

SYNOVUS FINANCIAL CORP

Form 424B3

May 07, 2003

## Synovus Financial Corp.

### Offer to Exchange

**4.875% Subordinated Notes Due 2013**

**that have been registered under the Securities Act of 1933  
for  
any and all outstanding 4.875% Subordinated Notes Due 2013  
that have not been registered under the Securities Act of 1933**

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#### The New Notes

The terms of the new notes are substantially identical to the old notes, except that the new notes have been registered under the Securities Act, and the transfer restrictions, registration rights and additional interest provisions relating to the old notes do not apply to the new notes.

The new notes will bear interest at the rate of 4.875% per year. We will pay interest on the new notes semiannually on February 15 and August 15 of each year, beginning August 15, 2003.

The new notes will mature on February 15, 2013.

The new notes may not be redeemed prior to maturity.

The new notes will rank junior in right of payment to all of our senior indebtedness and effectively junior to all indebtedness and other liabilities of our subsidiaries.

The new notes will be our unsecured obligations, will not be savings accounts, deposits or other obligations of ours or any of our subsidiaries and will not be insured by the Federal Deposit Insurance Corporation, the bank insurance fund or any other governmental agency or instrumentality.

The new notes will not be listed on any securities exchange.

#### The Exchange Offer

The exchange offer will expire at 5:00 p.m., New York City time, on June 11, 2003, unless extended.

The exchange offer is not subject to any conditions other than that the exchange offer not violate applicable law or any applicable interpretation of the staff of the SEC.

All old notes that are validly tendered and not validly withdrawn will be exchanged.

Tenders of old notes may be withdrawn at any time before the expiration of the exchange offer.

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**We are not asking you for a proxy, and you are requested not to send us a proxy.**

**Neither the SEC nor any state securities commission has approved or disapproved of these securities or determined that this prospectus is accurate or complete or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.**

The date of this prospectus is May 7, 2003.

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Each broker-dealer that receives new notes for its own account pursuant to the exchange offer must acknowledge that it will deliver a prospectus in connection with any resale of the new notes. The letter of transmittal states that by so acknowledging and by delivering a prospectus, a broker-dealer will not be deemed to admit that it is an underwriter within the meaning of the Securities Act of 1933, as amended, which we refer to as the Securities Act. This prospectus, as it may be amended or supplemented from time to time, may be used by a broker-dealer in connection with resales of new notes received in exchange for old notes where the old notes were acquired by the broker-dealer as a result of market-making activities or other trading activities. We have agreed that, starting on the expiration date and ending on the close of business one year after the expiration date, we will make this prospectus available to any broker-dealer for use in connection with any such resale. See Plan of Distribution.

## WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form S-4 under the Securities Act relating to our offering of the new notes. This prospectus is part of the registration statement. As described below, you may obtain from the SEC a copy of the registration statement and exhibits that we filed with the SEC when we registered the new notes. The registration statement may contain additional information that may be important to you. Statements made in this prospectus about legal documents may not necessarily be complete and you should read the documents which are filed as exhibits to the registration statement or otherwise filed with the SEC.

We also file annual, quarterly and current reports, proxy statements and other information with the SEC. Our SEC filings are available to the public over the Internet at the SEC's web site at <http://www.sec.gov>. You may also read and copy any document we file with the SEC at its public reference facilities at 450 Fifth Street, N.W., Washington, D.C. 20549. You can also obtain copies of the documents at prescribed rates by writing to the Public Reference Section of the SEC at 450 Fifth Street, N.W., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference facilities. Our SEC filings are also available at the office of the New York Stock Exchange. For further information on obtaining copies of our public filings at the New York Stock Exchange, you should call (212) 656-5060.

We are incorporating by reference into this prospectus certain documents we file with the SEC, which means that we can disclose important information to you by referring to those documents. The information incorporated by reference is an important part of this prospectus and information that we subsequently file with the SEC will automatically update and supercede information in this prospectus and in our other filings with the SEC. We incorporate by reference the documents listed below, which we have already filed with the SEC, and any future filings we make with the SEC under Sections 13(a), 13(c), 14

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or 15(d) of the Securities Exchange Act of 1934, until the later of the date on which we have completed the exchange offer or the end of the period during which this prospectus is available for use by participating broker-dealers and others with similar prospectus delivery requirements for use in connection with any resale of new notes:

Annual Report on Form 10-K for the year ended December 31, 2002, filed on March 20, 2003 (File No. 001-10312), as amended by the Annual Report on Form 10-K/A for the year ended December 31, 2002, filed on April 22, 2003 (File No. 001-10312);

Proxy Statement on Schedule 14A, including Financial Appendix, for the Annual Meeting of Shareholders to be held on April 24, 2003, filed as exhibit 20.1 to the Annual Report on Form 10-K for the year ended December 31, 2002, filed on March 20, 2003 (File No. 001-10312); and

Current Reports on Form 8-K filed on January 15, 2003 (File No. 001-10312) and April 16, 2003 (File No. 001-10312).

You may request a copy of these filings, other than an exhibit to a filing unless that exhibit is specifically incorporated by reference into that filing, and copies of the indenture and the registration rights agreement at no cost, by writing or calling us at the following address:

Synovus Financial Corp.

Suite 301, One Arsenal Place  
901 Front Avenue  
Columbus, Georgia 31901  
(706) 644-1930  
Attention: G. Sanders Griffith, III  
Senior Executive Vice President,  
General Counsel and Secretary

**To obtain timely delivery of this information, you must request it no later than five (5) business days before June 11, 2003, the expiration date of the exchange offer.**

**You should rely only on the information contained in this prospectus. We have not authorized anyone else to provide you with additional or different information. We are only offering to exchange the old notes for new notes in states where the offer is permitted. You should not assume that the information in this prospectus is accurate as of any date other than the date on the front of this document.**

## SUMMARY

*The following summary is qualified in its entirety by the more detailed information included elsewhere or incorporated by reference in this prospectus. Because this is a summary, it may not contain all of the information that may be important to you. Unless the context otherwise requires, references in this prospectus to Synovus, our company, we, us, our and similar expressions mean Synovus Financial Corp., a Georgia corporation, and its consolidated subsidiaries. References to the old notes mean the unregistered 4.875% subordinated notes due 2013 and references to the new notes mean the 4.875% subordinated notes due 2013, which have been registered under the Securities Act.*

### Synovus Financial Corp.

#### General

We are a financial services company and a registered bank holding company. We conduct a broad range of financial services through our banking and non-banking subsidiaries at approximately 300 locations. We operate in two business segments:

financial services, which primarily involve commercial banking activities, retail banking, financial management, mortgage banking, insurance and leasing services, and

electronic payment processing, which includes consumer credit, debit, commercial, retail and stored value card processing and related services, as well as debt collection and bankruptcy management services and the provision of software solutions for commercial card management programs.

As of December 31, 2002 we had total assets of approximately \$19.0 billion, net loans of \$14.3 billion, total deposits of \$13.9 billion and total shareholders' equity of \$2.0 billion.

Under the longstanding policy of the Board of Governors of the Federal Reserve System, which we refer to as the Federal Reserve Board, a bank holding company is expected to act as a source of financial strength for its subsidiary banks and to commit resources to support these banks. As a result of this policy, we may be required to commit resources to our subsidiary banks in circumstances where we might not otherwise do so.

