, for $100,000, a share of Preferred Stock on the Stock Purchase Date. The Trust has pledged the Underlying Notes to secure the Trust s obligations under the stock purchase contracts.

We are not offering to exchange any Stripped ITS or Capital ITS (each as defined below) in the Exchange Offer and are not seeking the Consents of holders of Stripped ITS or Capital ITS in the Consent Solicitation. As of the date hereof there were no Stripped ITS or Capital ITS outstanding.

What are the key terms of the Exchange Offer and the Consent Solicitation?

In the Exchange Offer, we are offering to exchange up to 1,250,000 Depositary Shares, each representing a 1/100th ownership interest in a share of our Preferred Stock, for any and all of our 1,250,000 outstanding Normal ITS, on the terms and subject to the conditions set forth in this Prospectus and Consent Solicitation Statement and in the accompanying Letter of Transmittal and Consent. You will receive one Depositary Share for each Normal ITS that is validly tendered and accepted for exchange in the Exchange Offer.

In the Consent Solicitation, we are soliciting the Consents of holders of Normal ITS to the Proposed Amendments. The Consent Solicitation is being conducted upon the terms and subject to the conditions specified in this Prospectus and Consent Solicitation Statement, as more particularly described in The Exchange Offer and the Consent Solicitation The Consent Solicitation and The Proposed Amendments.

What consideration are we offering in exchange for the Normal ITS tendered in the Exchange Offer?

For each Normal ITS that we accept for exchange in accordance with the terms of the Exchange Offer, the tendering holder will receive one Depositary Share, representing a 1/100th ownership interest in a share of our Preferred Stock. A Depositary Share represents the same fraction of a share of Preferred Stock that the Trust would receive upon settlement of the stock purchase contract underlying each Normal ITS that you tender into the Exchange Offer. We will also pay cash in the amount of any accrued and unpaid distributions on each Normal ITS accepted in the Exchange Offer up to, but excluding, the settlement date of the Exchange Offer, which, assuming the Exchange Offer expires on the current Expiration Date of June 7, 2010, will be $9.46 for each normal ITS.

What are the terms of the Preferred Stock?

Each share of Preferred Stock will be identical in all respects to the Preferred Stock to be issued upon settlement of the stock purchase contracts forming part of the Normal ITS, except that non-cumulative dividends, if declared, will accrue on the Preferred Stock underlying the Depositary Shares at a rate of 7.189% *per annum* until the later of April 15, 2011 and the Stock Purchase Date. During that same period, holders of the Normal ITS will be entitled to receive distributions at a rate of 6.189% *per annum*. See Description of Preferred Stock.

The specific terms of the Preferred Stock will be specified in an amended certificate of designations adopted by our board of directors and filed with the Secretary of State of Delaware prior to the settlement date. The terms of the Preferred Stock will provide that if dividends on any shares of the Preferred Stock or any other class or series of preferred stock that ranks on parity with the Preferred Stock as to payment of dividends with similar voting rights have not been declared or paid for the equivalent of six dividend payments, whether or not for consecutive dividend periods, holders of the outstanding shares of Preferred Stock, together with holders of any other series of our preferred stock ranking equal with the Preferred Stock with similar voting rights, will be entitled to vote for the election of two additional directors to our board, subject to the terms and to the limited extent described under Description of Preferred Stock Voting. The terms of the Preferred Stock will provide voting rights with respect to authorizing or increasing the authorized amount of senior stock, or to making certain changes in the terms of the Preferred Stock. These amendments are being made to facilitate the listing of the Depositary Shares on the New York Stock Exchange.

What consideration are we offering in exchange for the Consents delivered in the Consent Solicitation?

If you validly tender your Normal ITS pursuant to the Exchange Offer you will be required to, and will be deemed to have, validly delivered your Consents to the Proposed Amendments. If the Exchange Offer is consummated, you will receive one Depositary Share for each Normal ITS accepted by us for exchange, and you will not receive the Consent Fee or any other separate consideration for your Consent. If, however, proration occurs, you will receive the Consent Fee with respect to all validly tendered Normal ITS that were not accepted for exchange in the Exchange Offer due to such proration, but you will still be deemed to have delivered a Consent to the Proposed Amendments with respect to all such Normal ITS.

Alternatively, you may validly deliver your Consents without tendering your related Normal ITS. If the requisite Consents are received and the Proposed Amendments become operative, we will pay each holder of Normal ITS that validly delivers and does not validly revoke Consents in respect of such Normal ITS without also tendering its Normal ITS into the Exchange Offer, the Consent Fee of $1.25 for each Normal ITS for which a Consent is properly received and not properly withdrawn at or prior to the Expiration Date. However, you will not receive the Depositary Shares to be issued in the Exchange Offer and, if the Exchange Offer is consummated, would only receive the Consent Fee. The Consent Fee is equal to 0.125% of the liquidation amount of each Normal ITS. If the requisite Consents are received and the Proposed Amendments become operative, all holders of Normal ITS who validly deliver and do not validly revoke their Consents without tendering their Normal ITS into the Exchange Offer will be entitled to the Consent Fee, and the Consent Fee will be paid to such holders, regardless of whether the requisite Consents are delivered through tenders of Normal ITS in the Exchange Offer or separately. The Consent Solicitation is not conditioned on a majority in aggregate liquidation amount of the outstanding Normal ITS being tendered for exchange in the Exchange Offer.

