

J M SMUCKER Co  
 Form 424B2  
 December 06, 2017  
Table of Contents

**CALCULATION OF REGISTRATION FEE**

<b>Title of each Class of Securities to be Registered</b>	<b>Amount to be Registered</b>	<b>Proposed Maximum Offering Price</b>	<b>Proposed Maximum Aggregate Offering Price</b>	<b>Amount of Registration Fee(1)</b>
2.200% Notes due 2019	\$300,000,000	99.922%	\$299,766,000	\$37,321
3.375% Notes due 2027	\$500,000,000	99.966%	\$499,830,000	\$62,229
Total	\$800,000,000		\$799,596,000	\$99,550

(1) Calculated in accordance with Rule 457(r) of the Securities Act of 1933, as amended.

**Table of Contents**

**Filed Pursuant to Rule 424(b)(2)  
Registration No. 333-220696**

**PROSPECTUS SUPPLEMENT**

**(To Prospectus dated September 28, 2017)**

**\$800,000,000**

**The J. M. Smucker Company**

**\$300,000,000 2.200% Notes due 2019**

**\$500,000,000 3.375% Notes due 2027**

We are offering \$300 million aggregate principal amount of 2.200% Notes due 2019 (the 2019 notes ) and \$500 million aggregate principal amount of 3.375% Notes due 2027 (the 2027 notes and, together with the 2019 notes, the notes ).

The 2019 notes will bear interest at a rate equal to 2.200% per year. We will pay interest on the 2019 notes semi-annually on each June 6 and December 6, beginning on June 6, 2018. The 2019 notes will mature on December 6, 2019 and will be issued only in denominations of \$2,000 and integral multiples of \$1,000 in excess thereof.

The 2027 notes will bear interest at a rate equal to 3.375% per year. We will pay interest on the 2027 notes semi-annually on each June 15 and December 15, beginning on June 15, 2018. The 2027 notes will mature on December 15, 2027 and will be issued only in denominations of \$2,000 and integral multiples of \$1,000 in excess thereof.

We may redeem the notes in whole or in part, at our option, at any time or from time to time at the applicable redemption prices set forth under Description of Notes Optional Redemption. If a change of control triggering event occurs, unless we have previously exercised our option to redeem the notes in whole, holders of the notes will have the right to require us to repurchase the notes at a purchase price equal to 101% of their principal amount, plus accrued and unpaid interest, if any, to the date of purchase. See Description of Notes Repurchase at the Option of the Holders of Notes upon a Change of Control Triggering Event.

The notes will be our direct senior unsecured obligations and will rank equally with all of our other unsecured and unsubordinated indebtedness from time to time outstanding. The notes will not be guaranteed by any of our subsidiaries and will therefore be structurally subordinated to the indebtedness and other liabilities of our subsidiaries. See Description of Notes.

Investing in the notes involves risks that are described in the sections entitled **Risk Factors** beginning on page S-10 of this prospectus supplement and **Risk Factors** on page 5 of the accompanying prospectus.

	<b>Price to Public <sup>(1)</sup></b>	<b>Underwriting Discount</b>	<b>Proceeds, before Expenses, to Us <sup>(1)</sup></b>
Per 2019 note	99.922%	0.300%	99.622%
2019 note total	\$ 299,766,000	\$ 900,000	\$ 298,866,000
Per 2027 note	99.966%	0.650%	99.316%
2027 note total	\$ 499,830,000	\$ 3,250,000	\$ 496,580,000
Total	\$ 799,596,000	\$ 4,150,000	\$ 795,446,000

(1) Plus accrued interest from December 7, 2017, if settlement occurs after that date.

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

The notes will not be listed on any securities exchange. Currently, there is no public market for the notes.

The notes will be delivered in book-entry form only through the facilities of The Depository Trust Company, including for the accounts of Euroclear Bank S.A./N.V., as operator of the Euroclear System, or Clearstream Banking, société anonyme, against payment in New York, New York on or about December 7, 2017.

*Joint Book-Running Managers*

<b>BofA Merrill Lynch</b>	<b>J.P. Morgan</b>	<b>BMO Capital Markets</b>	<b>PNC Capital Markets LLC</b>
<i>Co-Managers</i>			

<b>Fifth Third Securities</b>	<b>Wells Fargo Securities</b>	<b>Huntington Capital Markets</b>	<b>US Bancorp</b>	<b>Loop Capital Markets</b>
-------------------------------	-------------------------------	-----------------------------------	-------------------	-----------------------------

Edgar Filing: J M SMUCKER Co - Form 424B2

The date of this prospectus supplement is December 4, 2017

**Table of Contents****TABLE OF CONTENTS****Prospectus Supplement**

	<b>Page</b>
<u>About This Prospectus Supplement</u>	S-1
<u>Where You Can Find More Information</u>	S-2
<u>Forward-Looking Statements</u>	S-3
<u>Summary</u>	S-5
<u>Risk Factors</u>	S-10
<u>Use of Proceeds</u>	S-13
<u>Capitalization</u>	S-14
<u>Ratio of Earnings to Fixed Charges</u>	S-16
<u>Description of Notes</u>	S-17
<u>Material United States Federal Income Tax Considerations</u>	S-35
<u>Underwriting</u>	S-40
<u>Legal Matters</u>	S-46
<u>Experts</u>	S-46

**Prospectus**

	<b>Page</b>
<u>About This Prospectus</u>	1
<u>Where You Can Find More Information</u>	2
<u>Forward-Looking Statements</u>	3
<u>The Company</u>	5
<u>Risk Factors</u>	5
<u>Use of Proceeds</u>	6
<u>Ratio of Earnings to Fixed Charges</u>	6
<u>Description of Capital Stock</u>	7
<u>Description of Debt Securities</u>	17
<u>Description of Warrants</u>	26
<u>Description of Units</u>	28
<u>Legal Ownership of Securities</u>	29
<u>Plan of Distribution</u>	32
<u>Legal Matters</u>	33
<u>Experts</u>	33

References in this prospectus to the Company, we, us and our are to The J. M. Smucker Company and its consolidated subsidiaries unless otherwise specified or the context requires otherwise.

**Table of Contents**

**ABOUT THIS PROSPECTUS SUPPLEMENT**

This document is in two parts. The first part is this prospectus supplement, which contains the terms of this offering of notes. The second part is the accompanying prospectus dated September 28, 2017, which is part of our Registration Statement on Form S-3.

This prospectus supplement may add to, update or change the information in the accompanying prospectus. If information in this prospectus supplement is inconsistent with information in the accompanying prospectus, the information in this prospectus supplement will apply and will supersede that information in the accompanying prospectus. It is important for you to read and consider all information contained or incorporated by reference in this prospectus supplement and the accompanying prospectus in making your investment decision.

We have not authorized anyone to provide any information other than that contained or incorporated by reference in this prospectus supplement, the accompanying prospectus or in any free writing prospectus filed by us with the Securities and Exchange Commission (the "SEC"). We take no responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. We are not, and the underwriters are not, making an offer to sell the notes in any jurisdiction where the offer and sale are not permitted.

The information appearing in this prospectus supplement, the accompanying prospectus or any related free writing prospectus is accurate only as of the date on the front of that document, and any information we have incorporated by reference is accurate only as of the date of the document incorporated by reference, regardless of the time of delivery of this prospectus supplement, the accompanying prospectus or any related free writing prospectus, or any sale of a security. Our business, financial condition, results of operations and prospects may have changed since those dates.

This prospectus supplement and the accompanying prospectus contains summaries of certain provisions contained in some of the documents described herein, but reference is made to the actual documents for complete information. All of the summaries are qualified in their entirety by the actual documents. Copies of some of the documents referred to herein have been filed, will be filed or will be incorporated by reference, and you may obtain copies of those documents as described below under the section entitled "Where You Can Find More Information."

**Table of Contents**

**WHERE YOU CAN FIND MORE INFORMATION**

We 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 at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the Public Reference Room.

The SEC allows us to incorporate by reference the information we file with them, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is an important part of this prospectus supplement, and information that we file later with the SEC will automatically update and supersede this information. We incorporate by reference the documents listed below 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, other than any portion of such documents that by statute, designation in such documents or otherwise are deemed to be furnished, rather than filed, under the applicable SEC rules or are not required to be incorporated herein by reference. We incorporate by reference the following information or documents that we have filed with the SEC:

our Annual Report on Form 10-K for the fiscal year ended April 30, 2017;

our Quarterly Reports on Form 10-Q for the quarters ended July 31, 2017 and October 31, 2017; and

our Current Reports on Form 8-K filed on June 15, 2017, August 18, 2017 and September 1, 2017.

The information relating to us contained in this prospectus supplement and the accompanying prospectus should be read together with the information in the documents incorporated by reference.

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

The J. M. Smucker Company

Attention: Corporate Secretary

One Strawberry Lane

Orrville, Ohio 44667

(330) 682-3000

**Table of Contents**

**FORWARD-LOOKING STATEMENTS**

Certain statements contained in this prospectus supplement and the accompanying prospectus (including the information incorporated by reference herein and therein) constitute forward-looking statements within the meaning of federal securities laws. The forward-looking statements may include statements concerning our current expectations, estimates, assumptions, and beliefs concerning future events, conditions, plans, and strategies that are not historical fact. Any statement that is not historical in nature is a forward-looking statement and may be identified by the use of words and phrases such as expects, anticipates, believes, intends, will, plans, and similar phrases.

Federal securities laws provide a safe harbor for forward-looking statements to encourage companies to provide prospective information. We are providing this cautionary statement in connection with the safe harbor provisions. Readers are cautioned not to place undue reliance on any forward-looking statements as such statements are by nature subject to risks, uncertainties, and other factors, many of which are outside of our control and could cause actual results to differ materially from such statements and from our historical results and experience. These risks and uncertainties include, but are not limited to, those set forth under the caption Risk Factors in this prospectus supplement and the accompanying prospectus and in our periodic reports under the Securities Exchange Act of 1934, as amended, filed with the SEC, as well as the following:

our ability to achieve cost savings related to our organization optimization and cost management programs in the amounts and within the time frames currently anticipated;

our ability to generate sufficient cash flow to meet our cash deployment objectives;

volatility of commodity, energy, and other input costs;

risks associated with derivative and purchasing strategies we employ to manage commodity pricing risks;

the availability of reliable transportation on acceptable terms;

our ability to implement and realize the full benefit of price changes, and the impact of the timing of the price changes to profits and cash flow in a particular period;

the success and cost of marketing and sales programs and strategies intended to promote growth in our businesses, including product innovation;

general competitive activity in the market, including competitors pricing practices and promotional spending levels;



the impact of food security concerns involving either our products or our competitors' products;

the impact of accidents, extreme weather, and natural disasters;

the concentration of certain of our businesses with key customers and suppliers, including single-source suppliers of certain key raw materials and finished goods, and our ability to manage and maintain key relationships;

the timing and amount of capital expenditures and share repurchases;

impairments in the carrying value of goodwill, other intangible assets, or other long-lived assets or changes in useful lives of other intangible assets;

S-3

**Table of Contents**

the impact of new or changes to existing governmental laws and regulations and their application;

the outcome of tax examinations, changes in tax laws, and other tax matters;

foreign currency and interest rate fluctuations; and

risks related to other factors described under **Risk Factors** in our Annual Report on Form 10-K for the fiscal year ended April 30, 2017.

Readers are cautioned not to unduly rely on such forward-looking statements, which speak only as of the date made, when evaluating the information contained in this prospectus supplement and the accompanying prospectus (including the information incorporated by reference herein and therein). There may be other factors that may cause our actual results to differ materially from the forward-looking statements. We do not undertake any obligation to update or revise these forward-looking statements to reflect new events or circumstances.

You should read this prospectus supplement and the accompanying prospectus (including the information incorporated by reference herein and therein) completely and with the understanding that our actual future results may be materially different from what we expect. All forward-looking statements are qualified by these cautionary statements.

**Table of Contents****SUMMARY**

*The following summary is qualified in its entirety by the more detailed information included elsewhere or incorporated by reference in this prospectus supplement and the accompanying prospectus. Because this is a summary, it may not contain all the information that may be important to you. You should read the entire prospectus supplement and the accompanying prospectus as well as the documents incorporated by reference before making an investment decision.*

**The Company**

The J. M. Smucker Company was established in 1897 and was incorporated in Ohio in 1921, and is often referred to as *Smucker's* (a registered trademark). We operate principally in one industry, the manufacturing and marketing of branded food and beverage products on a worldwide basis, although the majority of our sales are in the U.S. Our operations outside the U.S. are principally in Canada, although products are exported to other countries as well. Net sales outside the U.S., subject to foreign currency translation, represented 6% of consolidated net sales for 2017. Our branded food and beverage products include a strong portfolio of trusted, iconic, market-leading brands that are sold to consumers through retail outlets in North America.

We have four reportable segments: U.S. Retail Coffee, U.S. Retail Consumer Foods, U.S. Retail Pet Foods, and International and Away From Home. During the second quarter of 2018, we added the International and Away From Home reportable segment, as a single segment manager was named to oversee the entire operating segment. Prior year segment results have not been modified, as the new reportable segment represents the previously reported combination of the International and Away From Home strategic business areas, which were previously managed separately. The U.S. Retail Coffee segment primarily represents the domestic sales of *Folgers*<sup>®</sup>, *Dunkin' Donuts*<sup>®</sup>, and *Café Bustelo*<sup>®</sup> branded coffee; the U.S. Retail Consumer Foods segment primarily includes domestic sales of *Jif*<sup>®</sup>, *Smucker's*<sup>®</sup>, *Crisco*<sup>®</sup>, and *Pillsbury*<sup>®</sup> branded products; and the U.S. Retail Pet Foods segment primarily includes domestic sales of *Meow Mix*<sup>®</sup>, *Milk-Bone*<sup>®</sup>, *Natural Balance*<sup>®</sup>, *Kibbles 'n Bits*<sup>®</sup>, *9Lives*<sup>®</sup>, *Pup-Peroni*<sup>®</sup>, and *Nature's Recipe*<sup>®</sup> branded products. The International and Away From Home segment is comprised of products distributed domestically and in foreign countries through retail channels and foodservice distributors and operators (e.g., restaurants, lodging, schools and universities, health care operators). The U.S. retail market segments in total comprised over 85% of 2017 consolidated net sales and represent a major portion of our strategic focus—the sale of branded food products with leadership positions to consumers through retail outlets in North America.

