

EASTMAN KODAK CO
Form S-3
February 10, 2017
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As filed with the Securities and Exchange Commission on February 10, 2017

Registration No. 333-

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

FORM S-3
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

EASTMAN KODAK COMPANY
(Exact name of registrant as specified in its charter)

New Jersey
(State or other jurisdiction of
incorporation or organization)

16-0413150
(I.R.S. Employer
Identification Number)

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343 State Street

Rochester, NY 14650

(585) 724-4000

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

Sharon E. Underberg

General Counsel, Secretary and Senior Vice President

343 State Street

Rochester, NY 14650

(585) 724-4000

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

With a copy to:

Ari B. Blaut

Sullivan & Cromwell LLP

125 Broad Street

New York, New York 10004-2498

(212) 558-4000

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

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

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

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

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

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box:

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box:

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.

Large accelerated filer

Accelerated filer

Non-accelerated filer (Do not check if a smaller reporting company)

Smaller reporting company

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

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered (1)	Proposed maximum offering price	Proposed maximum aggregate	Amount of registration fee (3)
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		per security	offering price (2)(1)	
Series A Convertible Preferred Stock, no par value per share	2,000,000	\$100 (2)	\$200,000,000	\$23,180 (3)
Common Stock, par value \$0.01 per share	11,494,200 (4)			(5)
Total				\$23,180 (3)(5)

- (1) 2,000,000 shares of Series A Preferred Stock are being registered hereunder. These shares were issued by the registrant in a private placement pursuant to a purchase agreement dated as of November 7, 2016.
- (2) Estimated solely for purposes of calculating the registration fee pursuant to Rule 457(a) under the Securities Act of 1933, as amended (the Securities Act).
- (3) Calculated pursuant to Rule 457(a) of the rules and regulations under the Securities Act and based on the filing fee of \$115.90 per \$1,000,000 of securities registered.
- (4) Estimated based on the total number of shares of Common Stock issuable upon conversion of the Series A Preferred Stock. Each share of Series A Preferred Stock is initially convertible into Common Stock, at the option of the holder, at a conversion rate of 5.7471 shares of Common Stock per share of Series A Preferred Stock. Pursuant to Rule 416 under the Securities Act (Rule 416), the Common Stock offered hereby shall be deemed to cover additional securities to be offered to prevent dilution resulting from stock splits, stock dividends or similar transactions (pursuant to the conversion formulae set forth in the attached prospectus).
- (5) No separate consideration will be received for the shares of Common Stock issuable upon conversion of the Series A Preferred Stock; therefore, no registration fee for those shares is required pursuant to Rule 457(i) under the Securities Act.

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The information in this prospectus is not complete and may be changed. Neither we nor the selling shareholders may sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and neither we nor the selling shareholders are soliciting offers to buy these securities in any jurisdiction where the offer or sale is not permitted.

Subject to completion, dated February 10, 2017

PROSPECTUS

EASTMAN KODAK COMPANY

2,000,000 SHARES OF SERIES A CONVERTIBLE PREFERRED STOCK

11,494,200 SHARES OF COMMON STOCK

This prospectus relates to the resale from time to time of up to an aggregate of (i) 2,000,000 shares of our 5.50% Series A Convertible Preferred Stock, no par value per share (the "Series A Preferred Stock"), issued to the selling shareholders on November 15, 2016 pursuant to the Purchase Agreement (as defined herein) and (ii) 11,494,200 shares of common stock, par value \$0.01 per share (the "Common Stock"), and, together with the Series A Preferred Stock, the securities issuable upon conversion of the Series A Preferred Stock. The selling shareholders may offer and sell shares of Series A Preferred Stock or Common Stock in public or private transactions or both.

The selling shareholders may sell all or a portion of the shares of Series A Preferred Stock or Common Stock through underwriters, broker dealers or agents, who may receive compensation in the form of discounts, concessions or commissions from the selling shareholders, the purchasers of the shares of Series A Preferred Stock or Common Stock, or both. See "Plan of Distribution" for a more complete description of the ways in which the shares of Series A Preferred Stock or Common Stock may be sold. The names of any underwriters, dealers or agents, the specific terms of the plan of distribution, any over-allotment option and any applicable underwriting discounts and commissions will be set forth in a supplement to this prospectus. We will not receive any of the proceeds from the selling shareholders sale of shares of Series A Preferred Stock or Common Stock. We have agreed to bear the expenses (other than underwriting discounts, selling commissions and stock transfer taxes) in connection with the registration of the Series A Preferred Stock and Common Stock that the selling shareholders are offering under this prospectus.

Our Common Stock is listed on the New York Stock Exchange (the "NYSE") under the symbol "KODK". On February 9, 2017, the last reported sale price of our Common Stock on the NYSE was \$13.50. The Series A Preferred Stock is not listed on any exchange, and while we currently do not intend to list the Series A Preferred Stock on any exchange, we will list the Series A Preferred Stock if so requested by the selling shareholders or if so requested by the underwriter or underwriters of an underwritten offering of the Series A Preferred Stock.

Investing in our securities involves risks. You should read carefully and consider the risks referenced under Risk Factors beginning on page 5 of this prospectus, as well as the other information contained in or incorporated by reference in this prospectus or in any accompanying prospectus supplement before making a decision to invest in our securities.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.

Prospectus dated , 2017.

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ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement we filed with the Securities and Exchange Commission (the SEC or the Commission) using a shelf registration process. We have filed the registration statement for this shelf registration process pursuant to a registration rights agreement dated November 15, 2016 (the Registration Rights Agreement) between us and the selling shareholders. Under this shelf registration process, the selling shareholders may, from time to time, sell up to 2,000,000 shares of Series A Preferred Stock that we have issued to the selling shareholders and up to 11,494,200 shares of Common Stock, subject to adjustment, that we have issued, or may issue, upon conversion of the Series A Preferred Stock. The initial conversion ratio is one share of Series A Preferred Stock in exchange for 5.7471 shares of Common Stock, however, the conversion ratio is subject to adjustment.