Our principal executive offices are located at Suite 301, One Arsenal Place, 901 Front Avenue, Columbus, Georgia 31901, and our telephone number is (706) 649-4751. Our common stock is traded on the New York Stock Exchange under the symbol SNV.

#### Financial Services

We currently have 40 wholly owned first and second tier banking subsidiaries located in Georgia, Alabama, South Carolina, Florida and Tennessee, which we refer to as the bank subsidiaries.

The bank subsidiaries offer commercial banking services, including commercial, financial, agricultural and real estate loans, and retail banking services, including accepting customary types of demand and savings deposits, making individual, consumer, installment, first mortgage and second mortgage loans, offering money transfers, safe deposit services, trust, investment, IRA and Keogh services, leasing services, automated banking and electronic switch services, automated fund transfers and bank credit card services, including Mastercard and Visa services.

Our primary non-bank subsidiaries are:

Synovus Securities, Inc.®, Columbus, Georgia, which specializes in professional portfolio management for fixed-income securities, executing securities transactions as a broker/ dealer and providing individual investment advice on equity and other securities;

Synovus Trust Company®, N.A., Columbus, Georgia, which provides trust services;

Synovus Mortgage Corp.®, Birmingham, Alabama, which offers mortgage services;

Synovus Insurance Services, Columbus, Georgia, which offers insurance agency services;

Creative Financial Group, LTD., Atlanta, Georgia, which provides financial planning services; and

GLOBALT, Inc., Atlanta, Georgia, which provides asset management services.

### **Electronic Payment Processing**

Established in 1983 as an outgrowth of an on-line accounting and bankcard data processing system developed for one of our subsidiaries, Total System Services, Inc., which we refer to as TSYS, is now one of the world's largest electronic payments processors of consumer credit, debit, commercial, stored value and retail cards. TSYS is based in Columbus, Georgia, and its common stock is traded on the New York Stock Exchange under the symbol TSS. TSYS provides an electronic link between buyers and sellers with a comprehensive on-line system of data processing services with more than 245 million cardholder accounts on file as of December 31, 2002. TSYS provides a comprehensive on-line system of data processing services servicing issuing institutions throughout the United States, Canada, Mexico, Honduras, the Caribbean and Europe. TSYS currently offers merchant services to financial institutions and other organizations in the United States and Japan. We currently own 81% of TSYS through our wholly-owned subsidiary, Columbus Bank and Trust Company, which we refer to as CB&T.

### **The Exchange Offer**

On February 18, 2003, we completed the offering of \$300,000,000 aggregate principal amount at maturity of our 4.875% subordinated notes due 2013 in a transaction exempt from registration under the Securities Act. The net proceeds of the offering were used for general corporate purposes. In connection with the offering, we entered into a registration rights agreement with the initial purchasers of the old notes in which we agreed to commence this exchange offer. Accordingly, you may exchange your old notes for new notes which have substantially the same terms. We refer to the old notes and the new notes together as the notes. The following is a summary of the exchange offer. For a more detailed description of the terms of the exchange offer, see "The Exchange Offer" in this prospectus.

|                                      |   |
|--------------------------------------|---|
| Securities Offered                   | \$300,000,000 aggregate principal amount at maturity of our 4.875% subordinated notes due 2013, registered under the Securities Act. The terms of the new notes offered in the exchange offer are substantially identical to those of the old notes, except that the transfer restrictions, registration rights and additional interest provisions relating to the old notes do not apply to the new notes.                             |
| The Exchange Offer                   | We are offering new notes in exchange for a like principal amount of our old notes. We are offering these new notes to satisfy our obligations under a registration rights agreement which we entered into with the initial purchasers of the old notes. You may tender your outstanding notes for exchange by following the procedures described under the heading "The Exchange Offer."   |
| Expiration Date; Tenders; Withdrawal | The exchange offer will expire at 5:00 p.m., New York City time, on June 11, 2003, unless we extend it. You may withdraw any old notes that you tender for exchange at any time prior to the expiration date of this exchange offer. We will accept any and all old notes validly tendered and not validly withdrawn before the expiration date. See "The Exchange Offer" Procedures for Tendering Old Notes and Withdrawals of Tenders |

of Old Notes for a more complete description of the tender and withdrawal period.

United States Federal Income Tax Consequences

Your exchange of old notes for new notes to be issued in the exchange offer will not result in any gain or loss to you for United States federal income tax purposes. See United States Federal Income Tax Consequences for a summary of United States federal income tax consequences associated with the exchange of old notes for new notes and the ownership and disposition of those new notes.

Use of Proceeds

We will not receive any cash proceeds from the exchange offer.

Exchange Agent

The Bank of New York Trust Company of Florida, N.A.

Shelf Registration

If applicable interpretations of the staff of the SEC do not permit us to effect the exchange offer, or upon the request of any holder of old notes under certain circumstances, we will be required to file, and use our reasonable best efforts to cause to become effective, a shelf registration statement under the Securities Act which would cover resales of old notes. See The Exchange Offer Registration Rights.

Consequences of Your Failure to Exchange Your Old Notes

Old notes that are not exchanged in the exchange offer will continue to be subject to the restrictions on transfer that are described in the legend on the old notes. In general, you may offer or sell your old notes only if they are registered under, or offered or sold under an exemption from, the Securities Act and applicable state securities laws. We do not currently intend to register the old notes under the Securities Act. If your old notes are not tendered and accepted in the exchange offer, it may become more difficult for you to sell or transfer your old notes.

Consequences of Exchanging Your Old Notes

Based on interpretations of the staff of the SEC, we believe that you will be allowed to resell the new notes that we issue in the exchange offer without complying with the registration and prospectus delivery requirements of the Securities Act if:

you are acquiring the new notes in the ordinary course of your business,

you are not engaging in and do not intend to engage in a distribution of the new notes,

you have no arrangement or understanding with any person to participate in the distribution of the new notes, and

you are not an affiliate, as defined in Rule 405 under the Securities Act, of us.

If any of these conditions are not satisfied and you transfer any new notes issued to you in the exchange offer without delivering a proper prospectus or without qualifying for a registration exemption, you may incur liability under the Securities Act. We



will not be responsible for, or indemnify you against, any liability you incur.

If you are a broker-dealer and you will receive new notes for your own account in exchange for old notes that you acquired as a result of market-making activities or other trading activities, you will be required to acknowledge that you will deliver a prospectus in connection with any resale of the new notes. See Plan of Distribution for a description of the prospectus delivery obligations of broker-dealers in the exchange offer.

If you are a broker-dealer that acquired the old notes directly from us in the initial offering and not as a result of market-making activities, you must comply with the registration and prospectus delivery requirements of the Securities Act in connection with any resale of the new notes. In this case, you will not be permitted to use this exchange offer prospectus in connection with resales of the new notes.