We are the owner of all trademarks referenced herein, except for the following, which are used under license: *Pillsbury* is a trademark of The Pillsbury Company, LLC; and *Dunkin' Donuts* is a registered trademark of DD IP Holder, LLC. *Dunkin' Donuts* brand is licensed to us for packaged coffee products, including K-Cup<sup>®</sup> pods, sold in retail channels such as grocery stores, mass merchandisers, club stores, and drug stores. Information in this document does not pertain to *Dunkin' Donuts* coffee or other products for sale in *Dunkin' Donuts* restaurants. K-Cup<sup>®</sup> is a trademark of Keurig Green Mountain, Inc., used with permission.

On March 23, 2015, we completed the acquisition of Big Heart Pet Brands (Big Heart), a leading producer, distributor, and marketer of premium-quality, branded pet food and pet snacks in the U.S. The cash and stock transaction was valued at \$5.9 billion, which included the issuance of 17.9 million shares of our common stock. We assumed \$2.6 billion in debt that we repaid at closing and paid an additional \$1.2 billion in cash, net of a working capital adjustment. As part of the transaction, new debt of \$5.5 billion was borrowed. For additional information on the Big Heart acquisition, see Note 2: Acquisition in our 2017 Annual Report to Shareholders.

Our principal executive offices are located at One Strawberry Lane, Orrville, Ohio 44667, our telephone number is (330) 682-3000, and our website is [www.jmsmucker.com](http://www.jmsmucker.com). Information on our website is not a part of, and we are not incorporating the contents of our website into, this prospectus.

S-5

**Table of Contents**

**The Offering**

Issuer	The J. M. Smucker Company.
Notes Offered	<p>\$300,000,000 principal amount of 2.200% Notes due 2019.</p> <p>\$500,000,000 principal amount of 3.375% Notes due 2027.</p>
Stated Maturity	<p>The 2019 notes will mature on December 6, 2019.</p> <p>The 2027 notes will mature on December 15, 2027.</p>
Interest Rate	<p>The 2019 notes will bear interest at 2.200% per annum.</p> <p>The 2027 notes will bear interest at 3.375% per annum.</p>
Interest Payment Dates	<p>For the 2019 notes, June 6 and December 6 of each year, commencing on June 6, 2018.</p> <p>For the 2027 notes, June 15 and December 15 of each year, commencing on June 15, 2018.</p>
Ranking	<p>The notes will rank equally with all of our other unsecured and unsubordinated indebtedness from time to time outstanding. The notes will be our senior unsecured obligations and will be:</p> <p>equal in right of payment to all of our existing and future senior unsecured and unsubordinated indebtedness;</p> <p>senior in right of payment to all of our existing and future subordinated indebtedness;</p> <p>effectively subordinated to all of our and our subsidiaries' existing and future secured indebtedness to the extent of the value of our assets</p>

and the assets of our subsidiaries securing such indebtedness; and

structurally subordinated to all of the existing and future indebtedness and other liabilities of our subsidiaries.

The notes will not be guaranteed by any of our subsidiaries. See Description of Notes Ranking.

Form and Denomination

The notes will be issued in fully registered form in denominations of \$2,000 or integral multiples of \$1,000 in excess thereof.

Further Issuances

The indenture does not limit the amount of debt securities that we may issue. We may issue additional debt securities having the same interest rate, maturity date and other terms (except for the price to public and issue date) as the notes of any series offered hereby. Any such additional debt securities, together with the notes of any series offered hereby, will constitute a single series of debt securities under the indenture, as applicable, provided that if the additional notes are not fungible with the notes of such series for United States federal income tax purposes, the additional notes will have a separate CUSIP number.

**Table of Contents**

Optional Redemption	We may redeem the notes in whole at any time or in part from time to time at the applicable redemption prices as set forth in the section entitled "Description of Notes—Optional Redemption."
Offer to Repurchase upon Change of Control Triggering Event	If a change of control triggering event (as defined herein) occurs, we will be required, unless we have previously exercised our option to redeem the notes in whole, to offer to purchase the notes at a purchase price equal to 101% of their principal amount, plus accrued and unpaid interest to the date of purchase. See "Description of Notes—Repurchase at the Option of the Holders of Notes upon a Change of Control Triggering Event."
Certain Covenants	<p>The indenture governing the notes contains covenants that restrict our ability and the ability of our restricted subsidiaries, with certain exceptions, to:</p> <ul style="list-style-type: none"><li>incur debt for borrowed money secured by liens;</li><li>engage in sale and leaseback transactions; and</li><li>sell all or substantially all of our assets or merge or consolidate with or into other companies.</li></ul> <p>See "Description of Notes—Covenants" in this prospectus supplement and "Description of Debt Securities" in the accompanying prospectus.</p>
DTC Eligibility	The notes will be represented by global certificates deposited with, or on behalf of, The Depository Trust Company, which we refer to as "DTC," or its nominee. See "Description of Notes—Book-Entry System."
Use of Proceeds	We expect to receive net proceeds of approximately \$795.4 million, after deducting the underwriting discount but before deducting our expenses related to the offering. We intend to use a portion of the net proceeds from the sale of the notes to repay, redeem or refinance \$500.0 million in principal amount of our unsecured senior notes due March 15, 2018, which bear interest at 1.75%, together with accrued and unpaid interest thereon. We intend to use the balance of the net proceeds for general corporate purposes, which could include, but are not limited to, repayments of other outstanding debt, capital expenditures or working capital, and for funding of potential acquisitions. See "Use of Proceeds."

No Listing of the Notes

We do not intend to apply for the listing of the notes on any securities exchange or for the quotation of the notes of any series in any dealer quotation system.

Risk Factors

An investment in the notes involves risks. You should carefully consider the information set forth in the sections entitled Risk

S-7



**Table of Contents**

Factors beginning on page S-10 of this prospectus supplement and on page 5 of the accompanying prospectus, as well as other information included or incorporated by reference in this prospectus supplement and the accompanying prospectus before deciding whether to invest in the notes.

Trustee, Registrar and Paying Agent

U.S. Bank National Association.

Governing Law

The notes and the indenture will be governed by the laws of the State of New York.

S-8

**Table of Contents****Summary Historical Consolidated Financial Information**

The following information sets forth summary historical consolidated financial information of The J. M. Smucker Company for the periods presented. We derived the summary historical consolidated financial information presented below for each of the five fiscal years in the period ended April 30, 2017 from our audited consolidated financial statements. The information as of and for the six months ended October 31, 2016 and October 31, 2017 was derived from our unaudited interim consolidated financial statements and includes, in the opinion of management, all normal and recurring adjustments necessary to present fairly the information for such periods. The results of operations for the six months ended October 31, 2016 and October 31, 2017 are not necessarily indicative of the results to be expected for the fiscal year ending April 30, 2018.

You should read the financial information presented below in conjunction with the respective audited and unaudited consolidated financial statements and related notes, Management's Discussion and Analysis of Financial Condition and Results of Operations and other financial information contained in our Annual Report on Form 10-K for the fiscal year ended April 30, 2017 and our Quarterly Report on Form 10-Q for the fiscal quarter ended October 31, 2017, which are incorporated by reference in this prospectus supplement and the accompanying prospectus.

	<b>Six Months Ended October 31,</b>		<b>Fiscal Year Ended April 30,</b>				
	<b>2017</b>	<b>2016</b>	<b>2017</b>	<b>2016</b>	<b>2015</b>	<b>2014</b>	<b>2013</b>
	<b>(Unaudited)</b>		<b>(In millions, except per share data)</b>				
<b>Statements of Income:</b>							
Net sales	\$ 3,672.5	\$ 3,729.7	\$ 7,392.3	\$ 7,811.2	\$ 5,692.7	\$ 5,610.6	\$ 5,897.7
Gross profit	\$ 1,417.1	\$ 1,465.6	\$ 2,835.3	\$ 2,967.8	\$ 1,968.7	\$ 2,031.0	\$ 2,027.6
% of net sales	38.6%	39.3%	38.4%	38.0%	34.6%	36.2%	34.4%
Operating income	\$ 564.5	\$ 597.1	\$ 1,031.5	\$ 1,145.3	\$ 772.0	\$ 919.0	\$ 910.4
% of net sales	15.4%	16.0%	14.0%	14.7%	13.6%	16.4%	15.4%
Net income	\$ 321.4	\$ 347.3	\$ 592.3	\$ 688.7	\$ 344.9	\$ 565.2	\$ 544.2
<b>Financial Position:</b>							
Cash and cash equivalents	\$ 180.3	\$ 121.8	\$ 166.8	\$ 109.8	\$ 125.6	\$ 153.5	\$ 256.4
Total assets	\$ 15,702.0	\$ 16,058.2	\$ 15,639.7	\$ 15,984.1	\$ 16,806.3	\$ 9,041.4	\$ 9,010.7
Total debt	\$ 5,257.6	\$ 5,351.4	\$ 5,398.5	\$ 5,430.0	\$ 6,170.9	\$ 2,216.3	\$ 2,010.1
Shareholders' equity	\$ 7,036.3	\$ 7,180.1	\$ 6,850.2	\$ 7,008.5	\$ 7,086.9	\$ 5,029.6	\$ 5,148.8
<b>Statements of Cash Flows:</b>							
Net cash provided by operating activities	\$ 434.6	\$ 375.3	\$ 1,059.0	\$ 1,461.0	\$ 739.1	\$ 863.3	\$ 858.7
Capital expenditures	\$ 130.0	\$ 84.0	\$ 192.4	\$ 201.4	\$ 247.7	\$ 279.5	\$ 206.5
Quarterly dividends paid	\$ 173.4	\$ 164.9	\$ 339.3	\$ 316.6	\$ 254.0	\$ 238.0	\$ 222.8
Purchase of treasury shares	\$ 6.7	\$ 18.8	\$ 437.6	\$ 441.1	\$ 24.3	\$ 508.5	\$ 364.2
<b>Share Data:</b>							

Edgar Filing: J M SMUCKER Co - Form 424B2

Weighted-average shares outstanding		113.5		116.4		116.0		119.4		103.7		104.3		108.8
Weighted-average shares outstanding assuming dilution		113.6		116.5		116.1		119.5		103.7		104.3		108.9
Dividends declared per common share	\$	1.56	\$	1.50	\$	3.00	\$	2.68	\$	2.56	\$	2.32	\$	2.08
Earnings per Common Share:														
Net income	\$	2.83	\$	2.98	\$	5.11	\$	5.77	\$	3.33	\$	5.42	\$	5.00
Net income assuming dilution	\$	2.83	\$	2.98	\$	5.10	\$	5.76	\$	3.33	\$	5.42	\$	5.00

S-9

---

**Table of Contents**

**RISK FACTORS**

*An investment in the notes involves risk. Prior to making a decision about investing in the notes, and in consultation with your own financial and legal advisors, you should carefully consider the following risk factors, as well as the risk factors discussed in our Annual Report on Form 10-K for the fiscal year ended April 30, 2017 and our Quarterly Reports on Form 10-Q for the fiscal quarters ended July 31, 2017 and October 31, 2017, each of which are incorporated herein by reference. You should also refer to the other information in this prospectus supplement and the accompanying prospectus, including our financial statements and the related notes incorporated by reference in this prospectus supplement and the accompanying prospectus. Additional risks and uncertainties that are not yet identified may also materially harm our business, operating results and financial condition.*

**Risks Related to the Notes**

*Your right to receive payments on the notes is effectively subordinated to the rights of our existing and future secured creditors and structurally subordinated to any existing or future indebtedness or other liabilities of our subsidiaries.*

The notes represent unsecured obligations of The J. M. Smucker Company. Accordingly, holders of our secured indebtedness will have claims that are superior to your claims as holders of the notes to the extent of the value of the assets securing that other indebtedness. In addition, the notes will not be guaranteed by any of our subsidiaries, through which we conduct many of our operations and which generate a substantial portion of our operating income and cash. As a result, the notes are also effectively subordinated to any existing and future liabilities of our subsidiaries. We or our subsidiaries may incur substantial additional indebtedness in the future, which may be senior to the notes. The terms of the notes do not impose any limitation on us or our subsidiaries' ability to incur such additional debt.

In the event of any distribution of our assets in foreclosure, dissolution, winding-up, liquidation, reorganization or other bankruptcy proceeding, our secured creditors will have a superior claim to those of our assets that constitute their collateral and holders of debt of our subsidiaries will have a prior claim on the assets of our subsidiaries. If any of the foregoing events occur, we cannot assure you that there will be sufficient assets to pay amounts due on the notes. Holders of the notes will participate ratably with all holders of our other unsecured senior indebtedness, and with all of our other general senior creditors, based upon the respective amounts owed to each holder or creditor, in our remaining assets. As a result, holders of the notes may receive less, ratably, than our secured creditors.

As of October 31, 2017, our total consolidated indebtedness was \$5,257.6 million, all of which is unsecured and none of which is held by our subsidiaries.

*Our credit ratings may not reflect all risks of your investment in the notes.*

The credit ratings assigned to the notes are limited in scope and do not address all material risks relating to an investment in the notes, but rather reflect only the view of each rating agency at the time the rating is issued. An explanation of the significance of a rating may be obtained from the rating agency. There can be no assurance that credit ratings will remain in effect or that a rating will not be lowered, suspended or withdrawn by the rating agency if, in the rating agency's judgment, circumstances so warrant. Agency credit ratings are not a recommendation to buy, sell or hold any security. Each agency's rating should be evaluated independently of any other agency's rating. Actual or anticipated changes or downgrades in our credit ratings, including any announcement that our ratings are under review for a downgrade, could affect the market value of the notes and increase our corporate borrowing costs.

S-10

---

**Table of Contents**

***The indenture does not limit the amount of indebtedness that we and our subsidiaries may incur.***

The indenture under which the notes will be issued does not limit the amount of indebtedness that we and our subsidiaries may incur. Our incurrence of additional debt may have important consequences for you as a holder of the notes, including making it more difficult for us to satisfy our obligations with respect to the notes, a loss in the market value of your notes and a risk that the credit rating of the notes is lowered or withdrawn.

***The terms of the indenture and the notes provide only limited protection against significant corporate events that could adversely impact your investment in the notes.***

While the indenture and the notes contain terms intended to provide protection to the holders of the notes upon the occurrence of certain events involving significant corporate transactions, such terms are limited and may not be sufficient to protect your investment in the notes. The definition of the term "change of control triggering event" (as defined in "Description of Notes - Repurchase at the Option of the Holders of Notes upon a Change of Control Triggering Event") does not cover a variety of transactions (such as acquisitions by us or recapitalizations) that could affect the value of your notes. If we were to enter into a significant corporate transaction that would negatively affect the value of the notes but would not constitute a change of control triggering event, we would not be required to offer to repurchase your notes prior to their maturity.