You should rely only on the information contained in or incorporated by reference in this prospectus or in any related prospectus supplement filed by us with the SEC. If there is any inconsistency between the information in this prospectus and any prospectus supplement, you should rely on the information in the prospectus supplement. Additionally, the prospectus supplement may include a discussion of additional risk factors or other special considerations applicable to the Series A Preferred Stock and Common Stock. You should read both this prospectus and any prospectus supplement together with the additional information described under the headings Where You Can Find More Information and Incorporation of Certain Information by Reference . We and the selling shareholders have not authorized anyone to provide you with different information. This prospectus and any accompanying prospectus supplement does not constitute an offer to sell or the solicitation of an offer to buy any securities other than the securities described in this prospectus or an offer to sell or the solicitation of an offer to buy such securities in any circumstances in which such offer or solicitation is unlawful. You should assume that the information appearing in this prospectus, any prospectus supplement or any document incorporated by reference herein and therein is accurate only as of their respective dates. Our business, financial condition, results of operations and prospects may have changed materially since those dates.

The descriptions of the Purchase Agreement (as defined herein) and the Registration Rights Agreement are not complete and are qualified in their entirety by reference to the Purchase Agreement and the Registration Rights Agreement, each of which has been filed as an exhibit to the registration statement of which this prospectus forms a part. We further note that the representations, warranties and covenants made by the Company in the Purchase Agreement, the Registration Rights Agreement and any agreement that is filed as an exhibit to any document that is incorporated by reference in this prospectus or any prospectus supplement were made solely for the benefit of the parties to such agreements, including, in some cases, for the purpose of allocating risk among the parties thereto, and should not be deemed to be a representation, warranty or covenant to you. Moreover, such representations, warranties and covenants were accurate only as of the date when made. Accordingly, such representations, warranties and covenants should not be relied on as accurately representing the historical or current state of our affairs.

In this prospectus, except as otherwise indicated or as the context otherwise requires, Kodak, we, us, our, the Company and ours refer to Eastman Kodak Company and its consolidated subsidiaries.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, proxy statements and other information with the SEC, and we have filed with the SEC a registration statement on Form S-3 under the Securities Act of 1933, as amended (the Securities Act), with respect to the securities offered by this prospectus. This prospectus, which forms part of the registration statement, does not contain all of the information included in the registration statement, including its exhibits and schedules. For further information about us and the securities described in this prospectus, you should refer to the registration statement, its exhibits and schedules and our reports, proxy statements, information statements and other

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information filed with the SEC. You may read and copy these materials at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. You may also obtain copies of this information by mail from the Public Reference Section of the SEC at prescribed rates. You can obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. In addition, the SEC maintains an internet site at www.sec.gov, from which you can electronically access these materials.

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INCORPORATION OF CERTAIN INFORMATION BY REFERENCE

The SEC allows us to incorporate by reference information into this prospectus. This means that we can disclose important information about us and our financial condition to you by referring you to another document filed separately with the SEC. The information incorporated by reference is considered to be a part of this prospectus, except any information that is superseded by information that is included in a document subsequently filed with the SEC.

This prospectus incorporates by reference the documents listed below that we have previously filed with the SEC and any future filings we make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act), from the date of this prospectus until the termination of an offering of securities, except that we are not incorporating by reference any information furnished (and not filed) with the SEC, including our Compensation Committee report and performance graph or any information furnished pursuant to Items 2.02 or 7.01 of Form 8-K or related exhibits furnished pursuant to Item 9.01 of Form 8-K:

our Annual Report on Form 10-K for the year ended December 31, 2015 as amended, including the portions of our Proxy Statement for our 2016 annual meeting of shareholders incorporated by reference therein, but excluding Part I, Item 1; Part II, Item 6; Part II, Item 7; Part II, Item 8; Part IV, Item 15 and Exhibit 12 to such Annual Report to the extent superseded by our Current Report on Form 8-K filed on August 9, 2016;

our Quarterly Reports on Form 10-Q for the quarterly periods ended March 31, 2016, June 30, 2016 and September 30, 2016, filed on May 5, 2016, August 9, 2016 and November 9, 2016, respectively;

our Current Reports on Form 8-K filed on May 26, 2016, May 27, 2016, June 15, 2016, September 15, 2016, November 7, 2016, November 16, 2016 (but excluding Item 7.01 and the related exhibit), November 18, 2016 and January 12, 2017; and

the description of our Common Stock contained in our Registration Statement on Form 8-A filed on September 3, 2013, including the description of our Common Stock contained in our Registration Statement on Form S-8 filed on September 3, 2013 and incorporated by reference therein, and any amendments or reports filed for the purpose of updating that description.

Any statement contained in a document all or a portion of which is incorporated or deemed to be incorporated by reference herein will be deemed to be modified or superseded to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any statement so modified will not be deemed to constitute a part hereof, except as so modified, and any statement so superseded will not be deemed to constitute a part hereof.

A copy of any document incorporated by reference in this prospectus may be obtained at no cost by writing or telephoning us at the following address and telephone number:

Eastman Kodak Company

343 State Street

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Rochester, NY 14650

Attention: Sharon E. Underberg

Phone: (585) 724-4000

We maintain a website at *www.Kodak.com*. Information about us, including our reports filed with the SEC, is available through that site. Such reports are accessible at no charge through our website and are made available as soon as reasonably practicable after such material is filed with or furnished to the SEC. Our website and the information contained on that website, or connected to that website, are not incorporated by reference in this prospectus.

You may read and copy any materials we file with the SEC at the SEC's website or at the SEC's offices mentioned under the heading "Where You Can Find More Information." The information on the SEC's website is not incorporated by reference in this prospectus.