#### **The New Notes**

The following is a summary of the new notes. For a more detailed description of the terms of the new notes, see Description of the New Notes in this prospectus.

|                        |   |
|------------------------|---|
| Issuer                 | Synovus Financial Corp.   |
| Notes Offered          | \$300,000,000 aggregate principal amount of 4.875% subordinated notes due 2013.   |
| Maturity               | February 15, 2013.  |
| Interest Payment Dates | February 15 and August 15, beginning August 15, 2003.   |
| Ranking                | <p>The new notes will be our direct, unsecured subordinated obligations and will rank junior in right of payment to all senior indebtedness (as defined below under <u>Description of the New Notes Subordination of the Notes</u>) of our company. The new notes will also rank effectively junior to all of our subsidiaries' indebtedness, deposits and other liabilities. As of December 31, 2002, we had an aggregate of \$275.0 million of senior indebtedness outstanding. In addition, as of December 31, 2002, our subsidiaries had an aggregate of \$2,629.2 million of indebtedness and other liabilities outstanding, excluding deposits of \$13,928.8 million. We expect to incur additional senior indebtedness from time to time, and the indenture does not prohibit or limit the incurrence of other indebtedness, including additional senior indebtedness.</p> <p>The indenture also does not limit our or our subsidiaries' ability to incur other debt, including debt secured by a lien on our or our subsidiaries' assets, and does not contain financial or similar restrictive covenants.</p> <p>The new notes are not deposits and are not insured by the Federal Deposit Insurance Corporation or any governmental agency.</p> |
| Redemption             | We may not redeem the new notes prior to maturity.  |

### FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements. We may also make forward-looking statements in reports filed with the SEC that we incorporate by reference into this prospectus. Statements that are not historical facts, including statements about our beliefs and expectations, are forward-looking statements. Forward-looking statements include statements preceded by, followed by or that include the words believes, expects, anticipates, plans, estimates or similar expressions. These statements are based on beliefs and assumptions of our management, and on information currently available to our management.

Forward-looking statements are not guarantees of performance. They involve risks, uncertainties and assumptions. We caution you that a number of important factors could cause actual results to differ materially from those contained in any forward-looking statement. Many of these factors are beyond our ability to control or predict. With respect to forward-looking statements contained or incorporated by reference in this prospectus, we have made assumptions regarding, among other things:

expected trends in credit quality;

expected loan delinquency rates;

expected loan growth;

expected net interest margin;

expected increases in net income of TSYS;

expected increases in our banking services business net income;

expected increases in our Financial Management Services business and insurance business revenues;

expected increases in our Financial Services business expenses;

the impact of increasing competition and consolidation within the banking industry; and

general economic conditions.

We cannot assure you that our assumptions are correct. Forward-looking statements contained or incorporated by reference in this prospectus are also subject to risks and uncertainties. These include, but are not limited to, the following:

TSYS inability to achieve its net income goal for 2003, due to failure to successfully bring new products and services to market, adverse developments with respect to its sub-prime or retail clients, its inability to control expenses or sign new clients, or otherwise;

our inability to achieve our net income goals for banking services or to control Financial Services expenses;

our inability to increase our revenues derived from Financial Management Services and insurance;

the strength of the U.S. economy in general and the strength of the local economies in which we operate;

the effects of and changes in trade, monetary and fiscal policies, and laws, including interest rate policies of the Federal Reserve Board;

changes in inflation rates, interest rates, market and monetary fluctuations;

the timely development of and acceptance of new products and services and perceived overall value of these products and services by users;

changes in consumer spending, borrowing, and saving habits;

technological changes are more difficult or expensive than anticipated;

our ability to identify, complete and integrate acquisitions;

our ability to increase market share and control our expenses;

the effect of changes in laws and regulations, including laws and regulations concerning taxes, banking, securities, and insurance, with which we and our subsidiaries must comply;

the effect of changes in accounting policies and practices, as may be adopted by the regulatory agencies, the Financial Accounting Standards Board, or other authoritative bodies;

changes in our organization, compensation, and benefit plans;

the costs and effects of litigation and of unexpected or adverse outcomes in such litigation;

a deterioration in credit quality or a reduced demand for credit;

the occurrence of catastrophic events that could adversely impact us or TSYS and/or any of its major clients or the U.S. economy generally;

successfully managing the potential both for patent protection and patent liability in the context of rapidly developing legal framework for expansive software patent protection;

possible terrorist attacks against the United States or its interests abroad or hostilities in the Middle East or elsewhere; and

our success in managing the risks involved in the foregoing.

We believe that these forward-looking statements are reasonable; however, undue reliance should not be placed on any forward-looking statements, which are based on current expectations. Forward-looking statements speak only as of the date they are made, and we undertake no obligation to update publicly any of them in light of new information or future events.

#### USE OF PROCEEDS

This exchange offer is intended to satisfy our obligations under the registration rights agreement. We will not receive any proceeds from the exchange offer. You will receive, in exchange for old notes tendered by you and accepted by us in the exchange offer, new notes in the same principal amount. The old notes surrendered in exchange for the new notes will be retired and cancelled and cannot be reissued. Accordingly, the issuance of the new notes will not result in any increase of our outstanding debt.

#### RATIO OF EARNINGS TO FIXED CHARGES

The following table shows the ratio of earnings to fixed charges of our company, which includes our subsidiaries, on a consolidated basis. The ratio of earnings to fixed charges has been computed by dividing:

income before income taxes plus minority interest in TSYS net income plus fixed charges, by

fixed charges.

Fixed charges represent interest expense, either including or excluding interest on deposits as set forth below, and one-third of net rental expense, which has been deemed to be equivalent to interest on long-term debt. Interest expense, other than on deposits, includes interest on long-term debt, federal funds purchased and securities sold under agreements to repurchase, mortgages, commercial paper and other funds borrowed.

| Year ended December 31, |      |      |      |      |
|-------------------------|------|------|------|------|
| 1998                    | 1999 | 2000 | 2001 | 2002 |

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|                                |        |       |       |       |       |
|--------------------------------|--------|-------|-------|-------|-------|
| Including interest on deposits | 1.93x  | 1.96x | 1.79x | 2.01x | 2.71x |
| Excluding interest on deposits | 13.35x | 7.67x | 4.55x | 6.02x | 8.17x |

## CERTAIN REGULATORY CONSIDERATIONS

*Bank holding companies and banks are regulated extensively under federal and state law. In addition, our non-bank subsidiaries are also subject to regulation under federal and state law. The following discussion sets forth some elements of the comprehensive regulatory framework applicable to us and our bank subsidiaries. Federal and state regulation of bank holding companies and banks are intended primarily for the protection of depositors rather than the holders of the notes. See [Where You Can Find More Information](#).*

### General

We are a registered bank holding company subject to supervision and regulation by the Federal Reserve Board under the Bank Holding Company Act of 1956 and by the Georgia Department of Banking and Finance under the bank holding company laws of the State of Georgia. We became a financial holding company under the Gramm-Leach-Bliley Act of 1999 in April 2000. Financial holding companies may engage in a variety of activities, some of which are not permitted for other bank holding companies that are not financial holding companies. Our affiliate national banking associations are subject to regulation and examination primarily by the Office of the Comptroller of the Currency, which we refer to as the OCC, and, secondarily, by the Federal Deposit Insurance Corporation, which we refer to as the FDIC, and the Federal Reserve Board. Our state-chartered banks which are not members of the Federal Reserve System are subject to primary federal regulation and examination by the FDIC. Our state-chartered banks which are members of the Federal Reserve System are subject to primary federal regulation and examination by the Federal Reserve Board. In addition, all of our state-chartered banks are regulated and examined by their respective state banking departments. Numerous other federal and state laws, as well as regulations promulgated by the Federal Reserve Board, the state banking regulators, the OCC and the FDIC govern almost all aspects of the operations of the banks. Various federal and state bodies regulate and supervise our non-banking subsidiaries including our brokerage, investment advisory, insurance agency and processing operations. These include, but are not limited to, the SEC, the National Association of Securities Dealers, Inc., federal and state banking regulators and various state regulators of insurance and brokerage activities.