Furthermore, the indenture for the notes does not, among other things:

require us to maintain any specified financial ratios or specified levels of net worth, revenues, income, cash flow or liquidity;

limit our ability to incur indebtedness that is equal in right of payment to the notes;

restrict our subsidiaries' ability to issue securities or otherwise incur indebtedness or other obligations that would be senior to our equity interests in such subsidiaries and therefore rank effectively senior to the notes with respect to the assets of such subsidiaries;

limit the ability of our subsidiaries to service our other indebtedness;

restrict our ability to repurchase or prepay any other of our securities or other indebtedness; or

restrict our ability to make investments or to repurchase or pay dividends or make other payments in respect of our common stock or other securities ranking junior to the notes.

***We may not have sufficient funds to purchase the notes upon a change of control triggering event.***

Holders of the notes may require us to purchase their notes upon a change of control triggering event as defined under "Description of Notes - Repurchase at the Option of the Holders of Notes upon a Change of Control Triggering Event." We cannot assure you that we will have sufficient financial resources, or will be able to arrange sufficient financing,

to pay the purchase price of the notes, particularly if a change of control event triggers a similar repurchase requirement for, or results in the acceleration of, our other then-existing debt. Our failure to purchase the notes as required under the indenture governing the notes would result in an event of default under the indenture, which could have material adverse consequences for us and the holders of the notes. See Description of Notes Repurchase at the Option of the Holders of Notes upon a Change of Control Triggering Event.

***Active trading markets for the notes may not develop.***

There is no existing market for the notes of any series and we do not intend to apply for listing of the notes of any series on any securities exchange or any automated quotation system. Accordingly, there can be no

**Table of Contents**

assurance that a trading market for the notes of any series will ever develop or will be maintained. Further, there can be no assurance as to the liquidity of any market that may develop for the notes of any series, your ability to sell your notes or the price at which you will be able to sell your notes. Future trading prices of the notes of any series will depend on many factors, including prevailing interest rates, our financial condition and results of operations, the then-current ratings assigned to the notes of such series and the market for similar securities. Any trading market that develops for the notes of any series would be affected by many factors independent of and in addition to the foregoing, including:

the time remaining to the maturity of the notes of such series;

the outstanding amount of the notes of such series;

the terms related to optional redemption of the notes of such series; and

the level, direction and volatility of market interest rates generally.



**Table of Contents**

**USE OF PROCEEDS**

We expect to receive net proceeds of approximately \$795.4 million, after deducting the underwriting discount but before deducting our expenses relating to the offering. We intend to use a portion of the net proceeds from the sale of the notes to repay, redeem or refinance \$500.0 million in principal amount of our unsecured senior notes due March 15, 2018, which bear interest at 1.75%, together with accrued and unpaid interest thereon. We intend to use the balance of the net proceeds for general corporate purposes, which could include, but are not limited to, repayments of other outstanding debt, capital expenditures or working capital, and for funding of potential acquisitions.

S-13

**Table of Contents****CAPITALIZATION**

The following table sets forth:

our unaudited consolidated cash and cash equivalents and capitalization as of October 31, 2017; and

our unaudited consolidated cash and cash equivalents and capitalization as of October 31, 2017, as adjusted to give effect to this offering and the intended use of proceeds therefrom.

You should read this table in conjunction with our consolidated financial statements, the related notes and other financial information contained in our Quarterly Report on Form 10-Q for the fiscal quarter ended October 31, 2017, which is incorporated by reference in this prospectus supplement and the accompanying prospectus, as well as the other financial information incorporated by reference in this prospectus supplement and the accompanying prospectus.

	<b>As of October 31, 2017</b>	
	<b>Actual</b>	<b>As Adjusted</b>
	<b>(Unaudited, dollars in millions)</b>	
<b>Cash and cash equivalents</b>	\$ 180.3	\$ 474.2
<b>Total debt, including current portion<sup>(1)</sup>:</b>		
2019 notes offered hereby	\$	\$ 298.9
2027 notes offered hereby		496.6
1.75% Senior Notes due March 15, 2018	499.6	
2.50% Senior Notes due March 15, 2020	497.2	497.2
3.50% Senior Notes due October 15, 2021 <sup>(2)</sup>	779.0	779.0
3.00% Senior Notes due March 15, 2022	397.0	397.0
3.50% Senior Notes due March 15, 2025	994.0	994.0
4.25% Senior Notes due March 15, 2035	642.9	642.9
4.38% Senior Notes due March 15, 2045	585.2	585.2
Term Loan Credit Agreement due March 23, 2020 <sup>(3)</sup>	398.8	398.8
\$1,750,000,000 revolving line of credit <sup>(4)(5)</sup>		
<b>Total debt, including current portion</b>	<b>\$ 4,793.7</b>	<b>\$ 5,089.6</b>
<b>Shareholders equity:</b>		
Serial preferred shares, no par value; 6,000,000 shares authorized; none issued	\$	\$
Common shares, no par value; 300,000,000 shares authorized; 113,598,960 shares issued and outstanding	28.4	28.4
Additional capital	5,737.8	5,737.8

Edgar Filing: J M SMUCKER Co - Form 424B2

Retained income	1,383.8	1,383.8
Accumulated other comprehensive (loss)	(113.7)	(113.7)

Total shareholders equity	7,036.3	7,036.3
---------------------------	---------	---------

Total capitalization	\$ 11,830.0	\$ 12,125.9
----------------------	-------------	-------------

(1) All of our Senior Notes outstanding at October 31, 2017 are unsecured, and interest is paid semiannually, with no required scheduled principal payments until maturity. We may prepay at any time all

S-14

---

**Table of Contents**

or part of the Senior Notes at 100% of the principal amount thereof, together with the accrued and unpaid interest, and any applicable make-whole amount.

(2) During 2014, we entered into an interest rate swap designated as a fair value hedge of the 3.50% Senior Notes due October 15, 2021, which was subsequently terminated in 2015. At October 31, 2017, the remaining benefit of \$32.4 million was recorded as an increase in the long-term debt balance and will be recognized ratably as a reduction to future interest expense over the remaining life of the related debt.

(3) In March 2015, we entered into a senior unsecured delayed-draw Term Loan Credit Agreement (the Term Loan ) with a syndicate of banks and an available commitment amount of \$1.8 billion. Borrowings under the Term Loan bear interest on the prevailing U.S. Prime Rate or London Interbank Offered Rate ( LIBOR ), based on our election, and is payable either on a quarterly basis or at the end of the borrowing term. The weighted-average interest rate on the Term Loan at October 31, 2017, was 2.49%. The Term Loan requires quarterly amortization payments of 2.50% of the original principal amount. Voluntary prepayments are permitted without premium or penalty and are applied to the schedule of required quarterly minimum payment obligations in direct order of maturity. As of October 31, 2017, we have prepaid \$1.4 billion on the Term Loan to date, including \$150.0 million in the first six months of 2018, and therefore no additional payments are required until final maturity of the Term Loan on March 23, 2020. On September 1, 2017, we amended the Term Loan in connection with the execution of our new revolving credit facility (described in detail in note (5) below) to make certain changes to the representations and warranties and affirmative and negative covenants (including financial covenants) of the Term Loan.

(4) In June 2017, we entered into a treasury lock, with a notional value of \$300.0 million, to manage our exposure to interest rate volatility associated with anticipated debt financing in 2018. This interest rate contract is designated as a cash flow hedge, and as a result, the mark-to-market gains or losses on the contract are deferred and included as a component of accumulated other comprehensive income (loss), and reclassified to interest expense in the period during which the hedged transaction affects earnings. At October 31, 2017, an unrealized gain of \$3.5 million was deferred in accumulated other comprehensive income (loss) for this derivative instrument.

(5) On September 1, 2017, we, together with our Canadian subsidiary, entered into a Revolving Credit Agreement which provides for a \$1.75 billion unsecured revolving credit facility that matures on September 1, 2022. Borrowings under the revolving credit facility bear interest based on the prevailing U.S. Prime Rate, LIBOR, or Canadian Dealer Offered Rate, based on our election. We did not have a balance outstanding under our revolving credit facility as of October 31, 2017.

On August 1, 2014, we entered into a commercial paper program (the CP Program ) under which we may issue short-term, unsecured commercial paper notes (the CP Notes ). On September 1, 2017, in connection with the execution of our new revolving credit facility, we increased the amount of CP Notes that we may issue from time to time under the CP Program to an aggregate amount not to exceed \$1.75 billion outstanding at any time. The CP Notes have maturities of up to 270 days from the date of issue and will not be subject to voluntary prepayment by us or redemption prior to maturity. The CP Notes rank *pari passu* with all of our other unsecured and unsubordinated indebtedness. The net proceeds of issuances of the CP Notes will be used as a continuing source of short-term financing for general corporate purposes. We use our revolving credit facility as a liquidity backstop for our borrowings under the CP Program. As of October 31, 2017, we had \$463.9 million of CP Notes outstanding under the CP Program at a weighted-average interest rate of 1.41%.

**Table of Contents****RATIO OF EARNINGS TO FIXED CHARGES**

The following table sets forth the ratio of our earnings to our fixed charges for the periods indicated. The ratio has been computed by dividing earnings by fixed charges. For purposes of computing the ratio, Earnings is income before income taxes plus fixed charges, less capitalized interest. Fixed Charges is interest expense plus capitalized interest and the portion of rental expense which is representative of interest expense. For purposes of this calculation, management estimates approximately one-third of rent expense is representative of interest expense.

<b>Six Months Ended</b>	<b>Fiscal Year Ended April 30,</b>				
<b>October 31, 2017</b>	<b>2017</b>	<b>2016</b>	<b>2015</b>	<b>2014</b>	<b>2013</b>
5.7	5.4	5.8	5.8	9.1	7.8

S-16

---

**Table of Contents**

**DESCRIPTION OF NOTES**

*The terms of the notes will include those set forth in the indenture (as defined below) and those required to be made a part of the indenture by the Trust Indenture Act of 1939, upon registration of the notes. You should carefully read the summary below and the provisions of the indenture that may be important to you before investing in the notes. This summary is not complete and is qualified in its entirety by reference to the indenture. We urge you to read the indenture because the indenture, not this description, defines your rights as holders of the notes.*

*For the avoidance of doubt, references to the Company, we, us and our in this section are only to The J. M. Smucker Company and not The J. M. Smucker Company together with any of its subsidiaries.*

**General**

We will issue \$300 million aggregate principal amount of 2.200% senior notes due 2019 (the *2019 notes*) and \$500 million aggregate principal amount of 3.375% senior notes due 2027 (the *2027 notes*). We collectively refer to the 2019 notes and the 2027 notes as the *notes*.

The notes constitute multiple series of debt securities to be issued under a base indenture dated March 20, 2015 between us and U.S. Bank National Association, as trustee (the *base indenture*), as supplemented by a second supplemental indenture to be dated December 7, 2017 between us and the trustee (the *supplemental indenture* and, together with the base indenture, the *indenture*).

The notes are not subject to any sinking fund.

The indenture will not limit the amount of debt that we may issue under the indenture, nor the amount of other debt or securities that we or any of our subsidiaries may issue. We may issue debt securities under the indenture from time to time in one or more series, each in an amount authorized prior to issuance. Among other things, we may, without the consent of the existing holders of the notes, issue additional notes of the same series as any series of notes offered hereby having the same terms (other than some or all of the issue price, issue date, initial interest payment date, initial interest accrual date and amount of the first interest payment) so that in either case the existing notes of a series and the new notes of such series form a single series under the indenture. Any such additional notes of such series, together with the notes of such series offered hereby, will constitute a single series of debt securities under the indenture, *provided* that if the additional notes are not fungible with the notes for United States federal income tax purposes, the additional notes will have a separate CUSIP number.

The notes of each series will be issued in the form of one or more permanent global notes in definitive, fully registered, book-entry form in minimum denominations of \$2,000 and additional incremental multiples of \$1,000 in excess thereof. The trustee will initially act as paying agent and registrar for the notes. The notes may be presented for registration of transfer and exchange at the offices of the registrar, which will be the trustee's corporate trust office. We may change any paying agent and registrar without notice to holders of the notes and we may act as a paying agent or registrar.

We may redeem some or all of the notes at any time and from time to time at the redemption price described under **Optional Redemption**.

**Ranking**

The notes will be our direct unsecured obligations and will rank equally and *pari passu* with all of our other unsecured and unsubordinated debt. The notes will not be guaranteed by any of our subsidiaries.

The notes are our general unsecured, unsubordinated debt securities, but our assets include equity in our subsidiaries, through which we conduct many of our operations and which generate a substantial portion of our

S-17

**Table of Contents**

operating income and cash. As a result, our ability to make payments on the notes depends in part on our receipt of dividends, loan payments and other funds from our subsidiaries. If any of our subsidiaries becomes insolvent, the direct creditors of that subsidiary will have a prior claim on its assets. Our rights and the rights of our creditors, including your rights as an owner of notes, will be subject to that prior claim, unless we or you are also a direct creditor of that subsidiary. This subordination of creditors of a parent company to prior claims of creditors of its subsidiaries is commonly referred to as structural subordination. In addition, the notes will effectively rank junior in right of payment to any of our secured indebtedness to the extent of the assets securing such indebtedness.

The notes will be our unsecured, unsubordinated obligations and will:

rank equally in right of payment to all of our existing and future senior unsecured and unsubordinated indebtedness;

rank senior in right of payment to all of our existing and future subordinated indebtedness that is subordinated in right of payment to the notes;

be effectively subordinated to all of our and our subsidiaries' existing and future secured indebtedness to the extent of the value of our assets and the assets of our subsidiaries securing such indebtedness; and

be structurally subordinated to all of the existing and future indebtedness and other liabilities of our subsidiaries.

As of October 31, 2017, the indebtedness and other liabilities (including deferred taxes) of our subsidiaries were approximately \$2,622.0 million. The assets of our subsidiaries (excluding the effect of intercompany transactions and investments in subsidiaries and the goodwill of our subsidiaries) represented approximately 87% of our total consolidated assets as of April 30, 2017 and approximately 87% of our total consolidated assets as of October 31, 2017.

**Interest Provisions Relating to the Notes**

Each series of notes will mature and bear interest, with interest payment dates and record dates, as provided in the following table:

<b>Series</b>	<b>Maturity</b>	<b>Interest Rate</b>	<b>Interest Payment Dates</b>	<b>Record Dates</b>
2019 notes	December 6, 2019	2.200%	June 6 and December 6	June 1 and December 1
2027 notes	December 15, 2027	3.375%	June 15 and December 15	June 1 and December 1

We will pay interest on each series of the notes from and including December 7, 2017 or from the most recent interest payment date to which interest has been paid or duly provided for, semi-annually in arrears on the dates set forth above, commencing, in the case of the 2019 notes, on June 6, 2018 and, in the case of the 2027 notes, on June 15, 2018, until the principal is paid or made available for payment. Interest will be paid to the persons in whose names the notes are registered at the close of business on the record date (whether or not a business day), as the case may be, immediately preceding the relevant interest payment date. Interest will be computed on the basis of a 360-day year



consisting of twelve 30-day months.

