

Risk Factors Comparison 2023-09-20 to 2022-09-12 Form: 10-K

Legend: **New Text** ~~Removed Text~~ Unchanged Text **Moved Text Section**

Our business is subject to a number of risks. You should carefully consider the following risk factors, together with all of the other information included in this report, before you decide whether to invest in our securities. The following risks are not the only risks we face. If any of the following risks occurs or continues to occur, our business, financial condition and results of operations could be materially adversely affected. In such case, the trading price of our common shares could decline, and you may lose all or part of your investment. Although the risks are organized by headings, and each risk is discussed separately, many are interrelated.

Risks Related to Our Business ~~We have a limited track record in the durable medical equipment and investment management businesses, and provide no assurance as to our acquisition and investment program. We entered the investment management business in November 2016 and we entered the durable medical equipment business in September 2018. Accordingly, there is limited historical information about our performance. We have plans to make significant investments and will continue to explore opportunities in these and other sectors but cannot provide specificity as to our future investments or financing plans. These and other factors, including the other risk factors described in this report, make it difficult for you and other market participants to value our company and our prospects. We are unaware of any comparable company that securities analysts can use to benchmark our performance and valuation. We cannot give any assurance that any of the uncertainties or risk factors in this report will be favorably resolved.~~ Our growth strategy may not be successful. The process to identify potential investment opportunities and strategic transaction partners, to investigate and evaluate the future returns therefrom and business prospects thereof and negotiate definitive agreements with respect to such transactions on mutually acceptable terms can be time consuming and costly. We are likely to encounter intense competition from other companies with similar business objectives to ours, including private equity and venture capital funds, sovereign wealth funds, special purpose acquisition companies (SPACs), investment firms with significantly greater financial and other resources and operating businesses competing for acquisitions. Many of these companies are well established, well financed and have extensive experience in identifying and effecting business combinations. **We The Company** ~~continually evaluates~~ **evaluate its our** assets and investments relative to other market opportunities in order to **seek to** maximize shareholder value. As a result, ~~we the Company~~ **we the Company** may purchase new assets or businesses or sell existing assets or businesses at any time. If such a purchase or sale is not successfully completed, integrated or managed effectively, or does not result in the benefits or cost savings we expect, our business, financial condition or results of operations may be adversely affected. Because we will consider investments in different industries, you have no basis at this time to ascertain the merits or risks of any business that we may ultimately invest in or seek to acquire. ~~We are a holding company seeking to acquire assets and businesses.~~ We are not limited to acquisitions and / or investments in any particular industry or type of business. Accordingly, there is no current basis for you to evaluate the possible merits or risks of the particular industry in which we may ultimately invest or the target businesses in which we may ultimately invest or seek to acquire. We may not properly assess all of the significant risks present in that opportunity. Even if we properly assess those risks, some of them may be outside of our control or ability to affect. For example, as part of our investment management business we will direct investments in a wide variety of industries and vehicles, including SPACs, which may decline in value. Except as required under the Nasdaq Stock Market LLC (Nasdaq) rules and applicable law, we will not seek stockholder approval of any investment or acquisition that we may pursue, so you will most likely not be provided with an opportunity to evaluate the specific merits or risks of such a transaction before we become committed to the transaction. Our business, financial condition and results of operations are dependent upon our investments. Any material adverse change in one of our investments or in a particular industry in which we invest may cause material adverse changes to our business, financial condition and results of operations. Further, concentration of capital we devote to a particular investment or industry may increase the risk that such investment could significantly impact our financial condition and results of operations, possibly in a material adverse way. Subsequent to an investment, we may be required to take write- downs or write- offs, restructuring and impairment or other charges that could have a significant negative effect on our financial condition, results of operations and our share price, which could cause you to lose some or all of your investment. Even if we conduct extensive due diligence on a target business that we invest in, we cannot assure you that this diligence will identify all material issues that may be present inside a particular target business, that it would be possible to uncover all material issues through a customary amount of due diligence, or that factors outside of the target business or outside of our control will not later arise. As a result of these factors, we may be forced to later write- down or write- off assets, restructure our operations, or incur impairment or other charges that could result in ~~us~~ reporting losses. Even if our due diligence successfully identifies certain risks, unexpected risks may arise and previously known risks may materialize in a manner not