### Dividends

Under the laws of the State of Georgia, we, as a business corporation, may declare and pay dividends in cash or property unless the payment or declaration would be contrary to restrictions contained in our Articles of Incorporation, and unless, after payment of the dividend, we would not be able to pay our debts when they become due in the usual course of our business or our total assets would be less than the sum of our total liabilities. We are also subject to regulatory capital restrictions that limit the amount of cash dividends that we may pay. Additionally, we are subject to contractual restrictions that limit the amount of cash dividends we may pay.

The primary sources of funds for our payment of dividends to our shareholders are dividends and fees to us from our banking and non-banking affiliates. Various federal and state statutory provisions and regulations limit the amount of dividends that our subsidiary banks may pay. Under the regulations of the Georgia Department of Banking and Finance, a Georgia bank must have approval of the Georgia Department of Banking and Finance to pay cash dividends if, at the time of such payment:

the ratio of Tier 1 Capital to adjusted total assets is less than 6%;

the aggregate amount of dividends to be declared or anticipated to be declared during the current calendar year exceeds 50% of its net after-tax profits for the previous calendar year; or

its total classified assets in its most recent regulatory examination exceeded 80% of its Tier 1 Capital plus its allowance for loan losses, as reflected in the examination.

In general, the approval of the Alabama Banking Department, Florida Banking Department and Tennessee Department of Financial Institutions is required if the total of all dividends declared by an

Alabama, Florida or Tennessee bank, as the case may be, in any year would exceed the total of its net profits for that year combined with its retained net profits for the preceding two years less any required transfers to surplus. In addition, the approval of the OCC is required for a national bank to pay dividends in excess of the bank's retained net income for the current year plus retained net income for the preceding two years. Approval of the Federal Reserve Board is required for payment of any dividend by a state chartered bank that is a member of the Federal Reserve System and is sometimes referred to as a state member bank, if the total of all dividends declared by the bank in any calendar year would exceed the total of its net profits, as defined by regulatory agencies, for that year combined with its retained net profits for the preceding two years. In addition, a state member bank may not pay a dividend in an amount greater than its net profits then on hand.

Some of our banking affiliates have in the past been required to secure prior regulatory approval for the payment of dividends to us in excess of regulatory limits and may be required to seek approval for the payment of dividends to us in excess of those limits in the future. If prior regulatory approvals are sought, there is no assurance that any such regulatory approvals will be granted.

Federal and state banking regulations applicable to us and our banking subsidiaries require minimum levels of capital which limit the amounts available for payment of dividends. Our objective is to pay out at least one-third of prior year's earnings in cash dividends to our shareholders. We (including our predecessors) have paid cash dividends on our common stock in every year since 1891. Under restrictions imposed under federal and state laws, our subsidiary banks could declare aggregate dividends to us of approximately \$162.6 million during 2003 without obtaining regulatory approval.

### **Capital Requirements**

We are required to comply with the capital adequacy standards established by the Federal Reserve Board and our banking subsidiaries must comply with similar capital adequacy standards established by the OCC, Federal Reserve Board and FDIC, as applicable. There are two basic measures of capital adequacy for bank holding companies and their banking subsidiaries that have been promulgated by the Federal Reserve Board, the FDIC and the OCC: a risk-based measure and a leverage measure. All applicable capital standards must be satisfied for a bank holding company or a bank to be considered in compliance. As a financial holding company, we and our subsidiary banks are required to maintain capital levels required for a well-capitalized institution, as defined by the federal banking regulators.

The risk-based capital standards are designed to make regulatory capital requirements more sensitive to differences in risk profile among banks and bank holding companies, to account for off-balance-sheet exposure, and to minimize disincentives for holding liquid assets. Assets and off-balance-sheet items are assigned to broad risk categories, each with appropriate weights. The resulting capital ratios represent capital as a percentage of total risk-weighted assets and off-balance-sheet items.

The minimum guideline for the ratio of total capital to risk-weighted assets, including certain off-balance-sheet items, such as standby letters of credit, is 8.0%. At least half of total capital must comprise common stock, minority interests in the equity accounts of consolidated subsidiaries, noncumulative perpetual preferred stock and a limited amount of cumulative perpetual preferred stock, less goodwill and certain other intangible assets, referred to as Tier 1 Capital. The remainder may consist of subordinated debt, other preferred stock and a limited amount of loan loss reserves, referred to as Tier 2 Capital. The Federal Reserve Board also requires certain bank holding companies that engage in trading activities to adjust their risk-based capital to take into consideration market risk that may result from movements in market prices of covered trading positions in trading accounts, or from foreign exchange or commodity positions, whether or not in trading accounts, including changes in interest rates, equity prices, foreign exchange rates or commodity prices. Any capital required to be maintained under these provisions may consist of new Tier 3 Capital consisting of certain short-term subordinated debt. In addition, the Federal Reserve Board has issued a policy statement, under which a bank holding company that is determined to have weaknesses in its risk management processes or a high level of interest rate risk exposure may be required to hold additional capital.

The Federal Reserve Board has also established minimum leverage ratio guidelines for bank holding companies. These guidelines provide for a minimum leverage ratio of Tier 1 Capital to average assets, less goodwill and certain other intangible assets, of 3.0% for bank holding companies that meet certain specified criteria, including having the highest regulatory rating. All other bank holding companies generally are required to maintain a leverage ratio of at least 4.0%. Bank holding companies are expected to maintain higher-than-minimum capital ratios if they have supervisory, financial, operational or managerial weaknesses, or if they are anticipating or experiencing significant growth. We have not been advised by the Federal Reserve Board of any specific minimum leverage ratio applicable to us.

At December 31, 2002, our total capital ratio was 12.53%, our Tier 1 Capital ratio was 11.38% and our Tier 1 leverage ratio was 10.86%. Each of these ratios exceeds the current requirements under the Federal Reserve Board's capital guidelines.

Each of our banking subsidiaries is subject to similar risk-based and leverage capital requirements adopted by our applicable federal banking agency, and each was in compliance with the applicable minimum capital requirements as of December 31, 2002.

Failure to meet capital guidelines could subject a bank to a variety of enforcement remedies, including issuance of a capital directive, the termination of deposit insurance by the FDIC, a prohibition on the taking of brokered deposits and other restrictions on its business. As described below, substantial additional restrictions can be imposed upon FDIC-insured depository institutions that fail to meet applicable capital requirements. See Prompt Corrective Action below.