In the event that any date on which interest is payable on the note is not a business day, then payment of interest payable on such date will be made on the next succeeding day that is a business day (and without any interest in respect of any such delay) with the same force and effect as if made on such interest payment date. For the notes, *business day* means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in the place of payment are authorized or obligated by law or executive order to close.

S-18

---

**Table of Contents**

**Optional Redemption**

The 2019 notes will be redeemable as a whole or in part, at our option, at any time and from time to time, at a redemption price equal to the greater of

- (i) 100% of the principal amount of such notes to be redeemed; and
- (ii) the sum (a) of the present values of the remaining scheduled payments of principal and interest on the notes to be redeemed (not including interest accrued to the date of redemption) discounted to the redemption date on a semiannual basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate plus (b) 7.5 basis points,

plus in each case accrued and unpaid interest on the notes to be redeemed to, but excluding, the date of redemption.

Prior to September 15, 2027 (three months prior to the maturity date of the 2027 notes) (the Par Call Date), the 2027 notes will be redeemable as a whole or in part, at our option, at any time and from time to time, at a redemption price equal to the greater of

- (i) 100% of the principal amount of such notes to be redeemed; and
- (ii) the sum (a) of the present values of the remaining scheduled payments of principal and interest on the notes to be redeemed (not including interest accrued to the date of redemption) to the Par Call Date discounted to the redemption date on a semiannual basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate plus (b) 15 basis points,

plus in each case accrued and unpaid interest on the notes to be redeemed to, but excluding, the date of redemption. In addition, at any time on or after the Par Call Date, the 2027 notes will be redeemable at our option, in whole or in part, at a redemption price equal to 100% of the principal amount of the notes being redeemed plus accrued and unpaid interest on the notes to be redeemed to, but excluding, the date of redemption.

*Comparable Treasury Issue* means the United States Treasury security or securities selected by an Independent Investment Banker as having an actual or interpolated maturity comparable to the remaining term of the notes to (i) in the case of the 2019 notes, the maturity date of the notes or (ii) in the case of the 2027 notes, the Par Call Date that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of a comparable maturity to the remaining term of such notes.

*Comparable Treasury Price* means, with respect to any redemption date for the notes, (A) the average of the Reference Treasury Dealer Quotations for such redemption date, after excluding the highest and lowest such Reference Treasury Dealer Quotations, or (B) if the Independent Investment Banker obtains fewer than four such Reference Treasury Dealer Quotations, the average of all such quotations.

*Independent Investment Banker* means one of the Reference Treasury Dealers appointed by us.

*Primary Treasury Dealer* has the meaning set forth in the definition of Reference Treasury Dealer.

*Reference Treasury Dealer* means (1) each of Merrill Lynch, Pierce, Fenner & Smith Incorporated and J.P. Morgan Securities LLC their respective successors; *provided, however*, that if any of the foregoing ceases to be a primary U.S. Government securities dealer in the United States (a *Primary Treasury Dealer* ), we will substitute therefor another Primary Treasury Dealer and (2) any other Primary Treasury Dealers selected by us.

*Reference Treasury Dealer Quotations* means, with respect to each Reference Treasury Dealer and any redemption date, the average, as determined by the Independent Investment Banker, of the bid and asked prices

---

**Table of Contents**

for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Independent Investment Banker by such Reference Treasury Dealer at 3:30 p.m. New York time on the third business day preceding such redemption date.

*Treasury Rate* means, with respect to any redemption date for the notes, the rate per annum equal to the semiannual equivalent yield to maturity or interpolated yield to maturity (on a day count basis) of the Comparable Treasury Issue, assuming a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for such redemption date.

Notice of any redemption will be mailed or delivered electronically if held by DTC in accordance with DTC's customary procedures at least 30 days but not more than 60 days before the redemption date to each registered holder of notes to be redeemed. If fewer than all of the notes are to be redeemed, the particular notes to be redeemed will be selected by the trustee by such method as the trustee will deem fair and appropriate. If any note is to be redeemed only in part, the notice of redemption that relates to such note will state the principal amount thereof to be redeemed. A new note in principal amount equal to and in exchange for the unredeemed portion of the principal of the note surrendered will be issued in the name of the holder of the note upon surrender of the original note.

Unless we default in payment of the redemption price, on and after the redemption date interest will cease to accrue on the notes or portions thereof called for redemption.

**Events of Default**

Each of the following will be an event of default with respect to a series of the notes ( *Events of Default* ):

- (1) default in the payment of any interest on any note of such series when it becomes due and payable, and continuance of such default for a period of 30 days or more;
- (2) default in the payment of the principal amount of (or premium, if any, on) any note of such series as and when the same shall become due, either at maturity, upon redemption, by declaration, or otherwise;
- (3) default in the payment of any sinking or purchase fund or analogous obligation when the same becomes due by the terms of the notes of such series, and continuance of such default for a period of 30 days or more;
- (4) default in our performance, or breach by us, of any covenant in the indenture applicable to that series (other than defaults specified elsewhere in the Events of Default and the default or breach continues for a period of 90 days or more after we receive written notice from the trustee or we and the trustee receive notice from the holders of at least 25% in aggregate principal amount of the outstanding notes of the series;
- (5) default under any agreement or instrument evidencing, or under which we or any restricted subsidiary has outstanding at the time, any indebtedness for money borrowed by us or a restricted subsidiary, which default or defaults, individually or in the aggregate, have resulted in the acceleration of any portion of such indebtedness having an aggregate principal amount in excess of \$150 million; or
- (6) certain events of bankruptcy, insolvency, reorganization or similar proceedings with respect to us have occurred.

If an Event of Default (other than an Event of Default specified in clause (6) with respect to us) under the indenture occurs with respect to the notes of any series and is continuing, then the trustee or the holders of at least 25% in aggregate principal amount of the outstanding notes of that series may by written notice declare the principal amount

of the outstanding notes of that series (or such lesser amount as may be provided in the terms of the securities), together with all accrued and unpaid interest due and payable immediately.

S-20

## **Table of Contents**

If an Event of Default under the indenture specified in clause (6) with respect to us occurs and is continuing, then the entire principal amount of the outstanding notes (or such lesser amount as may be provided in the terms of the securities), together with all accrued and unpaid interest, will automatically become due and payable immediately without any declaration or other act on the part of the trustee or any holder.

After a declaration of acceleration, the holders of a majority in aggregate principal amount of outstanding notes of any series may rescind this accelerated payment requirement if all existing Events of Default, except for nonpayment of the principal and interest on the notes of that series that has become due solely as a result of the accelerated payment requirement, have been cured or waived, if all sums paid or advanced by the trustee and the reasonable compensation, expenses, disbursements and advances of the trustee, its agents and counsel have been paid and if the rescission of acceleration would not conflict with any judgment or decree. The holders of a majority in aggregate principal amount of the outstanding notes of any series also have the right to waive past defaults, except a default theretofore not cured in paying principal or interest on any outstanding note, or in respect of a covenant or a provision that cannot be modified or amended without the consent of all holders of the notes of that series.

Holders of at least 25% in aggregate principal amount of the outstanding notes of a series may seek to institute a proceeding only after they have notified the trustee of a continuing Event of Default in writing and made a written request, and offered reasonable indemnity, to the trustee to institute a proceeding and the trustee has failed to do so within 60 days after it received this notice. In addition, within this 60-day period the trustee must not have received directions inconsistent with this written request by holders of a majority in aggregate principal amount of the outstanding notes of that series. These limitations do not apply, however, to a suit instituted by a holder of a note for the enforcement of the payment of principal, interest or any premium on or after the due dates for such payment.

During the existence of an Event of Default, the trustee is required to exercise the rights and powers vested in it under the indenture and use the same degree of care and skill in its exercise as a prudent person would under the circumstances in the conduct of that person's own affairs. If an Event of Default has occurred and is continuing, the trustee is not under any obligation to exercise any of its rights or powers at the request or direction of any of the holders unless the holders have offered to the trustee reasonable security or indemnity. Subject to certain provisions, the holders of a majority in aggregate principal amount of the outstanding notes of any series have the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee, or exercising any trust, or power conferred on the trustee.

The trustee will, within 90 days after receiving notice of the occurrence of any default, give notice of the default to the holders of the notes of that series, unless the default was already cured or waived. Unless there is a default in paying principal, interest or any premium when due, the trustee can withhold giving notice to the holders if it determines in good faith that the withholding of notice is in the interest of the holders.

## **Modification and Waiver**

The indenture may be amended or modified without the consent of any holder of notes in order to:

evidence a succession to the trustee;

cure ambiguities, defects or inconsistencies;

provide for the assumption of our obligations in the case of a merger or consolidation or transfer of all or substantially all of our assets permitted under the indenture;

make any change that would provide any additional rights or benefits to the holders of the notes of a series;

S-21

**Table of Contents**

add guarantees or collateral with respect to the notes of a series;

secure the notes of a series;

establish the form or forms of notes of any series;

provide for the issuance of any series of notes and to set the terms thereof;

add to the rights of the holders of any series of notes;

add any additional events of default in respect of the notes of any or all series;

maintain the qualification of the indenture under the Trust Indenture Act of 1939, as amended; or

make any change that does not adversely affect in any material respect the interests of any holder.

Other amendments and modifications of the indenture or the notes issued may be made with the consent of the holders of not less than a majority in aggregate principal amount of the outstanding notes of each series affected by the amendment or modification. However, no modification or amendment may, without the consent of the holder of each outstanding note affected:

reduce the principal amount or any interest or premium payable thereon, or extend the fixed maturity or the stated payment date of any payment of principal, premium or interest, of the notes (in each case other than in connection with any amendments to redemption provisions);

alter or waive the redemption provisions of the notes;

if a change of control triggering event occurs, limit a holder's right, if any, to repayment of notes at the holder's option in connection therewith;

change the method of computing the amount of principal of any note or any interest payable thereon on any date;

change the place of payment or currency in which principal, any premium or interest is paid;



reduce the percentage in principal amount outstanding of notes of any series which must consent to an amendment, supplement or waiver or consent to take any action;

impair the right to institute suit for the enforcement of any payment on the notes;

waive a payment default with respect to the notes;

reduce the interest rate or extend the time for payment of interest on the notes;

modify any of the foregoing requirements contained in the indenture or those related to waivers of default or compliance with covenants contained in the indenture except to increase the percentage required for any such waiver or to provide that other provisions of the indenture cannot be modified or waived without the consent of the holder of each note affected thereby; or

amend or modify any provisions of any future guarantee or collateral that may be added in the future with respect to the notes of a series in a manner that could materially and adversely affect the holders of the notes of such series.

## **Table of Contents**

Under the indenture, the holders of at least a majority of the aggregate principal amount of the outstanding notes of each series of notes affected by a particular covenant or condition, acting as one class, may, on behalf of all holders of such series of notes, waive compliance by us with any covenant or condition contained in the indenture unless we specify that such covenant or condition cannot be so waived at the time we establish such series.

In addition, under the indenture, the holders of a majority in aggregate principal amount of the outstanding notes of any series of notes may, on behalf of all holders of that series, waive any past default under the indenture, except:

a default in the payment of the principal of any sinking or purchase fund or any analogous obligation or any premium or interest on any notes of that series; or

a default under any provision of the indenture which itself cannot be modified or amended without the consent of the holders of each outstanding note of that series.

### **Repurchase at the Option of the Holders of Notes upon a Change of Control Triggering Event**

If a change of control triggering event occurs, unless we have exercised our right to redeem the notes in whole as described above, holders of notes will have the right to require us to repurchase all or any part (equal to \$2,000 or an integral multiple of \$1,000 in excess thereof) of their notes pursuant to the offer described below (the *change of control offer* ) on the terms set forth in the notes. In the change of control offer, we will offer payment in cash equal to 101% of the aggregate principal amount of notes repurchased plus accrued and unpaid interest, if any, on the notes repurchased to but not including the date of purchase (the *change of control payment* ).

Within 30 days following any change of control triggering event, or, at our option, prior to the date of consummation of any change of control, but after public announcement of the pending change of control, we will mail a notice to holders of notes, with a copy to the trustee, describing the transaction or transactions that constitute or may constitute the change of control and offering to repurchase the notes on the date specified in the notice, which date will be no earlier than 30 days and no later than 60 days from the date such notice is mailed (the *change of control payment date* ), pursuant to the procedures required by the notes and described in such notice. The repurchase obligation with respect to any notice mailed prior to the consummation of the change of control will be conditioned on the change of control triggering event occurring on or prior to the payment date specified in the notice.

We will comply in all material respects with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the repurchase of the notes as a result of a change of control triggering event. To the extent that the provisions of any securities laws or regulations conflict with the change of control provisions of the notes, we will comply with the applicable securities laws and regulations and will not be deemed to have breached our obligations under the change of control provisions of the notes by virtue of such conflicts.

On the change of control payment date, we will, to the extent lawful:

accept or cause a third party to accept for payment all notes or portions of notes properly tendered pursuant to the change of control offer;

deposit with the paying agent an amount equal to the change of control payment in respect of all notes or portions of notes properly tendered; and

deliver or cause to be delivered to the trustee the notes properly accepted together with an officer's certificate stating the aggregate principal amount of notes or portions of notes being repurchased and

S-23

---

**Table of Contents**

that all conditions precedent to the change of control offer and to the repurchase by us of notes pursuant to the change of control offer have been complied with.

The paying agent will promptly pay to each holder of notes properly tendered the purchase price for the notes, and the trustee will promptly authenticate and mail (or cause to be transferred by book-entry) to each holder a new note equal in principal amount to any unpurchased portion of any notes surrendered; *provided* that each new note will be in a principal amount of \$2,000 or an integral multiple of \$1,000 in excess thereof.

We will not be required to make a change of control offer upon a change of control triggering event if a third party makes such an offer in the manner, at the times and otherwise in compliance with the requirements for an offer made by us and such third party purchases all notes properly tendered and not withdrawn under its offer.