What amount of Normal ITS must Consent to the Proposed Amendments in order for the Proposed Amendments to be adopted?

In order to be adopted, the Proposed Amendments must be consented to by the holders of at least a majority of the outstanding aggregate liquidation amount of the Normal ITS, which corresponds to at least a majority of the Normal ITS outstanding.

Will we exchange all of the Normal ITS tendered?

We may not accept for exchange all of the Normal ITS that you tender in the Exchange Offer. It is a condition to the Exchange Offer that the Normal ITS continue to be listed on the New York Stock Exchange, and, therefore, if accepting all of the Normal ITS would cause the Normal ITS to be de-listed, we will reduce the number of Normal ITS sought and accept a *pro rata* amount of the Normal ITS tendered in the Exchange Offer by all holders in the aggregate to ensure that the Normal ITS continue to be listed on the New York Stock Exchange after the consummation of the Exchange Offer. Any Normal ITS tendered but not accepted because of proration will be returned to you promptly after the Expiration Date. We intend to accept all validly tendered Normal ITS other than the minimum number necessary to ensure that the Normal ITS continue to be listed on the New York Stock Exchange after the consummation of the Exchange Offer. For a more detailed description of the proration procedures and the listing condition, see the sections below entitled The Exchange Offer and the Consent Solicitation Proration and Conditions of the Exchange Offer.

How will proration affect my Consents to the Proposed Amendments?

We intend that the Normal ITS continue to be listed on the New York Stock Exchange, and, therefore, if accepting all of the Normal ITS would cause the Normal ITS to be de-listed, we will reduce the number of Normal ITS sought and accept a *pro rata* amount of the Normal ITS tendered in the Exchange Offer by all holders in the aggregate to ensure that the Normal ITS continue to be listed on the New York Stock Exchange after the consummation of the Exchange Offer. The New York Stock Exchange will consider de-listing the outstanding Normal ITS if (1) the aggregate market value of the Normal ITS is less than $4 million (which would occur if greater than 99% of the outstanding Normal ITS were tendered into the Exchange Offer, based on the $1,000 liquidation amount per Normal ITS) or (2) for any other reason based on the suitability for the continued listing of the Normal ITS in light of all pertinent facts as determined by the New York Stock Exchange.

Proration will not revoke Consents to the Proposed Amendments. Therefore, if we do not accept all of your validly tendered Normal ITS due to proration, you will still be deemed to have delivered your Consents with respect to all of your validly tendered Normal ITS, even those that are not accepted for exchange. If proration occurs, you will receive the Consent Fee with respect to all validly tendered Normal ITS that were not accepted for exchange in the Exchange Offer due to such proration.

May I tender only a portion of the Normal ITS that I hold?

Yes. You do not have to tender all of your Normal ITS to participate in the Exchange Offer. However, you must tender whole numbers of Normal ITS.

Are we making a recommendation regarding whether you should tender in the Exchange Offer?

None of us, the trustees of the Trust, the Dealer Managers, the Information and Exchange Agent, or any other person are making any recommendation regarding whether you should tender or refrain from tendering your Normal ITS in the Exchange Offer or deliver your Consents pursuant to the Consent Solicitation.

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Accordingly, you must make your own determination as to whether to tender your Normal ITS in the Exchange Offer or deliver your Consents pursuant to the Consent Solicitation and, if so, the number of Normal ITS to tender or for which to deliver a Consent. Before making your decision, we urge you to carefully read this Prospectus and Consent Solicitation Statement in its entirety, including the information set forth in the section entitled Risk Factors, and the other documents incorporated by reference. The value of the Depositary Shares issued in the Exchange Offer may not equal or exceed the value of the Normal ITS tendered. You must make your own independent decision regarding your participation in the Exchange Offer and the Consent Solicitation.

Will the Depositary Shares to be delivered in the Exchange Offer be freely tradable and listed for trading?

Yes, the Depositary Shares you receive upon settlement of the Exchange Offer will be freely tradable, unless you are considered an affiliate of ours, as that term is defined in the Securities Act of 1933, as amended. We intend to apply to list the Depositary Shares on the New York Stock Exchange, and we expect trading on the New York Stock Exchange to begin within 30 days of the initial issuance of the Depositary Shares.

What are the conditions to the Exchange Offer?