### **Commitments to Subsidiary Banks**

Under the Federal Reserve Board's policy, we are expected to act as a source of financial strength to our subsidiary banks and to commit resources to support our subsidiary banks in circumstances when we might not do so absent that policy. In addition, any capital loans by us to any of our subsidiary banks would also be subordinate in right of payment to depositors and to certain other indebtedness of that bank.

In the event of our bankruptcy, any commitment by us to a federal bank regulatory agency to maintain the capital of a banking subsidiary will be assumed by the bankruptcy trustee and entitled to a priority of payment. In addition, the Federal Deposit Insurance Act provides that any financial institution whose deposits are insured by the FDIC generally will be liable for any loss incurred by the FDIC in connection with the default of, or any assistance provided by the FDIC to, a commonly controlled financial institution.

### **Prompt Corrective Action**

The Federal Deposit Insurance Corporation Improvement Act of 1991, which we refer to as the FDIC Improvement Act, establishes a system of prompt corrective action to resolve the problems of undercapitalized institutions. Under this system the federal banking regulators are required to rate supervised institutions on the basis of five capital categories as described below. The federal banking regulators are also required to take mandatory supervisory actions, and are authorized to take other discretionary actions, with respect to institutions in the three undercapitalized categories, the severity of which will depend upon the capital category in which the institution is placed. Generally, subject to a narrow exception, the FDIC Improvement Act requires the banking regulator to appoint a receiver or conservator for an institution that is critically undercapitalized. The federal banking agencies have specified by regulation the relevant capital level for each category.

Under the FDIC Improvement Act, the Federal Reserve Board, the FDIC, the OCC and the Office of Thrift Supervision have adopted regulations setting forth a five-tier scheme for measuring the capital adequacy of the financial institutions they supervise. Under the regulations, an institution would be placed in one of the following capital categories:

well capitalized an institution that has a Total Capital Ratio of at least 10%, a Tier 1 Capital Ratio of at least 6% and a Tier 1 Leverage Ratio of at least 5%;



adequately capitalized an institution that has a Total Capital Ratio of at least 8%, a Tier 1 Capital Ratio of at least 4% and a Tier 1 Leverage Ratio of at least 4%;

undercapitalized an institution that has a Total Capital Ratio of under 8%, a Tier 1 Capital Ratio of under 4% or a Tier 1 Leverage Ratio of under 4%;

significantly undercapitalized an institution that has a Total Capital Ratio of under 6%, a Tier 1 Capital Ratio of under 3% or a Tier 1 Leverage Ratio of under 3%; and

critically undercapitalized an institution whose tangible equity is not greater than 2% of total tangible assets.

The regulations permit the appropriate federal banking regulator to downgrade an institution to the next lower category if the regulator determines (1) after notice and opportunity for hearing or response, that the institution is in an unsafe or unsound condition or (2) that the institution has received and not corrected a less-than-satisfactory rating for any of the categories of asset quality, management, earnings or liquidity in its most recent examination. Supervisory actions by the appropriate federal banking regulator depend upon an institution's classification within the five categories. Our management believes that we and our bank subsidiaries have the requisite capital levels to qualify as well capitalized institutions under the FDIC Improvement Act regulations.

The FDIC Improvement Act generally prohibits a depository institution from making any capital distribution, including payment of a dividend, or paying any management fee to its holding company if the depository institution would thereafter be undercapitalized. Undercapitalized depository institutions are subject to restrictions on borrowing from the Federal Reserve System. In addition, undercapitalized depository institutions are subject to growth limitations and are required to submit capital restoration plans. A depository institution's holding company must guarantee the capital plan, up to an amount equal to the lesser of 5% of the depository institution's assets at the time it becomes undercapitalized or the amount of the capital deficiency when the institution fails to comply with the plan. Federal banking agencies may not accept a capital plan without determining, among other things, that the plan is based on realistic assumptions and is likely to succeed in restoring the depository institution's capital. If a depository institution fails to submit an acceptable plan, it is treated as if it is significantly undercapitalized.

Significantly undercapitalized depository institutions may be subject to a number of requirements and restrictions, including orders to sell sufficient voting stock to become adequately capitalized, requirements to reduce total assets and cessation of receipt of deposits from correspondent banks. Critically undercapitalized depository institutions are subject to appointment of a receiver or conservator.

### **Safety and Soundness Standards**

The Federal Deposit Insurance Act, as amended by the FDIC Improvement Act and the Riegle Community Development and Regulatory Improvement Act of 1994, requires the federal bank regulatory agencies to prescribe standards, by regulations or guidelines, relating to internal controls, information systems and internal audit systems, loan documentation, credit underwriting, interest rate risk exposure, asset growth, asset quality, earnings, stock valuation and compensation, fees and benefits and such other operational and managerial standards as the agencies deem appropriate. The federal bank regulatory agencies have adopted a set of guidelines prescribing safety and soundness standards under the FDIC Improvement Act. The guidelines establish general standards relating to internal controls and information systems, internal audit systems, loan documentation, credit underwriting, interest rate exposure, asset growth and compensation, fees and benefits. In general, the guidelines require, among other things, appropriate systems and practices to identify and manage the risks and exposures specified in the guidelines. The guidelines prohibit excessive compensation as an unsafe and unsound practice and describe compensation as excessive when the amounts paid are unreasonable or disproportionate to the services performed by an executive officer, employee, director or principal shareholder. The federal banking agencies determined that stock valuation standards were not appropriate. In addition, the agencies have adopted regulations that authorize, but do not require, an agency to order an institution that has been

given notice by an agency that it is not satisfying any of such safety and soundness standards to submit a compliance plan. If, after being so notified, an institution fails to submit an acceptable compliance plan, the agency must issue an order directing action to correct the deficiency and may issue an order directing other actions of the types to which an undercapitalized institution is subject under the prompt corrective action provisions of the FDIC Improvement Act. See Prompt Corrective Action above. If an institution fails to comply with such an order, the agency may seek to enforce such order in judicial proceedings and to impose civil money penalties.

#### **Depositor Preference Statute**

Federal law provides that deposits and certain claims for administrative expenses and employee compensation against an insured depository institution would be afforded a priority over other general unsecured claims against such an institution, including federal funds and letters of credit, in the liquidation or other resolution of such an institution by any receiver.

#### **Gramm-Leach-Bliley Act**

On November 12, 1999, legislation was enacted which allows bank holding companies to engage in a wider range of non-banking activities, including greater authority to engage in securities and insurance activities. Under the Gramm-Leach-Bliley Act, a bank holding company that elects to become a financial holding company may engage in any activity that the Federal Reserve Board, in consultation with the Secretary of the Treasury, determines by regulation or order is: (1) financial in nature; (2) incidental to any such financial activity; or (3) complementary to any such financial activity and does not pose a substantial risk to the safety or soundness of depository institutions or the financial system generally. The legislation makes significant changes in United States banking law, principally by repealing restrictive provisions of the 1933 Glass-Steagall Act. The legislation specifies certain activities that are deemed to be financial in nature, including lending, exchanging, transferring, investing for others, or safeguarding money or securities; underwriting and selling insurance; providing financial, investment or economic advisory services; underwriting, dealing in or making a market in securities; and any activity currently permitted for bank holding companies by the Federal Reserve Board under Section 4(c)(8) of the Bank Holding Company Act. The legislation does not authorize banks or their affiliates to engage in commercial activities that are not financial in nature. A bank holding company may elect to be treated as a financial holding company only if all depository institution subsidiaries of the holding company are well-capitalized, well-managed and have at least a satisfactory rating under the Community Reinvestment Act. We became a financial holding company in April 2000.