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CAUTIONARY STATEMENT CONCERNING FORWARD-LOOKING STATEMENTS

This prospectus and the information incorporated by reference include forward-looking statements as that term is defined under the Private Securities Litigation Reform Act of 1995.

Forward-looking statements include statements concerning Kodak's plans, objectives, goals, strategies, future events, future revenue or performance, capital expenditures, liquidity, investments, financing needs and business trends, and other information that is not historical information. When used in this document, the words estimates, expects, anticipates, projects, plans, intends, believes, predicts, forecasts, strategy, continues, goals, targets, conditional verbs, such as will, should, could, or may, and similar expressions, as well as statements that do not relate strictly to historical or current facts, are intended to identify forward-looking statements. All forward-looking statements, including management's examination of historical operating trends and data, are based upon Kodak's expectations and various assumptions. Future events or results may differ from those anticipated or expressed in these forward-looking statements. Important factors that could cause actual events or results to differ materially from these forward-looking statements include, among others, the risks and uncertainties described in more detail in this prospectus, in our Annual Report on Form 10-K for the year ended December 31, 2015, as amended, under the headings Risk Factors and Legal Proceedings, in our Current Report on Form 8-K under the headings Business and Management's Discussion and Analysis of Financial Condition and Results of Operations Liquidity and Capital Resources, and in the corresponding sections of our quarterly reports on Form 10-Q for the quarters ended March 31, 2016, June 30, 2016 and September 30, 2016, and in other filings Kodak makes with the SEC from time to time, as well as the following:

Kodak's ability to comply with the covenants in its credit agreements;

Kodak's ability to improve and sustain its operating structure, cash flow, profitability and other financial results;

the ability of Kodak to achieve cash forecasts, financial projections, and projected growth;

Kodak's ability to achieve the financial and operational results contained in its business plans;

Kodak's ability to fund continued investments, capital needs and restructuring payments and service its debt;

Kodak's ability to discontinue, sell or spin-off certain businesses or operations, including the Prosper Business, or otherwise monetize assets;

changes in foreign currency exchange rates, commodity prices and interest rates;

Kodak's ability to effectively anticipate technology trends and develop and market new products, solutions and technologies, including its micro 3D printing of touch sensors;

Kodak's ability to effectively compete with large, well-financed industry participants;

continued sufficient availability of borrowings and letters of credit under Kodak's credit facility, Kodak's ability to obtain additional financing if and as needed and Kodak's ability to provide or facilitate financing for its customers;

Kodak's ability to attract and retain key executives, managers and employees;

the performance by third parties of their obligations to supply products, components or services to Kodak;
and

the impact of the global economic environment on Kodak.

There may be other factors that may cause Kodak's actual results to differ materially from the forward looking statements. All forward looking statements attributable to Kodak or persons acting on its behalf apply only as of the date of this prospectus or, with respect to any forward-looking statements included in a document incorporated by reference, as of the date thereof and are expressly qualified in their entirety by the cautionary statements included or referenced in this prospectus. Kodak undertakes no obligation to update or revise forward looking statements to reflect events or circumstances that arise after the date made or to reflect the occurrence of unanticipated events.

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THE COMPANY

General

Kodak provides directly and through partnerships with other innovative companies hardware, software, consumables and services to customers in graphic arts, commercial print, publishing, packaging, electronic displays, entertainment and commercial films, and consumer products markets. With its world-class R&D capabilities, innovative solutions portfolio and highly trusted brand, Kodak is helping customers around the globe to sustainably grow their own businesses and enjoy their lives.

Kodak is a global commercial printing and imaging company with proprietary technologies in materials science, digital imaging science and software, and deposition processes (methods whereby one or more layers of various materials in gaseous, liquid or small particle form are deposited on a substrate in precise quantities and positions). Kodak leverages its core technology products and services to develop solutions for the product goods packaging and graphic communications markets, and is commercializing products for the functional printing market. Kodak also offers brand licensing and intellectual property opportunities, provides products and services for motion pictures and other commercial films, and sells ink to its existing installed consumer inkjet printer base.

The Company was founded by George Eastman in 1880 and incorporated in 1901 in the State of New Jersey. Kodak is headquartered in Rochester, New York.

Corporate Information

Our principal executive office is located at 343 State Street, Rochester, New York 14650, and our telephone number is (585) 724-4000.

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RISK FACTORS

Investing in our securities involves risks, including the risk factors described below with respect to our Common Stock and Series A Preferred Stock. You should carefully consider these risks, as well as the risks, uncertainties and other factors described in our most recent Annual Report on Form 10-K, as supplemented and updated by subsequent Quarterly Reports on Form 10-Q and Current Reports on Form 8-K that we have filed or will file with the SEC, and in other documents which are incorporated by reference into this prospectus, as well as the risk factors and other information contained in or incorporated by reference into any accompanying prospectus supplement, before investing in any of our securities. Our financial condition, results of operations or cash flows could be materially adversely affected by any of these risks. The risks and uncertainties described in the documents incorporated by reference herein are not the only risks and uncertainties that we may face.

For more information about our SEC filings, please see [Where You Can Find More Information](#) and [Incorporation of Certain Information by Reference](#).

Risks Related to the Common Stock

The conversion of the Series A Preferred Stock into shares of Common Stock may dilute the value for the current holders of Common Stock.

The Series A Preferred Stock is convertible into shares of Common Stock (as described below under [Description of the Series A Preferred Stock Conversion](#)). As a result of the conversion of any issued and outstanding Series A Preferred Stock, our existing shareholders will own a smaller percentage of our outstanding Common Stock. Based on the capitalization of the Company as of December 31, 2016, and the initial conversion rate of 5.7471 shares of Common Stock per share of Series A Preferred Stock, the conversion of all shares of Series A Preferred Stock would result in the issuance to holders thereof of approximately 21% of our outstanding Common Stock after giving effect to such conversion. Further, additional shares of Common Stock may be issuable pursuant to certain other features of the Series A Preferred Stock, with such issuances being further dilutive to existing holders of Common Stock.