For purposes of the foregoing discussion of a repurchase at the option of holders, the following definitions are applicable:

*below investment grade rating event* means the rating on the notes is lowered by each of the rating agencies and the notes are rated below an investment grade rating by each of the rating agencies on any date during the period (the *trigger period* ) commencing upon the first public announcement by us of any change of control (or pending change of control), and ending 60 days following consummation of such change of control (which trigger period will be extended following consummation of a change of control for so long as either of the rating agencies has publicly announced that it is considering the possible downgrade of the notes, and a downgrade by each of the rating agencies that has made such an announcement would result in a below investment grade rating event).

*change of control* means the occurrence of any of the following: (1) the direct or indirect sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one transaction or a series of related transactions, of all or substantially all of the assets of us and our subsidiaries, taken as a whole, to any person (as that term is used in Section 13(d)(3) of the Exchange Act) other than us or one of our subsidiaries; (2) the adoption of a plan relating to our liquidation or dissolution; (3) the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that any person becomes the beneficial owner (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, of more than 50% of our outstanding voting stock, measured by voting power rather than number of shares; *provided* that this clause (3) will not apply to acquisitions of capital stock by the Smucker Family so long as the acquisition by the Smucker Family of such capital stock will not result, directly or indirectly, in a going private transaction within the meaning of the Exchange Act; (4) we consolidate with, or merge with or into, any person, or any person consolidates with, or merges with or into us, in any such event pursuant to a transaction in which any of our outstanding voting stock or the voting stock of such other person is converted into or exchanged for cash, securities or other property, other than any such transaction where the shares of our voting stock outstanding immediately prior to such transaction constitute, or are converted into or exchanged for, a majority of the voting stock of the surviving person or any direct or indirect parent company of the surviving person immediately after giving effect to such transaction; or (5) the first day on which a majority of the members of our board of directors cease to be continuing directors. Notwithstanding the foregoing, a transaction will not be deemed to involve a change of control under clause (3) or (4) above if (i) we become a direct or indirect wholly owned subsidiary of a holding company or other person and (ii) (A) the direct or indirect holders of the voting stock of such holding company or other person immediately following that transaction are substantially the same as the holders of our voting stock immediately prior to that transaction or (B) immediately following that transaction no person (other than a holding company satisfying the requirements of this sentence) is the beneficial owner, directly or indirectly, of more than 50% of the voting stock of such holding company or other person.

*change of control triggering event* means the occurrence of both a change of control and a below investment grade rating event.

S-24

---

**Table of Contents**

*continuing directors* means, as of any date of determination, any member of our board of directors who (1) was a member of such board of directors on the date the notes were issued or (2) was nominated for election, elected or appointed to such board of directors with the approval of a majority of the continuing directors who were members of such board of directors at the time of such nomination, election or appointment (either by a specific vote or by approval of our proxy statement in which such member was named as a nominee for election as a director, without objection to such nomination).

*investment grade rating* means a rating equal to or higher than Baa3 (or the equivalent) by Moody's and BBB- (or the equivalent) by S&P, and the equivalent investment grade credit rating from any replacement rating agency or rating agencies selected by us.

*Moody's* means Moody's Investors Service, Inc., a subsidiary of Moody's Corporation and its successors.

*rating agencies* means each of Moody's and S&P; *provided* that if either Moody's or S&P ceases to rate the notes or fails to make a rating of the notes publicly available for reasons outside of our control, a nationally recognized statistical rating organization within the meaning of Rule 15c3-1(c)(2)(vi)(F) under the Exchange Act selected by us as a replacement agency for Moody's or S&P, or either of them, as the case may be.

*S&P* means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., and its successors.

*Smucker Family* means any of (i) Timothy P. Smucker, Richard K. Smucker, Susan Smucker Wagstaff and Marcella Smucker Clark, (ii) any member of the immediate family, heirs, legatees, descendants and blood relatives to the fifth degree of consanguinity of any individual mentioned in clause (i) and (iii) any trust (or other entity created for estate planning purposes) established for the benefit of any one or more of the individuals mentioned in clause (i), the members of their immediate families and the lineal descendants of any of them (and the trustees of any such trust).

*voting stock* of any specified person means the capital stock of such person that is at the time entitled to vote generally in the election of the board of directors of such person.

The definition of change of control includes a phrase relating to the direct or indirect sale, lease, transfer, conveyance or other disposition of all or substantially all of our assets and those of our subsidiaries taken as a whole. Although there is a limited body of case law interpreting the phrase substantially all, there is no precise established definition of this phrase under applicable law. Accordingly, the ability of a holder of notes to require us to purchase such holder's notes as a result of a sale, lease, transfer, conveyance or other disposition of less than all of our assets and those of our subsidiaries taken as a whole to another person may be uncertain.

**Reports by the Company**

So long as any notes are outstanding, we shall file with the trustee, within 15 days after filing with the SEC, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) that we may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act. We will be deemed to have complied with the previous sentence to the extent that such information, documents and reports are filed with the Commission via EDGAR (or any successor electronic delivery procedure) or posted on our website; *provided, however*, that the trustee shall have no obligation whatsoever to determine whether or not such information, documents or reports have been filed pursuant to the EDGAR system (or its successor).

Delivery of such reports, information and documents to the trustee is for informational purposes only and the trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including our compliance with any of our covenants hereunder (as to which the trustee is entitled to rely exclusively on officer's certificates).

S-25

**Table of Contents**

**Covenants**

***Limitation of Liens Applicable to Notes***

The indenture will provide that with respect to the notes, we will not, and will not permit any of our restricted subsidiaries to, issue, assume or guarantee any indebtedness for borrowed money secured by a lien on any principal property owned by us or any restricted subsidiary or upon any shares of stock or indebtedness of any restricted subsidiary owned by us or any restricted subsidiary (whether such principal property, share of stock or indebtedness are now owned or hereafter acquired) unless we or that first-mentioned restricted subsidiary secures or causes such restricted subsidiary to secure the notes (and any of our or such restricted subsidiary's other debt, at our option or such restricted subsidiary's option, as the case may be, not subordinate to the notes), equally and ratably with (or, at our option, prior to) such secured debt, for as long as such secured debt will be so secured.

These restrictions will not, however, apply to debt secured by:

liens on property, shares of stock or indebtedness (herein referred to as "property") of any corporation or other entity existing at the time such corporation or other entity becomes a restricted subsidiary;

liens on property existing at the time of acquisition of such property by us or a restricted subsidiary or on property of a corporation or other entity existing at the time such corporation or other entity is merged into or consolidated with us or a restricted subsidiary, *provided* that such liens do not attach to or affect property theretofore owned by us or such restricted subsidiary;

liens to secure the payment of all or any part of the purchase price of the property subject to such liens, or liens consisting of the interests of lessors in property under capital leases of such property;

liens on property of a restricted subsidiary securing debt owed to us or to another restricted subsidiary;

with respect to each series of notes, liens existing on the first date on which the notes of such series are authenticated by the trustee;

liens in favor of the United States, any State, any foreign country or any department, agency or instrumentality or political subdivision of any such jurisdiction, or in favor of holders of securities issued by any of the foregoing, to secure partial, progress, advance or other payments pursuant to any contract or statute (including specifically liens to secure industrial revenue bonds and similar debt);

liens on property (and improvements thereto) to secure any debt incurred for the purpose of financing all or part of the purchase price or cost of construction, development or substantial repair, alteration or improvement of such property if such debt is incurred prior to, at the time of or within one year after (or pursuant to a commitment obtained within one year after) the later of the completion of or the placing into operation



(exclusive of test and start-up periods) of such constructed, developed, repaired, altered or improved property;

liens arising in connection with contracts with or made at the request of U.S. governmental entities;

mechanics , materialmens , carriers, growers , producers , farmers and similar liens arising in the ordinary course of business (including construction of facilities) in respect of obligations not due or being contested in good faith;

liens arising from deposits with or the giving of any form of security to any governmental authority required by law or governmental regulation as a condition to the transaction of business or exercise of any privilege, franchise or license;

S-26

**Table of Contents**

liens for taxes, assessments or governmental charges or levies which, if delinquent, are being contested in good faith;

liens (including judgment liens) arising from legal proceedings;

liens incurred or deposits made in the ordinary course of business in connection with or to secure the performance of bids, tenders, leases or trade contracts (other than for the payment of debt) or to secure surety, appeal, indemnity, performance or other similar bonds;

liens of any depository bank consisting of statutory, common law or contractual rights of setoff or recoupment with respect to any deposit account; or

any extension, renewal or replacement of these categories of liens, so long as such lien does not extend to any other property and the amount of debt secured is not increased (other than by the amount equal to any costs and expenses incurred in connection with any extension, renewal or replacement).

However, if the total amount of our debt and the debt of our restricted subsidiaries secured by liens that would otherwise be subject to the foregoing restriction and any attributable debt (as defined below and not including any debt permitted to be secured as per above) deemed to be debt subject to the provisions of this paragraph would not exceed 15% of our consolidated net tangible assets (as defined below) this requirement does not apply.

***Sale and Leaseback***

We will not enter, nor will we permit any restricted subsidiary to enter, into a sale and leaseback transaction of any principal property more than 120 days after our or such restricted subsidiary's acquisition or completion of construction and commencement of full operation of such principal property (except for temporary leases for a term of not more than three years and except for leases between us and a restricted subsidiary or between restricted subsidiaries) unless:

we or such restricted subsidiary would be entitled to incur, assume or guarantee debt secured by such principal property at least equal in amount to the attributable debt in respect of such transaction without equally and ratably securing the notes (*provided* that such attributable debt will thereupon be deemed to be debt subject to the provisions of the preceding paragraph); or

an amount in cash equal to such attributable debt is applied, within 120 days of the effective date of such transaction, to the non-mandatory retirement of our long-term unsubordinated debt or long-term unsubordinated debt of a restricted subsidiary.

*Definitions.* The following are definitions of some terms used in the above description. We refer you to the indenture for a full description of all of these terms, as well as any other terms used herein for which no definition is provided.

The term *attributable debt* means the present value (discounted at the inherent interest rate as determined by us in good faith, compounded semi-annually) of the obligation of a lessee for rental payments during the remaining term of

any lease (including any period for which such lease has been extended).

The term *consolidated net tangible assets* means the total assets appearing on our latest consolidated balance sheet contained in our most recent Annual Report on Form 10-K or Quarterly Report on Form 10-Q, as the case may be, filed with the SEC, excluding the sum of (1) all current liabilities and (2) all goodwill, patents, copyrights, trademarks and other like intangibles.

The term *debt* means any indebtedness for money borrowed.

S-27

**Table of Contents**

The term *subsidiary* means any corporation of which at least a majority of the outstanding stock having voting power under ordinary circumstances to elect a majority of the board of directors of that corporation is at the time owned by us or in conjunction with or by one or more subsidiaries, and any other entity of which at least a majority of the voting interest under ordinary circumstances is at the time owned or controlled solely by us or in conjunction with or by one or more subsidiaries. The term *restricted subsidiary* means any other subsidiary:

substantially all of the property of which is located within the continental United States;

that owns a principal property; and

in which our investment exceeds 5% of our consolidated assets as shown on our latest quarterly financial statements.

However, the term *restricted subsidiary* shall not include any subsidiary which is principally engaged in leasing or which is principally engaged in financing our operations.

The term *principal property* means any manufacturing or processing plant or facility, warehouse, office facility or distribution center that is located within the continental United States, having a net book value which, on the date the determination as to whether a property is a principal property is being made, is in excess of 2% of our consolidated net tangible assets. Our board of directors (or any duly authorized committee of our board of directors) by resolution may create an exception by declaring that a plant or facility, is not of material importance to the total business conducted by us and our subsidiaries as an entirety.

***Consolidation, Merger or Sale of Assets***

The indenture will provide that we may consolidate with or merge into any other person, or convey or transfer all or substantially all of our properties and assets to any person (including, without limitation, a limited partnership or a limited liability company); *provided that*:

we will be the surviving person or, if not, that the successor will be a person that is organized and existing under the laws of any state of the United States or the District of Columbia and will expressly assume by a supplemental indenture our obligations under the indenture and the notes;

immediately after giving effect to such transaction, no event of default or other event which, after notice or lapse of time, or both, would become an event of default, will have happened and be continuing; and

we will have delivered to the trustee an opinion of counsel and an officers certificate, stating that such consolidation, merger, conveyance or transfer and any assumption complies with the indenture.

In the event of any such consolidation, merger, conveyance, transfer or lease, any such successor or acquiring entity will succeed to and be substituted for us as obligor on the notes with the same effect as if it had been named in the indenture as obligor. As a result, we will be released from all liabilities and obligations under the indenture and the

notes. For the purposes of the notes, person means any individual, corporation, partnership, limited liability company, business trust, association, joint-stock company, joint venture, trust, incorporated or unincorporated organization or other entity, or government or any agency or political subdivision thereof.

There are no other restrictive covenants contained in the indenture. Except as described herein, the indenture will not contain any provision that will restrict us from entering into one or more additional indentures providing for the issuance of debt securities or warrants, or from incurring, assuming, or becoming liable with respect to any indebtedness or other obligation, whether secured or unsecured, or from paying dividends or making other distributions on our capital stock, or from purchasing or redeeming our capital stock. The indenture does not

**Table of Contents**

contain any financial ratios or specified levels of net worth or liquidity to which we must adhere. In addition, except as described herein, the indenture will not contain any provision that would require us to repurchase, redeem, or otherwise modify the terms of any of the notes upon a change in control or other event involving us that may adversely affect our creditworthiness or the value of the notes.

**Satisfaction, Discharge and Covenant Defeasance**

We may terminate our obligations under the indenture with respect to the notes of any series issued thereunder, when:

either:

all notes of such series issued that have been authenticated and delivered have been canceled or delivered to the trustee for cancellation; or

all the notes of such series issued that have not been canceled or delivered to the trustee for cancellation have become due and payable, will become due and payable within one year, or are to be called for redemption within one year and we have made arrangements satisfactory to the trustee for the giving of notice of redemption by such trustee in our name and at our expense, and in each case, we have irrevocably deposited or caused to be deposited with the trustee sufficient funds to pay and discharge the entire indebtedness on such series of the notes with respect to principal, interest and any premium; *provided* that in connection with any discharge relating to any redemption that requires the payment of a premium based on the U.S. treasury rate or other floating rate, the amount deposited shall be sufficient for purposes of the indenture to the extent that an amount is deposited with the trustee equal to the premium calculated as of the date of the notice of redemption, with any deficit as of the redemption date only required to be deposited with the trustee on or prior to the redemption date; and

we have paid or caused to be paid all other sums then due and payable under the indenture; and

we have delivered to the trustee an officers' certificate and an opinion of counsel, each stating that all conditions precedent under the indenture relating to the satisfaction and discharge of the indenture have been complied with.