In addition to the Gramm-Leach-Bliley Act, there have been a number of legislative and regulatory proposals that would have an impact on bank/ financial holding companies and their bank and non-bank subsidiaries. It is impossible to predict whether or in what form these proposals may be adopted in the future and if adopted, what their effect will be on us.

## THE EXCHANGE OFFER

### Purpose and Effect of the Exchange Offer

We sold the old notes on February 18, 2003, pursuant to a purchase agreement, which we refer to in this prospectus as the purchase agreement, dated as of February 12, 2003, among us and Banc of America Securities LLC and Salomon Smith Barney Inc., as representatives of the initial purchasers named on Schedule I to the purchase agreement, which we refer to in this prospectus as the initial purchasers. The initial purchasers subsequently sold the old notes to qualified institutional buyers, as defined in Rule 144A under the Securities Act, in reliance on Rule 144A.

As a condition to the initial sale of the old notes, we and the initial purchasers entered into a registration rights agreement dated as of February 18, 2003. Pursuant to the registration rights agreement, we agreed to:

file a registration statement under the Securities Act with respect to the new notes with the SEC by May 19, 2003;

use our reasonable best efforts to cause the registration statement to become effective under the Securities Act on or before July 18, 2003;

commence the exchange offer promptly after the registration statement has been declared effective and to keep the exchange offer open for not less than 20 business days and not more than 30 business days after the date notice thereof is mailed to the holders of the old notes (or, in each case, longer if required by applicable law); and

use our reasonable best efforts to keep the registration statement continuously effective under the Securities Act, supplemented and amended as required to ensure that it is available for sales of new notes for the one-year period following consummation of the exchange offer.

We agreed to issue and exchange the new notes for all old notes validly tendered and not validly withdrawn before the expiration of the exchange offer. We are sending this prospectus, together with letter of transmittal, to all the beneficial holders known to us. For each old note validly surrendered to us pursuant to the exchange offer and not validly withdrawn, the holder will receive a new note having a principal amount equal to that of the surrendered old note. A copy of the registration rights agreement has been filed as an exhibit to the registration statement which includes this prospectus. The registration statement is intended to satisfy some of our obligations under the registration rights agreement.

The term holder with respect to the exchange offer means any person in whose name old notes are registered on the trustee's books or any other person who has obtained a properly completed bond power from the registered holder, or any person whose old notes are held of record by The Depository Trust Company, which we refer to as the Depository or DTC, who desires to deliver the old note by book-entry transfer at DTC.

### Resale of the New Notes

We believe that you will be allowed to resell the new notes to the public without registration under the Securities Act, and without delivering a prospectus that satisfies the requirements of Section 10 of the Securities Act, if you can make the representations set forth below under The Exchange Offer Procedures for Tendering Old Notes. However, if you intend to participate in a distribution of the new notes, or you are an affiliate of us as defined in Rule 405 of the Securities Act, you must comply with the registration requirements of the Securities Act and deliver a prospectus, unless an exemption from registration is otherwise available to you. You have to represent to us in the letter of transmittal accompanying this prospectus that you meet the conditions exempting you from the registration requirements.

We base our view on interpretations by the staff of the SEC in no-action letters issued to other issuers in exchange offers like ours. However, we have not asked the SEC to consider this particular

exchange offer in the context of a no-action letter. Therefore, you cannot be sure that the SEC will treat it in the same way it has treated other exchange offers in the past.

A broker-dealer that has bought old notes for market-making or other trading activities has to deliver a prospectus in order to resell any new notes it receives for its own account in the exchange. This prospectus may be used by a broker-dealer to resell any of its new notes. We have agreed in the registration rights agreement to send this prospectus to any broker-dealer that requests copies for a period starting on the expiration date and ending on the close of business one year after the expiration date. See *Plan of Distribution* for more information regarding broker-dealers.

A broker-dealer that acquired the old notes directly from us in the initial offering and not as a result of market-making activities must comply with the registration and prospectus delivery requirements of the Securities Act in connection with any resale of the new notes. In this case, the broker-dealer will not be permitted to use this exchange offer prospectus in connection with resales of the new notes.

The exchange offer is not being made to, nor will we accept surrenders for exchange from, holders of old notes in any jurisdiction in which this exchange offer or the acceptance of the exchange offer would not be in compliance with the securities or blue sky laws.

### **Terms of the Exchange Offer**

*General.* Based on the terms and conditions set forth in this prospectus and in the letter of transmittal, we will accept any and all old notes validly tendered and not validly withdrawn before the expiration date.

Subject to the minimum denomination requirements of the new notes, we will issue \$1,000 principal amount of new notes in exchange for each \$1,000 principal amount of outstanding old notes validly tendered pursuant to the exchange offer and not validly withdrawn before the expiration date. Holders may tender some or all of their old notes pursuant to the exchange offer. However, old notes may be tendered only in amounts that are integral multiples of \$1,000 principal amount.

The form and terms of the new notes are the same as the form and terms of the old notes except that:

the new notes will be registered under the Securities Act and, therefore, the new notes will not bear legends restricting the transfer of the new notes, and

holders of the new notes will not be entitled to any of the registration rights of holders of old notes under the registration rights agreement, which rights will terminate upon the consummation of the exchange offer, or to the additional interest provisions of the registration rights agreement.

The new notes of a particular series will evidence the same indebtedness as the old notes of that same series, which they replace, and will be issued under, and be entitled to the benefits of, the same indenture that governs the old notes. As a result, both the new notes of a particular series and the old notes of that same series will be treated as a single series of debt securities under the indenture. The exchange offer does not depend on any minimum aggregate principal amount of old notes being surrendered for exchange.

As of the date of this prospectus, \$300,000,000 in aggregate principal amount at maturity of the old notes is outstanding, all of which is registered in the name of Cede & Co., as nominee for DTC. Solely for reasons of administration, we have fixed the close of business on May 2, 2003 as the record date for the exchange offer for purposes of determining the persons to whom we will initially mail this prospectus and the letter of transmittal. There will be no fixed record date for determining holders of the old notes entitled to participate in this exchange offer.

As a holder of old notes, you do not have any appraisal or dissenters' rights or any other right to seek monetary damages in court under the Georgia Business Corporation Code or the indenture governing the notes. We intend to conduct the exchange offer in accordance with the provisions of the registration rights agreement, the applicable requirements of the Exchange Act, and the related rules and regulations of the

SEC. Old notes that are not surrendered for exchange in the exchange offer will remain outstanding and interest on these notes will continue to accrue.

We will be deemed to have accepted validly surrendered old notes if and when we give oral or written notice of our acceptance to The Bank of New York Trust Company of Florida, N.A., which is acting as the exchange agent. The exchange agent will act as agent for the tendering holders of old notes for the purpose of receiving the new notes from us.