If Series A Preferred Stock is converted into Common Stock, holders of such converted Common Stock will be entitled to the same dividend and distribution rights as holders of the Common Stock currently authorized and outstanding. As such, another dilutive effect resulting from the conversion of any issued and outstanding shares of Series A Preferred Stock will be a dilution to dividends and distributions. For more information, see [Description of the Series A Preferred Stock Conversion](#) below.

Holders of Common Stock will not realize any dilution in their ownership, dividend or distribution rights solely as a result of the reservation of any shares of Common Stock for issuance upon conversion of the Series A Preferred Stock or for issuance of additional shares of Common Stock pursuant to certain other features of the Series A Preferred Stock, but will experience dilution to the extent additional shares of Common Stock are issued in the future as described above.

The holders of Series A Preferred Stock own a large portion of the voting power of our outstanding securities and have the right to nominate two members to our Board of Directors. As a result, these holders may influence the composition of the Board and future actions taken by the Board.

The Purchasers (as defined below) are entitled to vote upon all matters upon which holders of Common Stock have the right to vote and are entitled to the number of votes equal to the number of full shares of Common Stock into which such shares of Series A Preferred Stock could be converted at the then applicable conversion rate. Accordingly,

the Purchasers will hold approximately 22% of the voting power of the Company on an as-converted basis. As a result, the Purchasers may have the ability to influence future actions by the Company requiring shareholder approval.

Further, the Series A Preferred Stock Purchase Agreement (the Purchase Agreement), dated November 7, 2016, by and among the Company, LongLeaf Partners Small-Cap Fund, C2W Partners Master Fund Limited and Deseret Mutual Pension Trust (together, the Purchasers) and Southeastern Asset Management, Inc. (Southeastern) provides that the Purchasers, beginning at the first annual meeting of shareholders of the Company following the closing and for as long as the Purchasers hold any shares of Series A Preferred Stock, shall be entitled to nominate for election (collectively and not individually) at the Company s annual meeting of shareholders a number of directors to the board of directors of the Company (the Board) commensurate with their ownership

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percentage of Common Stock on an as-converted basis. Accordingly, it is expected that the Purchasers will be able to nominate two directors to the Board at the Company's next annual meeting of shareholders, assuming the Purchasers retain ownership of their shares of Series A Preferred Stock or any Common Stock into which they may have been converted. The Purchase Agreement also provides the Purchasers (collectively and not individually) the right to fill vacancies on the Board created by a designee of the Purchasers ceasing to serve on the Board. The nomination and other rights regarding the Board granted to the Purchasers pursuant to the terms of the Purchase Agreement are not transferrable to any other person. Also, whenever dividends on the Series A Preferred Stock are in arrears for six or more dividend periods, the holders of Series A Preferred Stock (voting with holders of all other classes of preferred stock of the Company whose voting rights are then exercisable) are entitled to vote for the election of two additional directors at the Company's next annual meeting and all subsequent meetings until all accumulated dividends on such Series A Preferred Stock and other voting preferred stock have been paid or set aside (during which time the number of directors that the Purchasers are entitled to nominate under the Purchase Agreement will be reduced by two). As a result, the potential presence of directors on the Board nominated by the Purchasers or elected by the holders of Series A Preferred Stock would enable the Purchasers or the holders of Series A Preferred Stock to influence the composition of the Board and, in turn, potentially influence and impact future actions taken by the Board.

The resale of our Common Stock pursuant to the registration statement of which this prospectus forms a part or our other currently effective registration statement, or the perception that such resale may occur, may adversely affect the price of our Common Stock.

The resale of a substantial number of shares of our Common Stock in the public market pursuant to the registration statement of which this prospectus forms a part or our other currently effective registration statement, or the perception that such resale might occur, could cause the market price of our Common Stock to decline. We are subject to the Registration Rights Agreement with the selling shareholders. In certain circumstances, the selling shareholders can require us to participate in an underwritten public offering of these shares. Any shares sold by the selling shareholders pursuant to these registration rights will be freely tradable without restriction under the Securities Act. While we cannot predict the size of future resales or distributions of our Common Stock, if there is a perception that such resales or distributions could occur, or if the selling shareholders sell a large number of shares, the market price for our Common Stock could be adversely affected. In addition, we are also subject to a separate registration rights agreement for which we filed a separate shelf registration statement on behalf of certain holders of our Common Stock in connection with our emergence from voluntary reorganization under Chapter 11 proceedings. Sales by holders under that shelf registration statement could also cause the same downward pressure to the market price of our Common Stock.

Risks related to the Series A Preferred Stock

An active trading market for the Series A Preferred Stock does not exist and may not develop.

The Series A Preferred Stock has no established trading market and is not currently listed on any securities exchange. We cannot assure you that an active trading market in the Series A Preferred Stock will develop and, even if it develops, we cannot assure you that it will last. In either case, the trading price of the Series A Preferred Stock could be adversely affected and holders' ability to transfer shares of Series A Preferred Stock will be limited.

The market price of the Series A Preferred Stock will be directly affected by the market price of our Common Stock, which may be volatile.

To the extent that a secondary market for the Series A Preferred Stock develops, we believe that the market price of the Series A Preferred Stock will be significantly affected by the market price of our Common Stock. The trading

price of our Common Stock may be highly volatile and could be subject to wide fluctuations in response to various factors, including the risk factors described in the section entitled "Risk Factors" contained in our Annual Report and our Quarterly Reports and other factors which are beyond our control.