consistent with our preliminary risk analysis. Even though these charges may be non- cash items and not have an immediate impact on our liquidity, the fact that we report charges of this nature could contribute to negative market perceptions about us or our securities. In addition, charges of this nature may cause us to violate covenants under our debt agreements. Accordingly, you could suffer a significant reduction in the value of your shares. We may not correctly assess the management teams of the businesses we invest in. The value of the businesses we invest in is driven by the quality of the leaders of those businesses. When evaluating the desirability of a prospective target business, our ability to assess the target business' management may be limited due to a lack of time, resources or information. Our assessment of the capabilities of the target' s management, therefore, may prove to be incorrect and such management may lack the skills, qualifications or abilities we expected. Should the target' s management not possess the necessary skills, qualifications or abilities, the operations and profitability of that business will be negatively impacted. In addition, we may acquire private, non-

public companies, with unsophisticated accounting or compliance operations and personnel. Our ability to successfully grow our business will be dependent upon the efforts of our key personnel. ~~The loss of key personnel could negatively impact the operations and profitability of our business.~~ Our ability to successfully effect our growth strategy is dependent upon the efforts of our key personnel. The loss of our key personnel could severely negatively impact the operations and profitability of our business. Increased competition may adversely affect our revenues, profitability and staffing. All aspects of our business are intensely competitive. We will compete directly with a number of BDCs, private equity and venture capital funds, financial investment firms and **SPACs special purpose acquisition companies**. There has been increasing competition from others offering financial services, including services based on technological innovations. Increased competition or an adverse change in our competitive position could lead to a reduction of business and therefore a reduction of revenues and profits. Competition also extends to the hiring and retention of highly skilled management and employees. A competitor may be successful in hiring away employees, which may result in us losing business formerly serviced by such employees. Competition can also increase our costs of recruiting, hiring and retaining the employees we need to effectively operate our business. Changing conditions in financial markets and the economy could impact us through decreased revenues, losses or other adverse consequences. Global or regional changes in the financial markets or economic conditions, ~~including supply chain conditions,~~ could adversely affect our business in many ways, including the following:

- Limitations on the availability of credit could affect our ability to borrow on a secured or unsecured basis, which may adversely affect our liquidity and results of operations. Global market and economic conditions have been disrupted and volatile in the last several years and may be in the future. Our cost and availability of funding could be affected by illiquid credit markets and wider credit spreads.
- Should one of our customers, debtors or competitors fail, our business prospects and revenue could be negatively impacted due to negative market sentiment causing customers to cease doing business with us and our lenders to cease extending credit to us, which could adversely affect our business, funding and liquidity. ~~We may not be able to generate sufficient taxable income to fully~~ **Additionally, disruptions in the financial markets have increased the spread between the yields realized on risk-free and higher risk securities, resulting in illiquidity in parts of the financial markets. These and future market disruptions and / or illiquidity** NOL carry forwards, the potential benefits of which would be **expected** reduced if U. S. federal income tax rates are lowered. At June 30, 2022, we had NOL carryforwards of approximately \$ 821 million. If we are unable to **have an adverse** generate sufficient taxable income prior to the expiration of our U. S. federal NOL carryforwards, the NOL carryforwards would expire unused. Our projections of future taxable income required to fully realize the recorded amount of the gross deferred tax asset reflect ~~effect on~~ numerous assumptions about our operating businesses, **business, financial and investments and are subject to change as conditions condition** change specific to our business units, investments or general **results of operations and cash flows. Unfavorable** economic conditions **also would** be expected to increase our funding costs, limit our access to the capital markets or result in a decision by lenders not to extend credit to us. These events have limited and could continue to limit our investment originations, limit our ability to grow and have a material negative impact on our operating results and the fair values of our debt and equity investments. As a result, we may experience additional losses on our investments ~~in GECC stock.~~ **the underlying GECC's portfolio portfolios companies of managed funds** Decreases in the market values of investments held within **the underlying GECC's portfolio portfolios** could also lead to decreases in asset-based fee revenues. If our tax filing positions were to be challenged by federal, state and local or foreign tax jurisdictions, we may not be wholly successful in defending our tax filing positions. We record reserves for unrecognized tax benefits based on our assessment of the probability of successfully sustaining tax filing positions. Management exercises significant judgment when assessing the probability of successfully sustaining tax filing positions, and in determining whether a contingent tax liability should be recorded and, if so, estimating the amount. If our tax filing positions are successfully challenged, payments could be required that are in excess of reserved amounts or we may be required to reduce the carrying amount of our net deferred tax asset, either of which result could be significant to our financial position, cash balances and results of operations. We may issue notes or other debt securities, or otherwise incur substantial debt, which may adversely affect our leverage and financial condition and thus negatively impact the value of our stockholders' investment in us. We may choose to incur substantial debt to finance our growth plans. For example, in June 2022, we raised \$ 26.9 million through the issuance of 7.25 % Notes due 2027. The incurrence of additional debt could have a variety of negative effects, including:
- default and foreclosure on our assets if our operating cash flows are insufficient to repay our debt obligations;
- acceleration of our obligations to repay the indebtedness even if we make all principal and interest payments when due if we breach covenants that require the maintenance of financial ratios or reserves without a waiver or renegotiation of that covenant;
- our immediate payment of all principal and accrued interest, if any, if the debt is payable on demand;
- our inability to pay dividends on our common stock;
- using a substantial portion of our cash flow to pay principal and interest on our debt, which will reduce the funds available for dividends on our common stock (if declared), expenses, capital expenditures, acquisitions and other general corporate purposes;
- limitations on our flexibility in planning for and reacting to changes in our business and in the industry in which we operate;
- increased vulnerability to adverse changes in general economic, industry and competitive conditions and adverse changes in government regulation; and
- limitation on our ability to borrow additional amounts for expenses, capital expenditures, acquisitions, debt service requirements, execution of our strategy and other purposes and other disadvantages compared to our competitors who have less debt. The financial services industry is subject to extensive regulation, including recent legislation and new or pending regulation, which may significantly affect our business. The financial services industry is subject to extensive laws, rules and regulations. In recent years in particular, there has been significant legislation and increased regulation affecting the financial services industry. These legislative and regulatory initiatives affect us, our competitors, our managed investment products and our customers. These changes could have an effect on our revenue and profitability, limit our ability to pursue business opportunities, impact the value of assets that we hold, require us to change certain business practices, impose additional costs on us, and otherwise adversely affect our business. Accordingly, we cannot provide assurance that legislation and regulation will not eventually have an adverse effect on our

business, results of operations, cash flows and financial condition. Firms that engage in securities and derivatives trading and wealth and asset management must comply with the laws, rules and regulations imposed by national and state governments and regulatory and self-regulatory bodies with jurisdiction over such activities. Such laws, rules and regulations cover all aspects of the financial services business, including, but not limited to, sales and trading methods, trade practices, use and safekeeping of customers' funds and securities, capital structure, anti-money laundering and anti-bribery and corruption efforts, ~~recordkeeping~~ **record-keeping** and the conduct of directors, officers and employees. Regulators will supervise our business activities to monitor compliance with laws, rules and regulations of the relevant jurisdiction. In addition, if there are instances in which our regulators question our compliance with laws, rules, and regulations, they may investigate the facts and circumstances to determine whether we have complied. Operational risks may disrupt our business, result in regulatory action against us or limit our growth. Our businesses ~~are will be~~ highly dependent on our ability to process, on a daily basis, transactions across numerous and diverse markets and the transactions we process have become increasingly complex. If any of our financial, accounting or other data processing systems do not operate properly or are disabled or if there are other shortcomings or failures in our internal processes, people or systems, we could suffer an impairment to our liquidity, a financial loss, a disruption of our businesses, liability to clients, regulatory intervention or reputational damage. These systems may fail to operate properly or become disabled as a result of events that are wholly or partially beyond our control, including a disruption of electrical or communications services or our inability to occupy one or more of our buildings. The inability of our systems to accommodate an increasing volume of transactions could also constrain our ability to expand our businesses. Our financial and other data processing systems will rely on access to and the functionality of operating systems maintained by third parties. If the accounting, trading or other data processing systems on which we are dependent are unable to meet increasingly demanding standards for processing and security or if they fail or have other significant shortcomings, we could be adversely affected. Such consequences may include our inability to effect transactions and manage our exposure to risk. We may be required to expend significant additional resources to modify our protective measures or to investigate and remediate vulnerabilities or other exposures, and we may be subject to litigation and financial losses that are either not insured against or not fully covered through any insurance maintained by us. The increased use of smartphones, tablets and other mobile devices as well as cloud computing may also heighten these and other operational risks. We and our third-party providers are