If you surrender old notes in the exchange offer, you will not be required to pay brokerage commissions or fees. In addition, subject to the instructions in the letter of transmittal, you will not have to pay transfer taxes for the exchange of old notes. We will pay all charges and expenses in connection with the exchange offer, other than certain applicable taxes described under Fees and Expenses.

#### **Expiration Date; Extensions; Amendments**

The expiration date means 5:00 p.m., New York City time, on June 11, 2003, unless we extend the exchange offer, in which case the expiration date is the latest date and time to which we extend the exchange offer.

In order to extend the exchange offer, we will:

notify the exchange agent of any extension by oral or written communication;

issue a press release or other public announcement, which will report the approximate number of old notes deposited, before 9:00 a.m., New York City time, on the next business day after the previously scheduled expiration date.

During any extension of the exchange offer, all old notes previously surrendered and not withdrawn will remain subject to the exchange offer.

We reserve the right:

to delay accepting any old notes,

to amend the terms of the exchange offer in any manner,

to extend the exchange offer, or

if, in the opinion of our counsel, the consummation of the exchange offer would violate any law or interpretation of the staff of the SEC, to terminate or amend the exchange offer by giving oral or written notice to the exchange agent.

Any delay in acceptance, extension, termination, or amendment will be followed as soon as practicable by a press release or other public announcement. If we amend the exchange offer in a manner that we determine constitutes a material change, we will promptly disclose that amendment by means of a prospectus supplement that will be distributed to the registered holders of the old notes, and we will extend the exchange offer for a period of time that we will determine, depending upon the significance of the amendment and the manner of disclosure to the registered holders, if the exchange offer would have otherwise expired.

We will have no obligation to publish, advertise, or otherwise communicate any public announcement that we may choose to make, other than by making a timely release to an appropriate news agency.

In all cases, issuance of the new notes for old notes that are accepted for exchange will be made only after timely receipt by the exchange agent of a properly completed and duly executed letter of transmittal or a book-entry confirmation with an agent's message, in each case, with all other required documents. However, we reserve the absolute right to waive any conditions of the exchange offer or any defects or irregularities in the surrender of old notes. If we do not accept any surrendered old notes for any reason set forth in the terms and conditions of the exchange offer or if you submit old notes for a greater principal amount than you want to exchange, we will return the unaccepted or non-exchanged old notes to you, or

substitute old notes evidencing the unaccepted or non-exchanged portion, as appropriate. See Return of Old Notes.

### Procedures for Tendering Old Notes

If you wish to surrender old notes you must:

complete and sign the letter of transmittal or send a timely confirmation of a book-entry transfer of old notes to the exchange agent,

have the signatures on the letter of transmittal guaranteed if required by the letter of transmittal, and

mail or deliver the required documents to the exchange agent at its address set forth in the letter of transmittal for receipt before the expiration date.

In addition, either:

certificates for old notes must be received by the exchange agent along with the letter of transmittal;

a timely confirmation of a book-entry transfer of old notes into the exchange agent's account at DTC, pursuant to the procedure for book-entry transfer described below, must be received by the exchange agent before the expiration date; or

you must comply with the procedures described below under Guaranteed Delivery Procedures.

If you do not withdraw your surrender of old notes before the expiration date, it will indicate an agreement between you and our company that you have agreed to surrender the old notes, in accordance with the terms and conditions in the letter of transmittal.

**The method of delivery of old notes, the letter of transmittal, and all other required documents to the exchange agent is at your election and risk. Instead of delivery by mail, we recommend that you use an overnight or hand delivery service, properly insured, with return receipt requested. In all cases, you should allow sufficient time to assure delivery to the exchange agent before the expiration date. Do not send any letter of transmittal or old notes to us. You may request that your broker, dealer, commercial bank, trust company, or nominee effect the above transactions for you.**

If you are a beneficial owner of the old notes and you hold those old notes through a broker, dealer, commercial bank, trust company, or other nominee and you want to surrender your old notes, you should contact that intermediary promptly and instruct it to surrender the old notes on your behalf.

Generally, an eligible institution must guarantee signatures on a letter of transmittal unless:

you tender your old notes as the registered holder, which term includes any participant in DTC whose name appears on a security listing as the owner of old notes, and the new notes issued in exchange for your old notes are to be issued in your name and delivered to you at your registered address appearing on the security register for the old notes, or

you surrender your old notes for the account of an eligible institution.

An eligible institution is:

a member firm of a registered national securities exchange or of the National Association of Securities Dealers, Inc.,

a commercial bank or trust company having an office or correspondent in the United States, or

an eligible guarantor institution as defined by Rule 17Ad-15 under the Exchange Act.

In each instance, the entity must be a member of one of the signature guarantee programs identified in the letter of transmittal.

If the new notes or unexchanged old notes are to be delivered to an address other than that of the registered holder appearing on the security register for the old notes, an eligible institution must guarantee the signature in the letter of transmittal.

Your surrender will be deemed to have been received as of the date when:

the exchange agent receives a properly completed and signed letter of transmittal accompanied by the old notes, or a confirmation of book-entry transfer of the old notes into the exchange agent's account at DTC with an agent's message, or

the exchange agent receives a notice of guaranteed delivery from an eligible institution.

Issuances of new notes in exchange for old notes surrendered pursuant to a notice of guaranteed delivery or letter to similar effect by an eligible institution will be made only against submission of a duly signed letter of transmittal, and any other required documents, and deposit of the surrendered old notes, or confirmation of a book-entry transfer of the old notes into the exchange agent's account at DTC pursuant to the book-entry procedures described below.

We will make the determination regarding all questions relating to the validity, form, eligibility, including time of receipt, acceptance, and withdrawal of surrendered old notes, and our determination will be final and binding on all parties.

We reserve the absolute right to reject any and all old notes improperly surrendered. We will not accept any old notes if our acceptance of them would, in the opinion of our counsel, be unlawful. We also reserve the absolute right to waive any defects, irregularities, or conditions of surrender as to any particular old note. Our interpretation of the terms and conditions of the exchange offer, including the instructions in the letter of transmittal, will be final and binding on all parties. Unless waived, you must cure any defects or irregularities in connection with surrenders of old notes within the time we determine. Although we intend to notify holders of defects or irregularities in connection with surrenders of old notes, neither we, the exchange agent, nor anyone else will incur any liability for failure to give that notice. Surrenders of old notes will not be deemed to have been made until any defects or irregularities have been cured or waived.

We have no current plan to acquire any old notes that are not surrendered in the exchange offer or to file a registration statement to permit resales of any old notes that are not surrendered pursuant to the exchange offer. We reserve the right in our sole discretion to purchase or make offers for any old notes that remain outstanding after the expiration date. To the extent permitted by law, we also reserve the right to purchase old notes in the open market, in privately negotiated transactions, or otherwise. The terms of any future purchases or offers could differ from the terms of the exchange offer.

Pursuant to the letter of transmittal, if you elect to surrender old notes in exchange for new notes, you must exchange, assign, and transfer the old notes to us and irrevocably constitute and appoint the exchange agent as your true and lawful agent and attorney-in-fact with respect to the surrendered old notes, with full power of substitution, among other things, to cause the old notes to be assigned, transferred, and exchanged. By executing the letter of transmittal, you make the representations and warranties set forth below to us. By executing the letter of transmittal you also promise, on our request, to execute and deliver any additional documents that we consider necessary to complete the transactions described in the letter of transmittal.