We cannot predict how shares of our Common Stock will trade in the future, but fluctuations that may adversely affect the market prices of our Common Stock may, in turn, adversely affect the price of Series A Preferred Stock. This may result in greater volatility in the market price of the Series A Preferred Stock than would be expected for nonconvertible preferred stock. In addition, we expect that the market price of the Series A Preferred Stock will be influenced by yield and interest rates in the capital markets and our perceived creditworthiness.

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Future sales of our Common Stock in the public market could lower the market price for our Common Stock and adversely affect the trading price of the Series A Preferred Stock.

In the future, we may sell additional shares of our Common Stock to raise capital. We cannot predict the size of future issuances or the effect, if any, that they may have on the market price for our Common Stock. The issuance and sale of substantial amounts of Common Stock, or the perception that such issuances and sales may occur, could adversely affect the market price of the Series A Preferred Stock and our Common Stock. In addition, the existence of our Series A Preferred Stock may encourage short selling or arbitrage trading activity by market participants because the conversion of our Series A Preferred Stock could depress the price of our Common Stock, which may negatively impact the market price for the Series A Preferred Stock.

The conversion rate of the Series A Preferred Stock may not be adjusted for all dilutive events that may adversely affect the market price of the Series A Preferred Stock or the Common Stock issuable upon conversion of the Series A Preferred Stock.

The number of shares of our Common Stock that holders of Series A Preferred Stock are entitled to receive upon conversion of a share of Series A Preferred Stock is subject to adjustment for certain events arising from dividends or distributions in Common Stock, subdivisions, splits, and combinations of the Common Stock, certain issuances of stock purchase rights, options or warrants distributed in connection with a shareholder rights plan, self-tender offers and exchange offers, cash dividends or distributions, and certain other actions by us that modify our capital structure. See Description of Series A Preferred Stock Anti-Dilution Adjustments. We will not adjust the conversion rate for other events, including the issuance of Common Stock pursuant to plans for reinvestment of dividends or interest, options or rights to purchase such shares pursuant to benefit plans or employee agreements, any option, warrant, right, or exercisable, exchangeable or convertible security or for a change in the par value of the Common Stock. There can be no assurance that an event that adversely affects the value of the Series A Preferred Stock, but does not result in an adjustment to the conversion rate, will not occur. Further, if any of these other events adversely affects the market price of our Common Stock, it may also adversely affect the market price of the Series A Preferred Stock. In addition, we are not restricted from offering Common Stock in the future or engaging in other transactions that may dilute our Common Stock.

If our Common Stock is delisted, the ability to transfer or sell shares of Series A Preferred Stock, or Common Stock upon conversion, may be limited and the market value of Series A Preferred Stock will be materially adversely affected.

The terms of the Series A Preferred Stock may not protect you if our Common Stock is delisted. Upon delisting of our Common Stock, holders of our Series A Preferred Stock will have the option to convert their Series A Preferred Stock into shares of our Common Stock. As a result, holders will be forced to elect between converting their shares of the Series A Preferred Stock into illiquid shares of our Common Stock or holding their shares of the Series A Preferred Stock and receiving stated dividends on the stock until the Series A Preferred Stock is mandatorily redeemed, which shall be on the fifth anniversary of the original issue date (the mandatory redemption date). Accordingly, if the Common Stock is delisted, the holders' ability to transfer or sell their shares of the Series A Preferred Stock, or Common Stock upon conversion, may be limited and the market value of the Series A Preferred Stock will be materially adversely affected.

The redemption of the Series A Preferred Stock may adversely affect the return on the holders' investment in the Series A Preferred Stock.

On the fifth anniversary of the original issue date, the Company is obligated to redeem all shares of Series A Preferred Stock at a redemption price equal to the liquidation preference plus accrued and unpaid dividends to, but excluding the redemption date. In case of a mandatory redemption, holders may not be able to reinvest the redemption proceeds in a security comparable to the Series A Preferred Stock.

Purchasers of the Series A Preferred Stock may be adversely affected upon the issuance of a new series of preferred stock ranking senior to or equally with the Series A Preferred Stock.

The terms of the Series A Preferred Stock require the vote of holders representing at least 66 2/3% of the outstanding shares of Series A Preferred Stock to approve any offering by the Company of a new series of preferred stock that ranks senior to or equally with the Series A Preferred Stock as to dividend payments and liquidation preference. The Company is under no obligation to consider the specific interests of holders of Series A Preferred Stock in engaging in such a transaction once it has been approved by holders representing at least 66 2/3% of the outstanding shares of Series A Preferred Stock, and as a result, the rights of certain holders of Series A Preferred Stock may be adversely affected.

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The Series A Preferred Stock will rank junior to all of our and our subsidiaries' liabilities, as well as the capital stock of our subsidiaries held by third parties, in the event of a bankruptcy, liquidation or winding up of our or our subsidiaries' assets.

In the event of a bankruptcy, liquidation or winding up, our assets will be available to make payments to holders of the Series A Preferred Stock only after all of our liabilities have been paid. In addition, the Series A Preferred Stock will rank structurally junior to all existing and future liabilities of our subsidiaries, as well as the capital stock of our subsidiaries held by third parties. Your rights as holders of the Series A Preferred Stock to participate in the assets of our subsidiaries upon any liquidation or reorganization of any subsidiary will rank junior to the prior claims of that subsidiary's creditors and third party equity holders. In the event of a bankruptcy, liquidation or winding up, there may not be sufficient assets remaining, after paying our and our subsidiaries' liabilities, to pay any amounts to the holders of the Series A Preferred Stock then outstanding. As of September 30, 2016, we and our subsidiaries had total outstanding consolidated debt of approximately \$672 million.

You will not be entitled to the right of the selling shareholders to nominate directors to our Board upon your purchase of securities sold by the selling shareholders.