the subject of attempted unauthorized access, computer viruses and malware, and **cyberattacks** ~~cyber-attacks~~ designed to disrupt or degrade service or cause other damage and denial of service. Cyberattacks and other cyber incidents are occurring more frequently, are constantly evolving in nature, are becoming more sophisticated and are being carried out by groups and individuals (including criminal hackers, hacktivists, state-sponsored actors, criminal and terrorist organizations, individuals or groups participating in organized crime and insiders) with a wide range of expertise and motives (including monetization of corporate, payment or other internal or personal data, theft of computing resources, financial fraud, operational disruption, theft of trade secrets and intellectual property for competitive advantage and leverage for political, social, economic and environmental reasons). Such cyberattacks and cyber incidents can take many forms including cyber extortion, denial of service, social engineering, such as impersonation attempts to fraudulently induce employees or others to disclose information or unwittingly provide access to systems or data, introduction of viruses or malware, such as ransomware through phishing emails, website defacement or theft of passwords and other credentials, unauthorized use of computing resources for digital currency mining and business email compromises. There can be no assurance that such unauthorized access or cyber incidents will not occur in the future, and they could occur more frequently and on a larger scale. Legal liability arising from such risks may harm our business. Many aspects of our business involve substantial risks of liability. Our financial and operational controls may not be adequate. As we expand our business, there can be no assurance that financial controls, the level and knowledge of personnel, operational abilities, legal and compliance controls and other corporate support systems will be adequate to manage our business and growth. The ineffectiveness of any of these controls or systems could adversely affect our business and prospects. In addition, if we acquire new businesses and introduce new products, we face numerous risks and uncertainties integrating their controls and systems, including financial controls, accounting and data processing systems, management controls and other operations. A failure to integrate these systems and controls, and even an inefficient integration of these systems and controls, could adversely affect our business and prospects. Losses not covered by insurance may be large, which could adversely impact our financial performance. We carry various insurance policies on our assets. These policies contain policy specifications, limits and deductibles that may mean that such policies do not provide coverage or sufficient coverage against all potential material losses. There are certain types of risk (generally of a catastrophic nature such as war or environmental contamination) which are either uninsurable or not economically insurable. Further, there are certain types of risk for which insurance coverage is not equal to the full replacement cost of the insured assets. Should any uninsured or underinsured loss occur, we could lose our investment in, and anticipated profits and cash flows from, one or more of our assets or operations. We also carry directors and officers liability insurance (D & O insurance) for losses or advancement of defense costs in the event a legal action is brought against the company's directors, officers or employees for alleged wrongful acts in their capacity as directors, officers or employees. Our D & O insurance contains certain customary exclusions that may make it unavailable for the company in the event it is needed; and in any case our D & O insurance may not be adequate to fully protect the company against liability for the conduct of its directors, officers or employees. Our [business is subject to risks arising from..... Related to Our Investment Management Business Our](#) investment management agreements may be terminated. The investment management agreements (IMAs) we have through GECC with various pooled investment vehicles, such as GECC and Monomoy ~~REIT~~ **UpREIT**, may be cancelled at the applicable counterparty's discretion upon certain notice or upon the occurrence of certain events. We do not control the boards of directors of such pooled investment vehicles, and they may cancel our respective IMAs at their discretion without making any termination payment to us. GECC's investment performance is a key element of retaining this business. We have recorded an intangible asset attributable to the IMAs that is being amortized over a 15-year economic life even though the IMAs are

cancellable by the respective counterparties. Difficult or changing market conditions can adversely affect our **investment management** business in many ways, by reducing the value or performance of our funds (including our invested funds and funds invested by third parties) or by reducing the ability of our funds to raise or deploy capital, each of which could negatively impact our income and cash flow and adversely affect our financial condition. The build-out of our **investment management** business is affected by conditions in the financial markets and economic conditions and events throughout the world, such as interest rates, availability of credit, inflation rates, economic uncertainty, changes in laws and regulations, market perceptions and other factors. Adverse changes could lead to a reduction in investment income, losses on our own capital invested and lower revenues from investment management fees. Such adverse changes may also lead to a decrease in new capital raised and may cause investors to withdraw their investments and commitments. Even in the absence of a market downturn, below-market investment performance by our funds and portfolio managers could reduce investment management revenues and assets under management and result in reputational damage that may make it more difficult to attract new investors or retain existing investors.