The Exchange Offer is conditioned upon:

- the SEC having declared effective the registration statement of which this Prospectus and Consent Solicitation Statement forms a part (which condition cannot be waived by us);
- the receipt of valid Consents from holders of a majority in aggregate liquidation amount of the outstanding Normal ITS approving the Proposed Amendments;
- the continued listing of the Normal ITS that remain outstanding after the Exchange Offer on the New York Stock Exchange (which condition cannot be waived by us);
- the accuracy of representations and warranties, and the compliance with certain covenants, contained in the dealer manager agreement, in each case, as of the Expiration Date; and
- the satisfaction of the other conditions described below in the section entitled The Exchange Offer and the Consent Solicitation Conditions of the Exchange Offer.

Our obligation to consummate the exchange of Depositary Shares for Normal ITS is not subject to any minimum tender condition. We may waive certain conditions of the Exchange Offer. If any of the conditions are not satisfied or waived by the Expiration Date, we will not accept any validly tendered Normal ITS for exchange. See The Exchange Offer and Consent Solicitation Conditions of the Exchange Offer.

When does the Exchange Offer and the Consent Solicitation expire?

The Exchange Offer and the Consent Solicitation will expire at 11:59 p.m., New York City time, on June 7, 2010 (unless we extend it). We refer to such date and time (as it may be extended) as the Expiration Date.

How do I participate in the Exchange Offer?

You may tender your Normal ITS by transferring the Normal ITS through ATOP or following the other procedures described below under the section entitled The Exchange Offer and the Consent Solicitation Procedures for Participating in the Exchange Offer and the Consent Solicitation.

How do I participate in the Consent Solicitation?

You may deliver your Consent to the Proposed Amendments by validly tendering your Normal ITS into the Exchange Offer, in which case you will be deemed to have validly delivered your Consents to the

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Proposed Amendments by such tender. You may also deliver Consents to the Proposed Amendments without tendering your Normal ITS by following the procedures described below under the section entitled The Exchange Offer and the Consent Solicitation Procedures for Providing Consent without Tendering.

May I withdraw Normal ITS that I have previously tendered and Consents that I have previously delivered?

You may withdraw any Normal ITS that you tender at any time prior to the Expiration Date (and, if not previously accepted for exchange, after the expiration of 40 business days commencing on May 10, 2010). You may withdraw any Normal ITS in accordance with the terms of the Exchange Offer by following the procedures described below under the section entitled The Exchange Offer and the Consent Solicitation Withdrawal of Tenders. A valid withdrawal of Normal ITS shall be deemed a revocation of any related Consent.

Consents delivered that are accompanied by a tender of Normal ITS may only be validly revoked by validly withdrawing the corresponding previously-tendered Normal ITS at or prior to the Expiration Date. If you have not tendered Normal ITS but have Consented to the Proposed Amendments, you may withdraw such Consent at any time at or prior to the Expiration Date by following the procedures described below under the section entitled The Exchange Offer and the Consent Solicitation Withdrawal of Consents with Respect to Normal ITS that were not Tendered.

Under what circumstances can the Exchange Offer and the Consent Solicitation be extended, amended or terminated?

Subject to applicable law, we reserve the right to (1) extend the Exchange Offer or the Consent Solicitation, (2) waive any and all conditions to or amend the Exchange Offer or the Consent Solicitation in any respect (except the requirements that the registration statement, of which this Prospectus and Consent Solicitation Statement forms a part, be declared effective by the SEC, and that the remaining Normal ITS will continue to be listed on the New York Stock Exchange after the settlement date) or (3) terminate or withdraw the Exchange Offer or the Consent Solicitation if any condition to the Exchange Offer is not satisfied or waived at or prior to the Expiration Date.

In the event that we terminate or withdraw the Exchange Offer at or prior to the Expiration Date or the Exchange Offer is otherwise not completed, no consideration will be paid or become payable to holders who have tendered their Normal ITS pursuant to the Exchange Offer or delivered their Consents in the Consent Solicitation. In any such event, (1) Normal ITS previously tendered pursuant to the Exchange Offer will be promptly returned to the tendering holders and (2) the Proposed Amendments will not become operative. See The Exchange Offer and the Consent Solicitation Expiration Date; Extension; Termination; Amendment.

How will I be notified if the Exchange Offer and the Consent Solicitation is extended, amended or terminated?

If the Exchange Offer and the Consent Solicitation are extended, we will make a public announcement no later than 9:00 a.m., New York City time, on the next business day after the previously scheduled Expiration Date. If we terminate or amend the Exchange Offer or the Consent Solicitation, we will issue a timely public announcement regarding the termination or amendment. Upon termination of the Exchange Offer for any reason, any Normal ITS previously tendered in the Exchange Offer will be promptly returned to the tendering holders.

If we make a material change in the terms of the Exchange Offer or the information concerning the Exchange Offer, or waive a material condition of the Exchange Offer, we will promptly disseminate disclosure regarding the change or waiver, and extend the Exchange Offer and the Consent Solicitation, if required by law, so that the Exchange Offer remains open a minimum of five business days from the date we disseminate that disclosure. For more information regarding notification of extensions, amendments or the termination of the Exchange Offer, see the section below entitled The Exchange Offer and the Consent Solicitation Expiration Date; Extension; Termination; Amendment.