Under existing interpretations of the SEC contained in several no-action letters to third parties, we believe that the new notes will be freely transferable by the holders, other than our affiliates, after the exchange offer without further registration under the Securities Act; *provided, however*, that each holder who wishes to exchange its old notes for new notes will be required to represent:

that the holder has full power and authority to tender, exchange, assign, and transfer the old notes surrendered,

that we will acquire good title to the old notes being surrendered, free and clear of all security interests, liens, restrictions, charges, encumbrances, conditional sale agreements, or other obligations relating to their sale or transfer, and not subject to any adverse claim when we accept the old notes,

that the holder is acquiring the new notes in the ordinary course of your business,

that the holder is not engaging in and does not intend to engage in a distribution of the new notes,

that the holder has no arrangement or understanding with any person to participate in the distribution of the new notes,

that the holder acknowledges and agrees that if it is a broker-dealer registered under the Exchange Act or it is participating in the exchange offer for the purpose of distributing the new notes, it must comply with the registration and prospectus delivery requirements of the Securities Act in connection with a secondary resale of the new notes, and that the holder cannot rely on the position of the SEC's staff set forth in their no-action letters,

that the holder understands that a secondary resale transaction described above and any resales of new notes obtained by it in exchange for old notes acquired by it directly from us should be covered by an effective registration statement containing the selling security holder information required by Item 507 or 508, as applicable, of Regulation S-K of the SEC, and

that the holder is not an affiliate, as defined in Rule 405 under the Securities Act, of us, or, if the holder is an affiliate, that it will comply with the registration and prospectus delivery requirements of the Securities Act to the extent applicable.

If the holder is a broker-dealer and it will receive new notes for its own account in exchange for old notes that it acquired as a result of market-making activities or other trading activities, it will be required to acknowledge in the letter of transmittal that it will deliver a prospectus in connection with any resale of the new notes. See Plan of Distribution.

Participation in the exchange offer is voluntary. You are urged to consult your financial and tax advisors in making your decision on whether to participate in the exchange offer.

### **Return of Old Notes**

If any old notes are not accepted for any reason described in this prospectus, or if old notes are withdrawn or are submitted for a greater principal amount than you want to exchange, the exchange agent will return the unaccepted, withdrawn, or non-exchanged old notes to you or, in the case of old notes surrendered by book-entry transfer, into an account for your benefit at DTC, unless otherwise provided in the letter of transmittal. The old notes will be credited to an account maintained with DTC as promptly as practicable.

### **Book Entry Transfer**

The exchange agent will make a request to establish an account with respect to the old notes at DTC for purposes of the exchange offer within two business days after the date of this prospectus. Any financial institution that is a participant in DTC's system may make book-entry delivery of old notes by causing DTC to transfer the old notes into the exchange agent's account at DTC in accordance with DTC's procedures for transfer. To effectively tender notes through DTC, the financial institution that is a participant in DTC will electronically transmit its acceptance through the Automatic Transfer Offer Program. DTC will then edit and verify the acceptance and send an agent's message to the exchange agent for its acceptance. An agent's message is a message transmitted by DTC to the exchange agent stating that DTC has received an express acknowledgment from the participant in DTC tendering the old notes that the participant has received and agrees to be bound by the terms of the letter of transmittal, and that we may enforce this agreement against the participant.



A delivery of old notes through a book-entry transfer into the exchange agent's account at DTC will only be effective if an agent's message or the letter of transmittal with any required signature guarantees and any other required documents is transmitted to and received by the exchange agent at its address set forth in the letter of transmittal for receipt before the expiration date unless the guaranteed delivery procedures described below are complied with. Delivery of documents to DTC does not constitute delivery to the exchange agent.

### **Guaranteed Delivery Procedures**

If you wish to surrender your old notes and (1) your old notes are not immediately available so that you can meet the expiration date deadline, (2) you cannot deliver your old notes or other required documents to the exchange agent before the expiration date, or (3) the procedure for book-entry transfer cannot be completed on a timely basis, you may nonetheless participate in the exchange offer if:

you surrender your notes through an eligible institution;

before the expiration date, the exchange agent receives from the eligible institution a properly completed and duly executed notice of guaranteed delivery substantially in the form provided by us, by mail or hand delivery, showing the name and address of the holder, the name(s) in which the old notes are registered, the certificate number(s) of the old notes, if applicable, and the principal amount of old notes surrendered; the notice of guaranteed delivery must state that the surrender is being made by the notice of guaranteed delivery and guaranteeing that, within five New York Stock Exchange trading days after the expiration date, the letter of transmittal, together with the certificate(s) representing the old notes, in proper form for transfer, or a book-entry confirmation with an agent's message, as the case may be, and any other required documents, will be delivered by the eligible institution to the exchange agent, and

the properly executed letter of transmittal, as well as the certificate(s) representing all surrendered old notes, in proper form for transfer, or a book-entry confirmation, as the case may be, and all other documents required by the letter of transmittal are received by the exchange agent within five New York Stock Exchange trading days after the expiration date.

Unless old notes are surrendered by the above-described method and deposited with the exchange agent within the time period set forth above, we may, at our option, reject the surrender. The exchange agent will send you a notice of guaranteed delivery upon your request if you want to surrender your old notes according to the guaranteed delivery procedures described above.

### **Withdrawal of Tenders of Old Notes**

You may withdraw your surrender of old notes at any time before the expiration date.

To withdraw old notes surrendered in the exchange offer, the exchange agent must receive a written notice of withdrawal at its address set forth below before the expiration date. Any notice of withdrawal must:

specify the name of the person having deposited the old notes to be withdrawn,

identify the old notes to be withdrawn, including the certificate number or numbers, if applicable, and principal amount of the old notes,

contain a statement that the holder is withdrawing the election to have the old notes exchanged,

be signed by the holder in the same manner as the original signature on the letter of transmittal used to surrender the old notes, and

specify the name in which any old notes are to be registered, if different from that of the registered holder of the old notes and, unless the old notes were tendered for the account of an eligible institution, the signatures on the notice of withdrawal must be guaranteed by an eligible institution.

If old notes have been surrendered pursuant to the procedure for book-entry transfer, any notice of withdrawal must specify the name and number of the account at DTC.

We, in our sole discretion, will make the final determination on all questions regarding the validity, form, eligibility, and time of receipt of notices of withdrawal, and our determination will bind all parties. Any old notes withdrawn will be deemed not to have been validly surrendered for purposes of the exchange offer and no new notes will be issued in exchange unless the old notes so withdrawn are validly surrendered again. Properly withdrawn old notes may be surrendered again by following one of the procedures described above under Procedures for Tendering Old Notes at any time before the expiration date. Any old notes that are not accepted for exchange will be returned at no cost to the holder or, in the case of old notes surrendered by book-entry transfer, into an account for your benefit at DTC pursuant to the book-entry transfer procedures described above, as soon as practicable after withdrawal, rejection of surrender or termination of the exchange offer.

**Additional Obligations**