The replacement In July 2017, the Financial Conduct Authority (FCA) of the United Kingdom, which regulates the London Interbank Offered Rate (LIBOR), announced that it intends to stop compelling banks to submit rates for the calculation of LIBOR after December 31, 2021. LIBOR is not expected to be phased out entirely until 2023, and it is unclear whether new methods of calculating LIBOR will be established in the interim. The U. S. Federal Reserve, in conjunction with the Alternative Reference **Secured Overnight Financing Rates- Rate** Committee (the ARRC), is considering replacing U. S. dollar LIBOR with a newly created index (the secured overnight financing rate, or SOFR) **may**, calculated based on repurchase agreements backed by treasury securities. It is not possible to predict the effect **affect** of these **the** changes, other reforms **funds we manage and** or our results the establishment of **operations and financial results**. As a result of the discontinuation of **certain unsecured benchmark interest rates, including LIBOR, regulators and market participants in various jurisdictions have been working to identify alternative reference rates in that are compliant with the United Kingdom, the United States International Organization of Securities Commission's standards or for elsewhere transaction-based benchmarks**. In **To the extent these** **the U. S., the Alternative Committee, a group of market and official sector participants, identified SOFR as its recommended alternative benchmark rate. Other alternative reference rates have been recommended in other jurisdictions. The funds that we manage may hold a number of LIBOR-referenced contracts. Transition from LIBOR to SOFR or to another reference rate may result in an increase or a decrease of the overall borrowing cost for the funds we manage and their portfolio companies. Even if the overall borrowing cost decreases, any savings that the funds we manage realize from such decrease could be offset partially or entirely by lower overall interest income received from certain assets. In addition, the transition from LIBOR to another reference rate could result in financial market disruption and significant increases or volatility in risk-free benchmark rates increase, interest expense will increase. Should such disruption occur** If sources of capital for us are reduced, capital costs could increase materially. Restricted access to capital **it may adversely affect, among other things, the trading markets- market** and / or increased borrowing costs could have an adverse effect on our results of operations, cash flows, financial condition and liquidity. Regulators, industry groups and certain committees (e. g., the ARRC) have published recommended fallback language for LIBOR-linked financial **based securities and the market for derivative** instruments, identified recommended alternatives for certain LIBOR rates (e. g. **As a result**, SOFR as the recommended alternative to U. S. dollar LIBOR), and proposed implementations of the recommended alternatives in floating rate instruments. However, at this time, it is not possible to predict whether these recommendations and proposals will be broadly accepted, whether they **the** will continue to evolve and what the effect of their implementation may be on the markets for floating-rate financial instruments. Funds managed by GECM, our wholly-owned subsidiary, are party to, and derive income from, other agreements that expressly provide for alternative reference rates and spread adjustments to be used in the event that LIBOR ceases to be published. Despite those provisions, the impact on such agreements of LIBOR no longer being available cannot be entirely predicted at this time. Nor can a seamless transition of such agreements from LIBOR to those alternative reference rates be guaranteed. For example, no assurance can be given that the relevant parties to such agreements will satisfy their contractual obligations to transition to alternative reference rates once LIBOR is no longer available. In addition, the alternative reference rates and spread adjustments used in such agreements could result in a net-effective interest rate that is higher or lower than that which would result from the parties' use of LIBOR. The alternative reference rates also may be more or less volatile than LIBOR is prior to its discontinuance, which could result in an increase in the cost of our indebtedness, impact our ability to refinance some or all of our existing indebtedness, reduce income generated from assets currently referencing LIBOR, or otherwise have a material **direct or indirect** adverse impact **effect** on our business, **results of operations and** financial condition and operations. There also can be no assurance that LIBOR transition-related legislation in the United States or abroad will not adversely impact us by, for example, materially altering, disrupting, impairing, modifying or changing the terms of any LIBOR-linked agreements to which we are a party or beneficiary. As a result of the foregoing, we may need to renegotiate outstanding loans to our funds and their portfolio companies and that utilize LIBOR as a factor in determining the interest rate, to replace LIBOR with the new standard that is established. The situation continues to evolve and currently there is no definitive information regarding any particular replacement rate. As such, the potential effect of any such event on our cost of capital and net investment income cannot yet be determined. The effect on our investments will vary depending, among other things, on (1) whether fallback or termination provisions in individual contracts currently exist, and if so, the terms of such provisions and (2) whether, how, and when industry participants develop and adopt new reference rates and fallbacks for both legacy and new investments. We may have discretion to determine a successor or substitute reference rate, including any price or other adjustments to account for differences between the successor or substitute reference rate and previous rate. Such successor or substitute reference rate and any adjustments selected may negatively impact the income of our investments and may expose such investments to additional tax, accounting and regulatory risks. The elimination of LIBOR may affect the value, liquidity or return on our investments and