Pursuant to the terms of the Purchase Agreement, the selling shareholders, for as long as they hold any shares of Series A Preferred Stock, are entitled to certain rights to nominate directors for election to the Board commensurate with their ownership percentage of Common Stock on an as-converted basis. The nomination and other rights regarding the Board granted to the selling shareholders pursuant to the terms of the Purchase Agreement are not transferrable to any other person. As a result, purchasers of securities sold by the selling shareholders will only be entitled to the voting rights typically afforded to holders of such securities.

Table of Contents**RATIO OF EARNINGS TO COMBINED FIXED CHARGES AND PREFERRED STOCK DIVIDENDS**

The following table sets forth our ratio of earnings to combined fixed charges and preferred stock dividends for the periods indicated:

	Nine Months		Four Months		Eight Months		Year Ended	
	Ended	Year Ended	Ended	Ended	Ended	Year Ended	Year Ended	Year Ended
	September 30,	December 31,	December 31,	August 31,	December 31,	December 31,	December 31,	December 31,
	2016	2015	2014	2013	2013	2012	2012	2011
Ratio of earnings to combined fixed charges and preferred stock dividends	1.9	1.0	N/A ⁽¹⁾	N/A ⁽¹⁾	21.4	N/A ⁽¹⁾	N/A ⁽¹⁾	N/A ⁽¹⁾

(1) N/A represents coverage ratio of less than 1. Our earnings were inadequate to cover fixed charges for 2011, 2012 and 2014 and for the four months ended December 31, 2013. The amounts by which earnings were inadequate to cover fixed charges were \$756 million in 2011, \$1,609 million in 2012, \$52 million in 2014 and \$55 million for the four months ended December 31, 2013.

For the periods indicated above, we had no outstanding shares of preferred stock with required dividend payments.

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USE OF PROCEEDS

All of the shares of Series A Preferred Stock and Common Stock offered by the selling shareholders pursuant to this prospectus will be sold by the selling shareholders for their own accounts. We will not receive any of the proceeds from these sales, if any. We will pay all of the fees and expenses incurred by us in connection with this registration. We will not be responsible for fees and expenses incurred by the selling shareholders or any underwriting discounts or commissions.

Table of Contents**SELLING SHAREHOLDERS**

On November 7, 2016, the Company, Southeastern and the Purchasers entered into the Purchase Agreement, pursuant to which the Purchasers purchased from the Company, in the aggregate, 2,000,000 shares of Series A Preferred Stock for an aggregate purchase price of \$200 million. The consummation of the purchase and sale of the shares of Series A Preferred Stock to the Purchasers pursuant to the Purchase Agreement (the "Closing") occurred on November 15, 2016.

The Purchasers, acting as selling shareholders hereunder, may from time to time offer and sell pursuant to this prospectus any or all of the shares of Series A Preferred Stock listed below that have been issued to them, and any or all of the shares of Common Stock issuable upon conversion of such shares of Series A Preferred Stock. Shares of Common Stock held by such selling shareholders and not issued upon the conversion of the Series A Preferred Stock may not be offered pursuant to this prospectus.

The table below sets forth the name of the selling shareholders, the number of shares of Series A Preferred Stock beneficially owned by each such selling shareholder and the number of shares of Series A Preferred Stock that may be offered pursuant to this prospectus and the number of shares of our Common Stock beneficially owned by each such selling shareholder, and the number of shares of Common Stock that may be offered pursuant to this prospectus. In the table below, the number of shares of Common Stock that may be offered pursuant to this prospectus is calculated based on the initial conversion rate of 5.7471 shares of Common Stock per share of Series A Preferred Stock. The number of shares of Common Stock into which the Series A Preferred Stock is convertible is subject to adjustment under certain circumstances. Accordingly, the number of shares of Common Stock issuable upon conversion of the Series A Preferred Stock and beneficially owned and offered by the selling shareholders pursuant to this prospectus may increase or decrease from that set forth in the below table.

The information set forth below is based on information provided by or on behalf of the selling shareholders prior to the date hereof. Information concerning the selling shareholders may change from time to time. The selling shareholders may from time to time offer and sell any or all of the securities under this prospectus. Because the selling shareholders are not obligated to sell the offered securities, we cannot state with certainty the amount of our securities that the selling shareholders will hold upon consummation of any such sales. In addition, since the date on which the selling shareholders provided this information to us, such selling shareholders may have sold, transferred or otherwise disposed of all or a portion of the offered securities.

Name	Series A Preferred Stock (1)			Common Stock		
	Number of shares beneficially owned and offered hereby	Number of shares owned after completion of the offering	Percent of shares beneficially owned after the offering	Number of shares beneficially owned (2)	Number of shares owned after completion of the offering (3)	Percent of shares beneficially owned after the offering (3)
Longleaf Partners Small-Cap Fund (4)	1,864,300	0	0%	10,714,319	0	0%
C2W Partners Master Fund Limited (5)	100,000	0	0%	967,910	393,200	*
	35,700	0	0%	205,171	0	0%

Deseret Mutual Pension
Trust (6)

- * Represents less than 1% of outstanding common stock.
- (1) Assumes the sale of all shares of Series A Preferred Stock and Common Stock offered pursuant to this prospectus.
 - (2) Based on the initial conversion rate of 5.7471 shares of Common Stock per share of Series A Preferred Stock. All shares reflected as beneficially owned are offered pursuant to this prospectus except as described in footnote (5) below.
 - (3) Calculated based on Rule 13d-3 under the Exchange Act, based on 42,402,161 shares of Common Stock outstanding as of December 31, 2016 and the assumed conversion rate of 5.7471 shares of Common Stock per share of Series A Preferred Stock.
 - (4) Reflects 1,864,300 shares of Series A Preferred Stock held by Longleaf Partners Small-Cap Fund (Longleaf) and shares of Common Stock into which such shares of Series A Preferred Stock are convertible. Southeastern Asset Management, Inc. (Southeastern) is the investment counsel for Longleaf and as such may be deemed to have voting and dispositive power over the shares held by Longleaf. Mason Hawkins, Staley Cates and Ross Glotzbach, in their capacities as portfolio managers for Southeastern, make voting and investment decisions on behalf of Southeastern in its capacity as investment counsel for Longleaf. The address for Southeastern is 6410 Poplar Ave. #900, Memphis, TN 38119. This information as to beneficial ownership is based on a questionnaire completed on January 25, 2017 by Southeastern.