We may elect to have our obligations under the indenture discharged with respect to the outstanding notes of any series ( *legal defeasance* ). Legal defeasance means that we will be deemed to have paid and discharged the entire indebtedness represented by the outstanding notes of such series under the indenture, except for:

the rights of holders of such series of notes to receive principal, interest and any premium when due and any remaining rights to receive mandatory sinking fund payments;

our obligations with respect to such series of notes concerning issuing temporary notes, registration of transfer of notes, mutilated, destroyed, lost or stolen notes and the maintenance of an office or agency for payment for security payments held in trust;

the rights, powers, trusts, duties and immunities of the trustee; and

the defeasance provisions of the indenture.

In addition, we may elect to have our obligations released with respect to certain covenants in the indenture ( *covenant defeasance* ). Any omission to comply with these obligations will not constitute a default or an event of default with respect to the notes of any series. In the event covenant defeasance occurs, certain events, not

**Table of Contents**

including non-payment, bankruptcy and insolvency events, described under Events of Default above will no longer constitute an event of default for that series. Additionally, with limited exceptions, we would not have to comply with covenants applicable to such note series (including without limitation those covenants relating to consolidation, merger or sale, limitation on liens, and sale and leaseback transactions).

In order to exercise either legal defeasance or covenant defeasance with respect to outstanding notes of any series:

we must irrevocably have deposited or caused to be deposited with the trustee as trust funds for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to the benefits of the holders of the notes of that series:

money in an amount;

U.S. government obligations (or equivalent government obligations in the case of notes denominated in other than U.S. dollars or a specified currency) that will provide, not later than one day before the due date of any payment, money in an amount; or

a combination of money and U.S. government obligations (or equivalent government obligations, as applicable),

in each case sufficient, in the written opinion (with respect to U.S. or equivalent government obligations or a combination of money and U.S. or equivalent government obligations, as applicable) of a nationally recognized firm of independent registered public accountants to pay and discharge, and which will be applied by the trustee to pay and discharge, all of the principal (including mandatory sinking fund payments), interest and any premium at due date or maturity;

in the case of legal defeasance, we have delivered to the trustee an opinion of counsel stating that, under then applicable U.S. federal income tax law, the beneficial owners of the notes of that series will not recognize income, gain or loss for U.S. federal income tax purposes as a result of the deposit, defeasance and discharge to be effected and will be subject to the same U.S. federal income tax as would be the case if the deposit, defeasance and discharge did not occur;

in the case of covenant defeasance, we have delivered to the trustee an opinion of counsel to the effect that the beneficial owners of the notes of that series will not recognize income, gain or loss for U.S. federal income tax purposes as a result of the deposit and covenant defeasance to be effected and will be subject to the same U.S. federal income tax as would be the case if the deposit and covenant defeasance did not occur;

no Event of Default or default with respect to the outstanding notes of that series has occurred and is continuing at the time of such deposit after giving effect to the deposit or, in the case of legal defeasance, no default relating to bankruptcy or insolvency has occurred and is continuing at any time on or before the 91st



day after the date of such deposit, it being understood that this condition is not deemed satisfied until after the 91st day;

the legal defeasance or covenant defeasance will not cause the trustee to have a conflicting interest within the meaning of the Trust Indenture Act, assuming all notes of a series were in default within the meaning of such Act;

the legal defeasance or covenant defeasance will not result in a breach or violation of, or constitute a default under, any other agreement or instrument to which we are a party;

S-30

## **Table of Contents**

if notes are to be redeemed before the stated maturity date (other than from mandatory sinking fund payments or analogous payments), we have delivered satisfactory notice of redemption to the trustee;

the legal defeasance or covenant defeasance will not result in the trust arising from such deposit constituting an investment company within the meaning of the Investment Company Act of 1940, as amended, unless the trust is registered under such Act or exempt from registration; and

we have delivered to the trustee an officers' certificate and an opinion of counsel stating that all conditions precedent with respect to the legal defeasance or covenant defeasance have been complied with.

### **Concerning our Relationship with the Trustee**

We and our subsidiaries maintain ordinary banking relationships with U.S. Bank National Association.

### **Book-Entry System**

#### ***Book-Entry, Form and Delivery***

Except as set forth below, the notes will be issued in registered, global form in minimum denominations of \$2,000 and integral multiples of \$1,000 in excess thereof.

The notes will be represented by one or more notes in registered, global form without interest coupons (collectively, the Global Notes). The Global Notes will be deposited upon issuance with the trustee as custodian for DTC, and registered in the name of DTC or its nominee, in each case for credit to an account of a direct or indirect participant in DTC as described below. DTC will be the depository for the Global Notes. Except as set forth below, the Global Notes may be transferred, in whole and not in part, only to another nominee of DTC or to a successor of DTC or its nominee. Beneficial interests in the Global Notes may not be exchanged for notes in certificated form except in the limited circumstances described below. See Exchange of Global Notes for Certificated Notes.

In addition, transfers of beneficial interests in the Global Notes will be subject to the applicable rules and procedures of DTC and its direct or indirect participants (including, if applicable, those of Euroclear and Clearstream), which may change from time to time.

#### ***Exchange of Global Notes for Certificated Notes***

A Global Note is exchangeable for definitive notes in registered certificated form (Certificated Notes) if: (1) DTC (a) notifies us that it is unwilling or unable to continue as depository or clearing system for the Global Notes or (b) has ceased to be a clearing agency registered under the Exchange Act, and in each case we fail to appoint a successor depository or clearing system within 90 days of that notice or becoming aware that DTC is no longer so registered; (2) we, in our sole discretion, determine not to have the notes represented by a Global Note and provide written notice thereof to the trustee; or (3) there shall have occurred and be continuing an event of default with respect to the notes and DTC requests such exchange.

In all cases, Certificated Notes delivered in exchange for any Global Note or beneficial interests in Global Notes will be in registered form, registered in such names as the Depository shall direct, and issued only in minimum denominations of \$2,000 and any integral multiple of \$1,000 in excess thereof.

***Depository Procedures***

The following description of the operations and procedures of DTC, Euroclear and Clearstream are provided solely as a matter of convenience. These operations and procedures are solely within the control of the respective

S-31

---

**Table of Contents**

settlement systems and are subject to changes by them. We and the trustee take no responsibility for these operations and procedures and urge investors to contact the system or their participants directly to discuss these matters.

DTC has advised us that DTC is a limited-purpose trust company created to hold securities for its participating organizations (collectively, the Participants ) and to facilitate the clearance and settlement of transactions in those securities between Participants through electronic book-entry changes in accounts of its Participants. The Participants include securities brokers and dealers (including the initial purchasers), banks, trust companies, clearing corporations and certain other organizations. Access to DTC's system is also available to other entities such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a Participant, either directly or indirectly (collectively, the Indirect Participants ). Persons who are not Participants may beneficially own securities held by or on behalf of DTC only through the Participants or the Indirect Participants. The ownership interests in, and transfers of ownership interests in, each security held by or on behalf of DTC are recorded on the records of the Participants and Indirect Participants. DTC has also advised us that, pursuant to procedures established by it: (1) upon deposit of the Global Notes, DTC will credit the accounts of Participants designated by the initial purchasers with portions of the principal amount of the Global Notes; and (2) ownership of these interests in the Global Notes will be shown on, and the transfer of ownership thereof will be effected only through, records maintained by DTC (with respect to the Participants) or by the Participants and the Indirect Participants (with respect to other owners of beneficial interest in the Global Notes).

Investors in the Global Notes who are Participants in DTC's system may hold their interests therein directly through DTC. Investors in the Global Notes who are not Participants may hold their interests therein indirectly through organizations (including Euroclear and Clearstream) which are Participants in such system. All interests in a Global Note, including those held through Euroclear or Clearstream, may be subject to the procedures and requirements of DTC. Those interests held through Euroclear or Clearstream may also be subject to the procedures and requirements of such systems.

The laws of some states require that certain persons take physical delivery in definitive form of securities that they own. Consequently, the ability to transfer beneficial interests in a Global Note to such persons will be limited to that extent. Because DTC can act only on behalf of the Participants, which in turn act on behalf of the Indirect Participants, the ability of a person having beneficial interests in a Global Note to pledge such interests to persons that do not participate in the DTC system, or otherwise take actions in respect of such interests, may be affected by the lack of a physical certificate evidencing such interests.

**Except as described above, owners of interests in the Global Notes will not have notes registered in their names, will not receive physical delivery of notes in certificated form and will not be considered the registered owners or holders thereof under the indenture for any purpose.**

Payments in respect of the principal of, and interest, premium or additional interest, if any, on a Global Note registered in the name of DTC or its nominee will be payable to DTC in its capacity as the registered holder under the indenture. Under the terms of the indenture, we and the trustee will treat the persons in whose names the notes, including the Global Notes, are registered as the owners thereof for the purpose of receiving payments and for all other purposes. Consequently, neither we, the trustee, nor any agent of ours or the trustee has or will have any responsibility or liability for: (1) any aspect of DTC's records or any Participant's or Indirect Participant's records relating to or payments made on account of beneficial ownership interest in the Global Notes or for maintaining, supervising or reviewing any of DTC's records or any Participant's or Indirect Participant's records relating to the beneficial ownership interests in the Global Notes; or (2) any other matter relating to the actions and practices of DTC or any of its Participants or Indirect Participants.

DTC has advised us that its current practice, upon receipt of any payment in respect of securities such as the notes (including principal, interest and additional interest, if any), is to credit the accounts of the relevant

S-32

---

**Table of Contents**

Participants with the payment on the payment date unless DTC has reason to believe it will not receive payment on such payment date. Each relevant Participant is credited with an amount proportionate to its beneficial ownership of an interest in the principal amount of the relevant security as shown on the records of DTC. Payments by the Participants and the Indirect Participants to the beneficial owners of the notes will be governed by standing instructions and customary practices and will be the responsibility of the Participants or the Indirect Participants and will not be the responsibility of DTC, the trustee or us. Neither we nor the trustee will be liable for any delay by DTC or any of its Participants in identifying the beneficial owners of the notes, and we and the trustee may conclusively rely on and will be protected in relying on instructions from DTC or its nominee for all purposes.

Transfers between Participants in DTC will be effected in accordance with DTC's procedures, and will be settled in same-day funds, and transfers between participants in Euroclear and Clearstream will be effected in accordance with their respective rules and operating procedures.

Cross-market transfers between the Participants in DTC, on the one hand, and Euroclear or Clearstream participants, on the other hand, will be effected through DTC in accordance with DTC's rules on behalf of Euroclear or Clearstream, as the case may be, by its respective depository; however, such cross-market transactions will require delivery of instructions to Euroclear or Clearstream, as the case may be, by the counterparty in such system in accordance with the rules and procedures and within the established deadlines (Brussels time) of such system. Euroclear or Clearstream, as the case may be, will, if the transaction meets its settlement requirements, deliver instructions to its respective depository to take action to effect final settlement on its behalf by delivering or receiving interests in the relevant Global Note in DTC, and making or receiving payment in accordance with normal procedures for same-day funds settlement applicable to DTC. Euroclear participants and Clearstream participants may not deliver instructions directly to the depositories for Euroclear or Clearstream.

DTC has advised us that it will take any action permitted to be taken by a holder of the notes only at the direction of one or more Participants to whose account DTC has credited the interests in the Global Notes and only in respect of such portion of the aggregate principal amount of the notes as to which such Participant or Participants has or have given such direction. However, if there is an Event of Default under the indenture, DTC reserves the right to exchange the Global Notes for legended notes in certificated form, and to distribute such notes to its Participants.

Although DTC, Euroclear and Clearstream have agreed to the foregoing procedures to facilitate transfers of interests in the Global Notes among participants in DTC, Euroclear and Clearstream, they are under no obligation to perform or to continue to perform such procedures, and may discontinue such procedures at any time. Neither we nor the trustee nor any of our or their respective agents will have any responsibility for the performance by DTC, Euroclear or Clearstream or their respective participants or indirect participants of their respective obligations under the rules and procedures governing their operations.

***Same Day Settlement and Payment***

We will make payments in respect of the notes represented by the Global Notes, including principal, premium, if any, and interest by wire transfer of immediately available funds to the accounts specified by DTC or its nominee. We will make all payments of principal, premium, if any, and interest with respect to Certificated Notes by wire transfer of immediately available funds to the accounts specified by the holders of the Certificated Notes or, if no such account is specified, by mailing a check to each such holder's registered address. The notes represented by the Global Notes are expected to be eligible to trade in DTC's Same-Day Funds Settlement System, and any permitted secondary market trading activity in such notes will, therefore, be required by DTC to be settled in immediately available funds. We expect that secondary trading in any Certificated Notes will also be settled in immediately available funds.



**Table of Contents**

Because of time zone differences, the securities account of a Euroclear or Clearstream participant purchasing an interest in a Global Note from a Participant will be credited, and any such crediting will be reported to the relevant Euroclear or Clearstream participant, during the securities settlement processing day (which must be a business day for Euroclear and Clearstream) immediately following the settlement date of DTC. DTC has advised us that cash received in Euroclear or Clearstream as a result of sales of interests in a Global Note by or through a Euroclear or Clearstream participant to a Participant will be received with value on the settlement date of DTC but will be available in the relevant Euroclear or Clearstream cash account only as of the business day for Euroclear or Clearstream following DTC's settlement date.

S-34



---

**Table of Contents**

**MATERIAL UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS**

The following is a summary of the material U.S. federal income tax considerations of the purchase, ownership and disposition of notes. This summary is based upon provisions of the Internal Revenue Code of 1986, as amended (the Code ), applicable U.S. Treasury regulations, administrative rulings and judicial decisions in effect as of the date hereof, any of which may be subject to differing interpretation or subsequently be changed, possibly retroactively, so as to result in U.S. federal income tax consequences different from those discussed below. Except where noted, this summary deals only with a note held as a capital asset by a beneficial owner who purchased the note on original issuance at its issue price (the first price at which a substantial portion of the notes is sold for cash to persons other than bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers). This summary only addresses investors that are treated as purchasing the notes for cash for U.S. federal income tax purposes and does not address all aspects of U.S. federal income taxes (including the potential application of the Medicare contribution tax) and does not deal with all tax consequences that may be relevant to holders in light of their particular circumstances or particular situations, such as:

tax consequences to holders who may be subject to special tax treatment, including dealers in securities or currencies, banks, financial institutions, regulated investment companies, real estate investment trusts, tax-exempt entities, insurance companies, individual retirement accounts and tax-deferred accounts, controlled foreign corporations, passive foreign investment companies, or traders in securities that elect to use a mark-to-market method of accounting for their securities;

tax consequences to persons holding notes as a part of a hedging, integrated or conversion transaction or a straddle or persons deemed to sell notes under the constructive sale provisions of the Code;

tax consequences to U.S. holders (as defined below) whose functional currency is not the U.S. dollar;

tax consequences to investors in pass-through entities (including partnerships and entities and arrangements classified as partnerships for U.S. federal income tax purposes);

alternative minimum tax consequences, if any;

any state, local or foreign tax consequences; and

estate or gift tax consequences, if any.