may result in costs incurred in connection with closing out positions and entering into new investments, adversely impacting our overall financial condition or results of operations. Accordingly, it is difficult to predict the full impact of the transition away from LIBOR on our businesses and investments until new reference rates and fallbacks for both legacy and new products, instruments and contracts are commercially accepted. If we are deemed to be an investment company under the Investment Company Act, we may be required to institute burdensome compliance requirements and our activities may be restricted, which may make it difficult for us to execute our growth plans. If we are deemed to be an investment company under the Investment Company Act, we will be subject to additional regulatory requirements and our activities may be restricted, including: ▪ restrictions on the nature of our investments; ▪ limitations on our ability to borrow; ▪ prohibitions on transactions with affiliates; and ▪ restrictions on the issuance of securities. Each of these may make it difficult for us to run our business. In addition, the law may impose upon us burdensome requirements, including: ▪ registration as an investment company and subsequent regulation as an investment company; ▪ adoption of a specific form of corporate structure; and ▪ reporting, record keeping, voting, proxy and disclosure requirements and other rules and regulations. In order not to be regulated as an investment company under the Investment Company Act, unless we can qualify for an exclusion, we must ensure ~~that we are engaged primarily in a business other than investing, reinvesting or trading of securities and~~ that our activities do not include investing, reinvesting, owning, holding or trading “ investment securities ” constituting more than 40 % of our total assets (exclusive of U. S. government securities and cash items) on an unconsolidated basis. Though we do not believe that our principal activities will subject us to the Investment Company Act, if we were deemed to be subject to the Investment Company Act, compliance with these additional regulatory burdens would require additional expense and attention from management for which we have not accounted. Our officers and directors may become aware of business opportunities which may be appropriate for presentation to us and the other entities to which they owe certain fiduciary or contractual duties. Accordingly, they may have conflicts of interest in determining to which entity a particular business opportunity should be presented. These conflicts may not be resolved in our favor and a potential target business may be presented to another entity prior to its presentation to us, subject to their fiduciary duties under applicable law. We may engage in a business combination with one or more target businesses that have relationships with our executive officers, directors or existing holders which may raise potential conflicts of interest. In light of the involvement of our executive officers and directors with other entities in the investment management business and otherwise, we may decide to acquire or do business with one or more businesses affiliated with our executive officers, directors or existing shareholders. Our directors also serve as officers and board members for other entities. Such entities may compete with us **and potential conflicts of interest may exist**. We ~~Nonetheless, we~~ could pursue an affiliate transaction if we determined that such affiliated entity met our criteria for a business combination and such transaction was approved by a majority of our disinterested directors ~~- Potential conflicts of interest may exist, and, as a result, the terms of the business combination may not be as advantageous to our~~ **audit committee** public stockholders as they would be absent any conflicts of interest. Risks Relating to Our Common Stock Our common stock is subject to transfer restrictions. We have ~~significant~~ NOL carryforwards and other tax attributes, the amount and availability of which are subject to certain qualifications, limitations and uncertainties. In order to reduce the possibility that certain changes in ownership could result in limitations on the use of the tax attributes, our amended and restated certificate of incorporation ~~(our certificate of incorporation)~~ contains provisions that generally restrict the ability of a person or entity from acquiring ownership (including through attribution under the tax law) of 4.99 % or more of our common stock and the ability of persons or entities now owning 5 % or more of our common shares from acquiring additional common shares. The restriction will remain until the earliest of (1) the repeal of Section 382 of the Internal Revenue Code of 1986, as amended or any successor statute if our Board determines that the restriction on transfer is no longer necessary or desirable for the preservation of tax benefits, (2) the close of business on the first day of a taxable year as to which our Board determines that no tax benefits may be carried forward, (3) such date as our Board may fix for expiration of transfer restrictions and (4) January 29, 2028. The restriction may be waived