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- (5) Reflects (i) 100,000 shares of Series A Preferred Stock held by C2W Partners Master Fund Limited (C2W) and shares of Common Stock into which such shares of Series A Preferred Stock are convertible, all of which are offered pursuant to this prospectus, and (ii) 393,200 shares of Common Stock beneficially owned by C2W as of the date of this prospectus which are not offered pursuant to this prospectus. Southeastern is an investment advisor to C2W and as such may be deemed to have dispositive power over the shares held by C2W. Mason Hawkins, Staley Cates and Ross Glotzbach, in their capacities as portfolio managers for Southeastern, make investment decisions on behalf of Southeastern in its capacity as investment advisor to C2W. The address for Southeastern is 6410 Poplar Ave. #900, Memphis, TN 38119. This information as to beneficial ownership is based on a questionnaire completed on January 25, 2017 by Southeastern.
- (6) Reflects 35,700 shares of Series A Preferred Stock held by Deseret Mutual Pension Trust (Deseret) and shares of Common Stock into which such shares of Series A Preferred Stock are convertible. Southeastern Asset Management, Inc. (Southeastern) is an investment advisor to Deseret and as such may be deemed to have dispositive power over the shares held by Deseret. Mason Hawkins, Staley Cates and Ross Glotzbach, in their capacities as portfolio managers for Southeastern, make investment decisions on behalf of Southeastern in its capacity as investment advisor to Deseret. The address for Southeastern is 6410 Poplar Ave. #900, Memphis, TN 38119. This information as to beneficial ownership is based on a questionnaire completed on January 25, 2017 by Southeastern.

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DESCRIPTION OF THE SERIES A PREFERRED STOCK

The following is a summary of the material terms and provisions of the Series A Preferred Stock as contained in the Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of the Company (the Certificate of Designations) which is filed as an exhibit to the registration statement of which this prospectus forms a part. While we believe this summary covers the material terms and provisions of the Series A Preferred Stock, we encourage you to read the Certificate of Designations. For more information about accessing this Current Report on Form 8-K and the other information we file with the SEC, please see [Where You Can Find More Information](#) .

Dividends

Holders of Series A Preferred Stock are entitled to receive cash dividends in an amount equal to the dividend rate of 5.50% of the liquidation preference of \$100.00 per share of Series A Preferred Stock (the liquidation preference). Dividends on the Series A Preferred Stock cumulate quarterly on January 15, April 15, July 15 and October 15 of each year, commencing January 15, 2017, and accumulate from the most recent date dividends were paid, and if no dividends have been paid, from the first date on which the Series A Preferred Stock is issued, which was November 15, 2017 (the original issue date). Dividends on the Series A Preferred Stock will be paid in cash if the Company has funds legally available for payment and the Board, or an authorized committee thereof, declares a cash dividend payable.

Prior to the mandatory redemption date, unless all accumulated and unpaid dividends on the Series A Preferred Stock have been paid in full or a sum for such amounts has been set aside for payment, the Company may not declare dividends on shares of Common Stock or any other shares of the Company s stock ranking junior or equal to the Series A Preferred Stock and may not purchase, redeem or otherwise acquire such shares, subject to certain customary exceptions.

Ranking

The Series A Preferred Stock ranks senior, as to payment of dividends and distributions of assets upon the liquidation, dissolution or winding up of Company, to the Company s Common Stock and any shares of capital stock of the Company not expressly ranking senior to or *pari passu* with the Series A Preferred Stock, and junior to all shares of capital stock of the Company issued in the future, the terms of which expressly provide that such shares will rank senior to the Series A Preferred Stock.

Voting Rights

Holders of Series A Preferred Stock are entitled to vote upon all matters upon which holders of Common Stock have the right to vote, and will be entitled to the number of votes equal to the number of full shares of Common Stock into which such shares of Series A Preferred Stock could be converted at the then applicable conversion rate, at the record date, such votes to be counted together with shares of Common Stock and not separately as a class, except that (i) for so long as any Series A Preferred Stock remains outstanding, the affirmative vote of holders of more than 66 2/3% of the outstanding shares of Series A Preferred Stock will be required to alter or amend our Second Amended and Restated Certificate of Incorporation (the Certificate), the Certificate of Designations, or the bylaws of the Company, if such amendment would alter the rights and preferences of the Series A Preferred Stock so as to adversely affect the holders thereof and (ii) whenever dividends on the Series A Preferred Stock are in arrears for six or more dividend periods, the holders of Series A Preferred Stock (voting with holders of all other classes of preferred stock of the Company whose voting rights are then exercisable) are entitled to vote for the election of two additional directors in the next annual meeting and all subsequent meetings until all accumulated dividends on such Series A Preferred Stock

and other voting preferred stock have been paid or set aside. If and when all accumulated dividends have been paid on such Series A Preferred Stock and other voting preferred stock, such rights of such holders of Series A Preferred Stock and other voting preferred stock will immediately cease.

Table of Contents**Redemption**

Subject to the New Jersey Business Corporation Act and unless no shares of the Series A Preferred Stock are outstanding, on the mandatory redemption date, the Company will redeem all shares of Series A Preferred Stock at a redemption price equal to the liquidation preference plus accrued and unpaid dividends to, but excluding, the redemption date.

Conversion***Optional Conversion***

Each holder of Series A Preferred Stock has the option at any time to convert any or all of such holder's shares of Series A Preferred Stock at an initial conversion rate of 5.7471 shares of fully paid and non-assessable shares of Common Stock (subject to adjustment as described in **Anti-Dilution Adjustments** below) per share of Series A Preferred Stock and a cash payment in lieu of any fractional shares of Common Stock.