We have not sought and will not seek any rulings from the Internal Revenue Service (the IRS ) with respect to the matters discussed below. There can be no assurances that the IRS will not take a different position concerning the tax consequences of the purchase, ownership or disposition (including an exchange) of the notes or that any such position would not be sustained.

**If you are considering the purchase of notes, you should consult your own tax advisors concerning the U.S. federal income tax consequences to you in light of your own specific situation, as well as consequences arising under any tax reform proposals pending in the United States Congress and the application of any other U.S. federal tax laws or the laws of any other taxing jurisdiction.**

As used herein, the term "U.S. holder" means a beneficial owner of notes that is, for U.S. federal income tax purposes:

an individual who is a citizen or resident of the United States, including a resident alien individual meeting the requirements under Section 7701 of the Code;

S-35

---

**Table of Contents**

a corporation (or any other entity classified as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the United States, any state thereof or the District of Columbia;

an estate the income of which is subject to U.S. federal income taxation regardless of its source; or

a trust, if it (i) is subject to the primary supervision of a court within the United States and one or more United States persons (within the meaning of the Code) have the authority to control all substantial decisions of the trust, or (ii) has a valid election in effect under applicable U.S. Treasury regulations to be treated as a United States person.

A non-U.S. holder is a beneficial owner (other than any entity or arrangement classified as a partnership for U.S. federal income tax purposes) of notes that is not a U.S. holder. Special rules may apply to certain non-U.S. holders such as corporations that accumulate earnings to avoid U.S. federal income tax or, in certain circumstances, individuals who are U.S. expatriates. Consequently, non-U.S. holders should consult their tax advisors to determine the U.S. federal, state, local and other tax consequences that may be relevant to them.

If an entity or arrangement classified as a partnership for U.S. federal income tax purposes holds the notes, the tax treatment of a partner will generally depend on the status of the partner and the activities of the partnership. This discussion does not address the tax consequences to you if you hold the notes through a partnership, an entity or arrangement classified as a partnership or any other pass-through entity. If you are a partner in a partnership holding notes, you should consult your tax advisors.

### **Material United States Federal Income Tax Consequences to U.S. Holders**

#### ***Treatment of Stated Interest***

It is anticipated, and this discussion assumes, that the notes will be issued for an amount equal to the principal amount (i.e., without original issue discount). In such case, payments of stated interest on a note will generally be taxable to a U.S. holder as ordinary income at the time it is received (actually or constructively) or accrued (i.e., when all events that fix, with reasonable certainty, a U.S. holder's rights with respect to the interest) in accordance with the U.S. holder's usual method of accounting for U.S. federal income tax purposes.

#### ***Offer to Purchase Upon Change of Control***

If a change of control triggering event occurs, unless we have exercised our option to redeem the notes, we are required to make an offer to each holder of the notes to repurchase all or any part of the notes for an amount equal to 101% of the aggregate principal amount of the notes repurchased, plus accrued and unpaid interest. We believe (and the rest of this discussion assumes) that the notes should not be treated as contingent payment debt instruments under applicable Treasury regulations because of the possibility of such a repurchase. This position is based in part on assumptions regarding the likelihood, as of the date of issuance of the notes, that we will be obligated to make any such repurchase. Our determination that the notes are not contingent payment debt instruments is not binding on the IRS. If the IRS were to challenge our determination successfully and the notes were treated as contingent payment debt instruments, a U.S. holder would be required, among other things, to accrue interest income, regardless of the U.S. holder's method of accounting, at a rate higher than the stated interest rate on the notes and to treat as taxable ordinary income, rather than capital gain, any gain recognized on a sale, exchange or redemption of a note. Our determination that the notes are not contingent payment debt instruments is binding on U.S. holders unless they disclose their contrary positions to the IRS in the manner that is required by applicable U.S. Treasury regulations. U.S.

holders are urged to consult their tax advisors regarding the potential application of the contingent payment debt instrument rules to the notes and the consequences thereof.

S-36

---

**Table of Contents**

***Treatment of Taxable Dispositions of Notes***

A U.S. holder will generally recognize gain or loss upon the sale, exchange, redemption or other taxable disposition of a note equal to the difference between the amount realized (less a portion allocable to any accrued and unpaid interest, as explained below) upon the sale, exchange, redemption or other taxable disposition and such U.S. holder's adjusted tax basis in the note. A U.S. holder's adjusted tax basis in a note will generally be equal to the amount that the U.S. holder paid for the note. Any gain or loss recognized on a taxable disposition of the note will generally be capital gain or loss. If, at the time of the sale, exchange, redemption or other taxable disposition of the note, the U.S. holder held the note for more than one year, such gain or loss will be long-term capital gain or loss. Otherwise, such gain or loss will be short-term capital gain or loss. In the case of certain non-corporate U.S. holders (including individuals), long-term capital gain is generally subject to a reduced rate of U.S. federal income tax. Short-term capital gains are taxed at ordinary income rates. A U.S. holder's ability to deduct capital losses may be limited.

If the sale, exchange, redemption or other taxable disposition occurs between interest payment dates, a portion of the amount received will reflect interest that has accrued on the note but has not yet been paid by the date of such transaction. That amount is treated as interest income to the extent not previously included in gross income and will be taxed as ordinary income rather than capital gains.

**Material United States Federal Income Tax Consequences to Non-U.S. Holders**

***Treatment of Interest***

The 30% U.S. federal withholding tax will not be applied to any payment of interest on a note to a non-U.S. holder provided that:

the non-U.S. holder does not actually or constructively own 10% or more of the total combined voting power of all classes of our stock that are entitled to vote within the meaning of Section 871(h)(3) of the Code;

the non-U.S. holder is not a controlled foreign corporation with respect to which we are (actually or constructively) a related person through stock ownership; and

(a) the non-U.S. holder provides its name and address, and certifies, under penalties of perjury, that it is not a U.S. person (which certification may be made on an IRS Form W-8BEN or W-8BEN-E (or other applicable form)) or (b) the non-U.S. holder holds the notes through certain foreign intermediaries or certain foreign partnerships, and the non-U.S. holder and the foreign intermediaries or foreign partnerships satisfy the certification requirements of applicable U.S. Treasury regulations.

Special certification rules apply to non-U.S. holders that are pass-through entities.

If a non-U.S. holder cannot satisfy the requirements described above, payments of interest will be subject to the 30% U.S. federal withholding tax, unless the non-U.S. holder provides us with a properly executed (1) IRS Form W-8BEN or W-8BEN-E (or other applicable form) claiming an exemption from or reduction in withholding under the benefit of an applicable income tax treaty or (2) IRS Form W-8ECI (or other applicable form) stating that interest paid on the notes is not subject to withholding tax because it is effectively connected with the non-U.S. holder's conduct of a trade

or business in the United States, if applicable. If a non-U.S. holder is engaged in a trade or business in the United States and interest on the notes is effectively connected with the conduct of that trade or business and, if required by an applicable income tax treaty, is attributable to a U.S. permanent establishment or fixed base, then (although the non-U.S. holder will be exempt from the 30% withholding tax provided the certification requirements discussed above are satisfied) the non-U.S. holder will be subject to U.S. federal income tax on that interest on a net income basis in the same manner as if the non-U.S.

S-37

---

**Table of Contents**

holder were a U.S. holder. In addition, if a non-U.S. holder is a foreign corporation, it may be subject to a branch profits tax equal to 30% (or lesser rate under an applicable income tax treaty) of its earnings and profits for the taxable year, subject to adjustments, that are effectively connected with its conduct of a trade or business in the United States.

***Treatment of Taxable Dispositions of Notes***

Subject to the discussion below under **United States Information Reporting Requirements and Backup Withholding Non-U.S. Holders and FATCA Legislation**, any gains realized by a non-U.S. holder on the sale, exchange, redemption or other taxable disposition of a note will not be subject to U.S. federal income tax unless:

that gain is effectively connected with a non-U.S. holder's conduct of a trade or business in the United States (and, if required by an applicable income treaty, is attributable to a U.S. permanent establishment or fixed base); or

the non-U.S. holder is an individual who is present in the United States for 183 days or more in the taxable year of that disposition, and certain other conditions are met.

If you are a non-U.S. holder described in the first bullet point above, you will be subject to tax at regular graduated U.S. federal income tax rates on the net gain derived from the sale, exchange, redemption, conversion or other taxable disposition of a note, generally in the same manner as if you were a U.S. holder. If you are a foreign corporation that falls under the first bullet point above, you may be subject to the branch profits tax equal to 30% of your effectively connected earnings and profits, or at such lower rate as may be specified by an applicable income tax treaty. If you are described in the second bullet point above, you will be subject to a flat 30% tax on the gain recognized on the sale, exchange, redemption, conversion or other taxable disposition of a note (which gain may be offset by U.S.-source capital losses), even though you are not considered a resident of the United States. Any amounts which a non-U.S. holder receives on a sale, exchange, redemption, conversion or other taxable disposition of a note which are attributable to accrued interest will be subject to U.S. federal income tax in accordance with the rules for taxation of interest described above under **Material United States Federal Income Tax Consequences to Non-U.S. Holders Treatment of Interest**.

**United States Information Reporting Requirements and Backup Withholding**

***U.S. Holders***

Information reporting requirements generally will apply to payments of interest on the notes and to the proceeds of a sale of a note paid to a U.S. holder unless the U.S. holder is an exempt recipient and, if requested, certifies as to that status. Backup withholding generally will apply to those payments if the U.S. holder fails to provide its correct taxpayer identification number, or certification of exempt status. Any amounts withheld under the backup withholding rules will generally be allowed as a refund or a credit against a U.S. holder's U.S. federal income tax liability, provided the required information is furnished timely to the IRS.

***Non-U.S. Holders***

Generally, we must report annually to the IRS and to non-U.S. holders the amount of interest paid to non-U.S. holders and the amount of tax, if any, withheld with respect to those payments. Copies of the information returns reporting such interest and withholding may also be made available to the tax authorities in the country in which a non-U.S.

holder resides under the provisions of an applicable income tax treaty. In general, a non-U.S. holder will not be subject to backup withholding with respect to payments of interest on a note, provided the statement described above in the last bullet point under "Material United States Federal Income Tax Consequences to Non-U.S. Holders" Treatment of Interest has been received (and we do not have

S-38



---

**Table of Contents**

actual knowledge or reason to know that the holder is a U.S. person, as defined under the Code, that is not an exempt recipient). In addition, a non-U.S. holder will be subject to information reporting and, depending on the circumstances, backup withholding with respect to payments of the proceeds of the sale or other taxable disposition of a note within the United States or conducted through certain U.S.-related financial intermediaries, unless (i) the statement described above has been received (and we and the relevant financial intermediaries do not have actual knowledge or reason to know that the holder is a U.S. person, as defined under the Code, that is not an exempt recipient) or (ii) the non-U.S. holder otherwise establishes an exemption. Any amounts withheld under the backup withholding rules will generally be allowed as a refund or a credit against a non-U.S. holder's U.S. federal income tax liability provided the required information is furnished timely to the IRS.

**FATCA Legislation**

Legislation enacted in 2010 (commonly referred to as FATCA) generally imposes a withholding tax of 30% on interest paid on, and the gross proceeds of a disposition of, debt obligations in a United States corporation paid to (i) a foreign financial institution (FFI), whether as a beneficial owner or intermediary, unless such institution enters into an agreement with the U.S. government to collect and provide to the U.S. tax authorities substantial information regarding U.S. account holders of such institution (which would include certain equity and debt holders of such institution, as well as certain account holders that are foreign entities with U.S. owners), or qualifies for an exemption from these rules, and (ii) a foreign entity that is not a financial institution (whether as a beneficial owner or intermediary for another foreign entity that is not a financial institution) unless such entity provides the withholding agent or U.S. tax authorities with a certification identifying the substantial U.S. owners of the entity, which generally includes any U.S. person who directly or indirectly owns more than 10% of the entity, or qualifies for an exemption from these rules. A person that receives payments through one or more FFIs may receive reduced payments as a result of FATCA withholding taxes if (i) any such FFI does not enter into such an agreement with the U.S. government and does not otherwise establish an exemption, or (ii) such person is (a) a recalcitrant account holder or (b) itself an FFI that fails to enter into such an agreement or establish an exemption. FFIs located in jurisdictions that have an intergovernmental agreement with the United States governing FATCA may be subject to different rules.

Under the applicable Treasury regulations and administrative guidance, the FATCA withholding rules currently apply to payments of interest and will apply to payments of gross proceeds from a sale or other disposition of notes on or after January 1, 2019. Investors are encouraged to consult with their tax advisors regarding the implications of this legislation on their investment in our notes.

**Table of Contents****UNDERWRITING**

Subject to the terms and conditions contained in an underwriting agreement, dated as of the date of this prospectus supplement, between us and Merrill Lynch, Pierce, Fenner & Smith Incorporated and J.P. Morgan Securities LLC, as representatives of the several underwriters named below, we have agreed to sell to each underwriter, and each underwriter has severally and not jointly agreed to purchase from us, the principal amount of notes that appears opposite its name in the table below:

<b>Underwriters</b>	<b>Principal amount of 2019 notes</b>	<b>Principal amount of 2027 notes</b>
Merrill Lynch, Pierce, Fenner & Smith Incorporated	\$ 87,000,000	\$ 145,000,000
J.P. Morgan Securities LLC	75,000,000	125,000,000
BMO Capital Markets Corp.	37,500,000	62,500,000
PNC Capital Markets LLC	37,500,000	62,500,000
Fifth Third Securities, Inc.	16,500,000	27,500,000
Wells Fargo Securities, LLC	16,500,000	27,500,000
The Huntington Investment Company	12,000,000	20,000,000
U.S. Bancorp Investments, Inc.	12,000,000	20,000,000
Loop Capital Markets LLC	6,000,000	10,000,000
<b>Total</b>	<b>\$ 300,000,000</b>	<b>\$ 500,000,000</b>

The underwriters are offering the notes subject to their acceptance of the notes from us and subject to prior sale. The underwriting agreement provides that the obligations of the several underwriters to pay for and accept delivery of the notes offered by this prospectus supplement are subject to certain conditions. The underwriters are obligated to take and pay for all of the notes offered by this prospectus supplement if any such notes are taken.