by our Board on a case-by- case basis. You are advised to carefully monitor your ownership of our common shares and consult your own legal advisors to determine whether your ownership of our common shares approaches the proscribed level. We also have a Tax Rights Plan that would be triggered if any person acquires 4.99 % or more of our common stock without prior approval by our Board. Holders of more than 4.99 % of our common stock on the day the rights plan was adopted were exempted from this limitation as to the number shares they held at the time of adoption of the rights plan. We may issue additional shares of common stock or shares of our preferred stock to obtain additional financial resources, as acquisition currency or under employee incentive plans. Any such issuances would dilute the interest of our stockholders and likely present other risks. Our certificate of incorporation authorizes our Board to issue shares of our common stock or preferred stock from time to time in their business ~~judgement-~~ **judgment** up to the amount of our then authorized capitalization. We may issue a substantial number of additional shares of our common stock and may issue shares of our preferred stock. These issuances: ▪ may significantly dilute your equity interests; ▪ may require you to make an additional investment in us or suffer dilution of your equity interest; ▪ may subordinate the rights of holders of shares of our common stock if shares of preferred stock are issued with rights senior to those afforded to our common stock; ▪ could cause a change in control if a substantial number of shares of our common stock are issued; ▪ may affect, among other things, our ability to use our NOL carry forwards; and ▪ may adversely affect prevailing market prices for our common stock. Anti- takeover provisions contained in our certificate of incorporation and amended and restated bylaws ~~(our bylaws)~~, as well as provisions of Delaware law, could impair a takeover attempt. Our certificate of incorporation, bylaws and Delaware law contain provisions that could have the effect of rendering more difficult or discouraging an acquisition deemed undesirable by our Board. Our corporate governance documents include provisions: ▪ authorizing blank check preferred stock, which could be issued with voting, liquidation, dividend and other rights superior to our common stock; ▪ limiting the liability of, and providing indemnification to, our Board and officers; ▪ limiting the ability of our stockholders to call and bring business before special meetings and to take action by written consent in lieu of a meeting; ▪ requiring advance notice of stockholder proposals for

business to be conducted at meetings of our stockholders and for nominations of candidates for election to our Board; ▪ controlling the procedures for the conduct and scheduling of Board and stockholder meetings; ▪ limiting the ability for persons to acquire 4.99 % or more of our common stock; ▪ providing **an exclusive forum selection provision**; ▪ **providing** our Board with the express power to postpone previously scheduled annual meetings and to cancel previously scheduled special meetings; ▪ limiting the determination of the number of directors on our Board and the filling of vacancies or newly created seats on the board to our Board then in office; and ▪ providing that directors may be removed by stockholders only for cause. These provisions, alone or together, could delay hostile takeovers and changes in control of our company or changes in our management. As a Delaware corporation, we are also subject to provisions of Delaware law, including Section 203 of the Delaware General Corporation Law, which prevents some stockholders holding more than 15 % of our outstanding common stock from engaging in certain business combinations without approval of the holders of substantially all of our outstanding common stock. Any provision of our certificate of incorporation or bylaws or Delaware law that has the effect of delaying or deterring a change in control could limit the opportunity for our stockholders to receive a premium for their shares of our common stock and could also affect the price that some investors are willing to pay for our common stock. Our common stockholders may experience significant dilution upon the issuance of common stock upon conversion of **our** 5.0 % Convertible Senior ~~Payment-In-Kind~~ Notes due 2030 (~~The the~~ Convertible Notes). The issuance of common stock upon conversion of some or all of the Convertible Notes will dilute the ownership interests of existing holders of shares of our common stock, which could cause the price of our common stock to decline. Furthermore, the number of shares of common stock to be issued upon conversion of the Convertible Notes may be substantially greater if the conversion rate is adjusted in accordance with the terms of the Convertible Notes. Holders of the Convertible Notes have the right to convert all or any portion of such notes at any time prior to February 22, 2030 into shares of our common stock at a conversion price of \$ 3.4722 per share. Upon conversion of any note, ~~we the Company~~ will pay or deliver, as the case may be, to the noteholder, in respect of each \$ 1,000 principal amount of notes being converted, shares of common stock equal to the conversion rate in effect on the conversion date, together with cash, if applicable, in lieu of delivering any fractional share of common stock. We cannot predict or accurately forecast the total amount of shares of common stock that ultimately may be issued under the Convertible Notes. Further, the perception of these sales or issuances, or the conversion of the Convertible Notes, could impair our ability to raise additional capital through the sale of our equity securities.