Mandatory Conversion

The Company has the right, at any time after the second anniversary of the original issue date, to cause all outstanding shares of Series A Preferred Stock to be automatically converted into shares of Common Stock using the conversion rate then in effect, with a cash payment in lieu of fractional shares, if the closing price per share of Common Stock equals or exceeds 125% of the conversion price using the conversion rate then in effect for at least 45 trading days in a period of 60 consecutive trading days with the last trading day of such 60 day period ending on the trading day immediately preceding the business day on which the Company issues a press release announcing the mandatory conversion. Upon a mandatory conversion, all rights of the holders of Series A Preferred Stock will terminate except for the right to receive the whole shares of Common Stock issuable upon conversion, a cash payment in lieu of any fractional shares and a partial payment of any accrued and unpaid dividend. Standard notice provisions as set forth in the Certificate of Designations apply.

Conversion upon a Fundamental Change

If (i) subject to certain exceptions, a person or a group beneficially owns more than 50% of the voting power of the Company (a **change of control**); (ii) the Company consummates any recapitalization, reclassification of Common Stock or any sale or transfer of all or substantially all of the consolidated assets of the Company and its subsidiaries; (iii) the Common Stock ceases to be listed on the NYSE, NASDAQ Global Select Market or the NASDAQ Global Market; or (iv) our shareholders approve any plan or proposal for the liquidation or dissolution of the Company (each of (i) through (iv), a **fundamental change**) (provided that any transaction whereby at least 90% of the consideration to be received by holders of Common Stock consists of shares of Common Stock that are or will be listed on the NYSE, NASDAQ Global Select Market or the NASDAQ Global Market as a result of which the Series A Preferred Stock becomes convertible into such consideration will not be considered a fundamental change), the holders of Series A Preferred Stock will receive for each share of Series A Preferred Stock converted during a specified window either (a) a number of shares of Common Stock equal to the then-applicable conversion rate plus an additional number of shares of Common Stock as determined by reference to a make-whole premium chart specified in the Certificate of Designations or (b) a number of shares of Common Stock equal to the conversion rate increased to equal the sum of the liquidation preference of Series A Preferred Stock plus all accumulated and unpaid dividends to the settlement date of the conversion divided by the market value of the Common Stock (defined as the volume weighted average price of the Common Stock during the 15 consecutive trading day period ending on the date of such conversion); provided that the conversion rate used in clause (b) above will not exceed 10.3448 shares of Common Stock (subject

to adjustment as described in Anti-Dilution Adjustments (below) per share of Series A Preferred Stock. In addition to the shares of Common Stock received as described above, each converting holder will have the right to receive a cash payment of all accrued, accumulated and unpaid dividends on such shares of Series A Preferred Stock for all dividend periods prior to the dividend payment date immediately preceding such conversion date as long as the Company is then legally permitted to pay such dividends.

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Anti-Dilution Adjustments

The conversion rate of the Series A Preferred Stock is subject to certain anti-dilution adjustments. These anti-dilution adjustments, as described in the Certificate of Designations, will apply if:

the Company exclusively issues shares of Common Stock as a dividend or distribution on all shares of Common Stock, or if the Company effects a share split or share combination;

the Company distributes to all or substantially all holders of Common Stock any rights or warrants entitling them to purchase or subscribe for shares of Common Stock at a price per share that is less than the average of the closing price per share of Common Stock over the 10 consecutive trading day period ending on the trading day immediately preceding the dividend ex-date as determined by the exchange or market that Common Stock trades on;

the Company makes distributions to all or substantially all holders of Common Stock consisting of its capital stock, evidence of indebtedness or other assets, excluding dividends or other distributions (including share splits), rights, options or warrants as to which an adjustment is effected in clause (i) or (ii) above or (vi) below and dividends or other distributions covered by (iv) below and subject to certain other exceptions;

the Company makes any cash dividends or distribution to all or substantially all holders of Common Stock;

the liabilities relating to the remediation of environmental conditions at Eastman Business Park exceed \$99 million and the Company (1) is obligated to make a cash payment in accordance with the Amended and Restated Settlement Agreement, dated as of June 17, 2013 and amended and restated as of August 6, 2013 (and as may be further amended, restated, modified or supplemented from time to time), by and among the Company and the New York State Department of Environmental Conservation and the New York State Urban Development Corporation, or (2) establishes a reserve with respect to an obligation described in the preceding clause, and such cash payment or reserve is greater than or equal to \$5 million; and

the Company or any of its subsidiaries makes a payment in respect of a tender offer or exchange offer for Common Stock and the cash and other consideration payable under such tender offer or exchange offer exceeds the average closing price per share of Common Stock over 10 consecutive trading days commencing on the trading day immediately following the last day tenders and exchanges may be made.

In addition to the adjustments provided above, to the extent permitted by applicable law and subject to the applicable rules of the NYSE, the Company may (but is not required to) from time to time increase the conversion rate for a period of at least 20 business days or longer if the increase is irrevocable during such period and the Board determines that such increase would be in the Company's best interest.

Reorganization Events

In the event of: (i) any recapitalization, reclassification or change of Common Stock; (ii) any consolidation, merger or combination involving the Company; (iii) any sale, lease or other transfer to a third party of the consolidated assets of the Company and the Company's subsidiaries substantially as an entirety; or (iv) any statutory share exchange, in each case, as a result of which Common Stock is converted into, or exchanged for, stock, other securities or other property (each, referred to as a reorganization event), each share of the Series A Preferred Stock outstanding immediately prior to such reorganization event will become convertible into the kind and amount of securities, cash and other property that a holder of a number of shares of Common Stock equal to the conversion rate per share of the Series A Preferred Stock prior to the reorganization event would have owned or been entitled to