The underwriters initially propose to offer each series of notes to the public at the public offering prices that appear on the cover page of this prospectus supplement. In addition, the underwriters may offer each series of notes to selected dealers at the applicable public offering price minus a concession of up to, in the case of the 2019 notes, 0.180% and, in the case of the 2027 notes, 0.400% of the principal amount of such series of notes. In addition, the underwriters may allow, and those selected dealers may reallow, a concession of up to, in the case of the 2019 notes, 0.120% and, in the case of the 2027 notes, 0.250% of the principal amount of a series of notes to certain other dealers. After the initial offering, the underwriters may change the public offering price and any other selling terms. The underwriters may offer and sell notes through certain of their affiliates.

The following table shows the underwriting discounts and commissions that we will pay to the underwriters in connection with the offering of the notes (expressed as a percentage of the principal amount of each series of notes):

Per 2019 note	<b>Paid by the Company</b> 0.300%
---------------	--

Per 2027 note	0.650%
Total	\$ 4,150,000

Expenses associated with this offering to be paid by us, other than the underwriting discount, are estimated to be approximately \$1.5 million.

We have also agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act of 1933, as amended, or to contribute to payments which the underwriters may be required to make in respect of any such liabilities.

## **Table of Contents**

### **New Issue of Notes**

The notes of each series are a new issue of securities, and there is currently no established trading market for the notes. We do not intend to apply for the notes of any series to be listed on any securities exchange or to arrange for the notes of any series to be quoted on any quotation system. The underwriters have advised us that they intend to make a market in the notes of each series, but they are not obligated to do so. The underwriters may discontinue any market making in the notes of any series at any time at their sole discretion. Accordingly, we cannot assure you that a liquid trading market will develop for the notes of any series, that you will be able to sell your notes at a particular time or that the prices you receive when you sell will be favorable. If the notes of any series are traded, they may trade at a discount from their initial offering price, depending on prevailing interest rates, the market for similar securities, our operating performance and financial condition, general economic conditions and other factors.

### **Overallotment, Stabilization, Covering Transactions**

In connection with the offering of the notes, the underwriters may engage in transactions that stabilize, maintain or otherwise affect the prices of the notes. Specifically, the underwriters may overallot in connection with the offering of the notes, creating syndicate short positions. In addition, the underwriters may bid for and purchase notes in the open market to cover syndicate short positions or to stabilize the prices of the notes.

Finally, the underwriting syndicate may reclaim selling concessions allowed for distributing the notes in the offering of the notes, if the syndicate repurchases previously distributed notes in syndicate covering transactions, stabilization transactions or otherwise. Any of these activities may stabilize or maintain the market prices of the notes above independent market levels. The underwriters are not required to engage in any of these activities, and may end any of them at any time. These transactions may be effected in the over-the-counter market or otherwise.

The underwriters also may impose a penalty bid. This occurs when a particular underwriter repays to the underwriters a portion of the underwriting discount received by it because the representatives have repurchased notes sold by or for the account of such underwriter in stabilizing or short covering transactions.

### **Other Relationships**

From time to time in the ordinary course of their respective businesses, some of the underwriters and their affiliates have engaged in, and may in the future engage in, investment banking and other commercial dealings in the ordinary course of business with us or our affiliates. They have received, or may in the future receive, customary fees and commissions for these transactions. In particular, under our revolving credit facility, Merrill Lynch, Pierce, Fenner & Smith Incorporated, BMO Capital Markets Corp., affiliates of J.P. Morgan Securities LLC and PNC Capital Markets LLC serve as bookrunners and lead arrangers and certain of their affiliates and affiliates of certain of the other underwriters are agents and/or lenders thereunder. In addition, Merrill Lynch, Pierce, Fenner & Smith Incorporated, J.P. Morgan Securities LLC, BMO Capital Markets Corp. and an affiliate of PNC Capital Markets LLC act as joint lead arrangers and joint bookrunners, affiliates of Merrill Lynch, Pierce, Fenner & Smith Incorporated, J.P. Morgan Securities LLC and PNC Capital Markets LLC act as syndication agents and lenders, affiliates of certain of the other underwriters act as lenders and an affiliate of BMO Capital Markets Corp. acts as administrative agent under the Term Loan. In addition, U.S. Bancorp Investments, Inc. is an affiliate of the trustee.

In addition, in the ordinary course of their business activities, the underwriters and their affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers. Such investments and securities activities may involve securities and/or instruments of ours or our

S-41

## **Table of Contents**

affiliates. Certain of the underwriters or their affiliates that have a lending relationship with us routinely hedge, and certain other of those underwriters or their affiliates may hedge, their credit exposure to us consistent with their customary risk management policies. Typically, such underwriters and their affiliates would hedge such exposure by entering into transactions which consist of either the purchase of credit default swaps or the creation of short positions in our securities, including potentially the notes offered hereby. Any such credit default swaps or short positions could adversely affect future trading prices of the notes offered hereby. The underwriters and their affiliates may also make investment recommendations and/or publish or express independent research views in respect of such securities or financial instruments and may hold, or recommend to clients that they acquire, long and/or short positions in such securities and instruments.

### **T+ 3 Settlement Cycle**

We expect that delivery of the notes will be made against payment therefor on or about December 7, 2017, which is the third business day following the date of pricing of the notes (such settlement being referred to as T+3). Pursuant to Rule 15c6-1 under the Exchange Act, trades in the secondary market generally are required to settle in two business days unless the parties to any such trade expressly agree otherwise. Accordingly, purchasers who wish to trade the notes more than two business days prior to the scheduled settlement date will be required, by virtue of the fact that the notes initially will settle in T+3, to specify an alternative settlement arrangement at the time of any such trade to prevent a failed settlement. Purchasers of the notes who wish to trade the notes prior to their date of delivery hereunder should consult their own advisors.

### **Selling Restrictions**

#### ***Notice to Prospective Investors in the European Economic Area***

In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a Relevant Member State), each underwriter has represented and agreed that with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the Relevant Implementation Date) it has not made and will not make an offer of notes which are the subject of the offering contemplated by this prospectus to the public in that Relevant Member State other than:

- (a) to any legal entity which is a qualified investor as defined in the Prospectus Directive;
- (b) to fewer than 100 or, if the Relevant Member State has implemented the relevant provision of the 2010 PD Amending Directive, 150, natural or legal persons (other than qualified investors as defined in the Prospectus Directive), as permitted under the Prospectus Directive, subject to obtaining the prior consent of the representatives for any such offer; or
- (c) in any other circumstances falling within Article 3(2) of the Prospectus Directive, provided that no such offer of notes shall require us or any underwriter to publish a prospectus pursuant to Article 3 of the Prospectus Directive or supplement a prospectus pursuant to Article 16 of the Prospectus Directive.

This prospectus has been prepared on the basis that any offer of notes in any Relevant Member State will be made pursuant to an exemption under the Prospectus Directive from the requirement to publish a prospectus for offers of

notes. Accordingly any person making or intending to make an offer in that Relevant Member State of notes which are the subject of the offering contemplated in this prospectus may only do so in circumstances in which no obligation arises for us or any of the underwriters to publish a prospectus pursuant to Article 3 of the Prospectus Directive in relation to such offer. Neither we nor the underwriters have authorized, nor do they authorize, the making of any offer of notes in circumstances in which an obligation arises for us or the underwriters to publish a prospectus for such offer.

S-42

## **Table of Contents**

For the purposes of this provision, the expression an offer of notes to the public in relation to any notes in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the notes to be offered so as to enable an investor to decide to purchase or subscribe for the notes, as the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State, the expression Prospectus Directive means Directive 2003/71/EC (and amendments thereto, including the 2010 PD Amending Directive, to the extent implemented in the Relevant Member State), and includes any relevant implementing measure in the Relevant Member State and the expression 2010 PD Amending Directive means Directive 2010/73/EU.

### ***Notice to Prospective Investors in the United Kingdom***

In addition, in the United Kingdom, this document is being distributed only to, and is directed only at, and any offer subsequently made may only be directed at persons who are qualified investors (as defined in the Prospectus Directive) (i) who have professional experience in matters relating to investments falling within Article 19 (5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, as amended (the Order) and/or (ii) who are high net worth companies (or persons to whom it may otherwise be lawfully communicated) falling within Article 49(2)(a) to (d) of the Order (all such persons together being referred to as relevant persons). This document must not be acted on or relied on in the United Kingdom by persons who are not relevant persons. In the United Kingdom, any investment or investment activity to which this document relates is only available to, and will be engaged in with, relevant persons.

### ***Notice to Prospective Investors in Switzerland***

This prospectus supplement does not constitute an issue prospectus pursuant to Article 652a or Article 1156 of the Swiss Code of Obligations and the notes will not be listed on the SIX Swiss Exchange. Therefore, this prospectus supplement may not comply with the disclosure standards of the listing rules (including any additional listing rules or prospectus schemes) of the SIX Swiss Exchange. Accordingly, the notes may not be offered to the public in or from Switzerland, but only to a selected and limited circle of investors who do not subscribe to the notes with a view to distribution. Any such investors will be individually approached by the underwriters from time to time.

### ***Notice to Prospective Investors in the Dubai International Financial Centre***

This prospectus supplement relates to an Exempt Offer in accordance with the Offered Securities Rules of the Dubai Financial Services Authority ( DFSA ). This prospectus supplement is intended for distribution only to persons of a type specified in the Offered Securities Rules of the DFSA. It must not be delivered to, or relied on by, any other person. The DFSA has no responsibility for reviewing or verifying any documents in connection with Exempt Offers. The DFSA has not approved this prospectus supplement nor taken steps to verify the information set forth herein and has no responsibility for the prospectus supplement. The notes to which this prospectus supplement relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of the notes offered should conduct their own due diligence on the notes. If you do not understand the contents of this prospectus supplement you should consult an authorized financial advisor.

### ***Notice to Prospective Investors in the United Arab Emirates***

The notes have not been, and are not being, publicly offered, sold, promoted or advertised in the United Arab Emirates (including the Dubai International Financial Centre) other than in compliance with the laws of the United Arab Emirates (and the Dubai International Financial Centre) governing the issue, offering and sale of securities. Further, this prospectus supplement does not constitute a public offer of securities in the United Arab Emirates (including the



Dubai International Financial Centre) and is not intended to be a public offer. This prospectus supplement has not been approved by or filed with the Central Bank of the United Arab Emirates, the Securities and Commodities Authority or the Dubai Financial Services Authority.

S-43

---

**Table of Contents**

***Notice to Prospective Investors in Hong Kong***

The notes may not be offered or sold by means of any document other than: (i) in circumstances which do not constitute an offer to the public within the meaning of the Companies Ordinance (Cap. 32, Laws of Hong Kong), or (ii) to professional investors within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder, or (iii) in other circumstances which do not result in the document being a prospectus within the meaning of the Companies Ordinance (Cap. 32, Laws of Hong Kong), and no advertisement, invitation or document relating to the notes may be issued or may be in the possession of any person for the purpose of issue (in each case whether in Hong Kong or elsewhere), which is directed at, or the contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the laws of Hong Kong) other than with respect to notes which are or are intended to be disposed of only to persons outside Hong Kong or only to professional investors within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder.

***Notice to Prospective Investors in Japan***

The notes have not been and will not be registered under the Securities and Exchange Law of Japan (the Securities and Exchange Law ) and each underwriter has agreed that it will not offer or sell any notes, directly or indirectly, in Japan or to, or for the benefit of, any resident of Japan (which term as used herein means any person resident in Japan, including any corporation or other entity organized under the laws of Japan), or to others for re-offering or resale, directly or indirectly, in Japan or to a resident of Japan, except pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the Securities and Exchange Law and any other applicable laws, regulations and ministerial guidelines of Japan.

***Notice to Prospective Investors in Singapore***

This prospectus supplement has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this prospectus supplement and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the notes may not be circulated or distributed, nor may the notes be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than: (i) to an institutional investor under Section 274 of the Securities and Futures Act, Chapter 289 of Singapore (the SFA ), (ii) to a relevant person, or any person pursuant to Section 275(1A), and in accordance with the conditions, specified in Section 275 of the SFA, or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

Where the notes are subscribed or purchased under Section 275 by a relevant person which is:

- (a) a corporation (which is not an accredited investor) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or
- (b) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary of the trust is an accredited investor, shares, debentures and units of shares and debentures of that corporation or the beneficiaries' rights and interest in that trust shall not be transferable for six months after that corporation or that trust has acquired the notes under Section 275

except: (1) to an institutional investor under Section 274 of the SFA or to a relevant person, or any person pursuant to Section 275(1A), and in accordance with the conditions, specified in Section 275 of the SFA; (2) where no consideration is given for the transfer; or (3) by operation of law.

***Notice to Prospective Investors in Australia***

No placement document, prospectus, product disclosure statement or other disclosure document (including as defined in the Corporations Act 2001 (Cth) ( Corporations Act )) has been or will be lodged with the

S-44

---

**Table of Contents**

Australian Securities and Investments Commission ( ASIC ) or any other governmental agency, in relation to the offering. This prospectus supplement does not constitute a prospectus, product disclosure statement or other disclosure document for the purposes of Corporations Act, and does not purport to include the information required for a prospectus, product disclosure statement or other disclosure document under the Corporations Act. No action has been taken which would permit an offering of the notes in circumstances that would require disclosure under Parts 6D.2 or 7.9 of the Corporations Act.

The notes may not be offered for sale, nor may application for the sale or purchase or any notes be invited in Australia (including an offer or invitation which is received by a person in Australia) and neither this prospectus supplement nor any other offering material or advertisement relating to the notes may be distributed or published in Australia unless, in each case:

- (a) the aggregate consideration payable on acceptance of the offer or invitation by each offeree or invitee is at least A\$500,000 (or its equivalent in another currency, in either case, disregarding moneys lent by the person offering the notes or making the invitation or its associates) or the offer or invitation otherwise does not require disclosure to investors in accordance with Part 6D.2 or 7.9 of the Corporations Act;
- (b) the offer, invitation or distribution complied with the conditions of the Australian financial services license of the person making the offer, invitation or distribution or an applicable exemption from the requirement to hold such license;
- (c) the offer, invitation or distribution complies with all applicable Australian laws, regulations and directives (including, without limitation, the licensing requirements set out in Chapter 7 of the Corporations Act);
- (d) the offer or invitation does not constitute an offer or invitation to a person in Australia who is a retail client as defined for the purposes of Section 761G of the Corporations Act; and
- (e) such action does not require any document to be lodged with ASIC or the ASX.

***Notice to Prospective Investors in Canada***

The notes may be sold only to purchasers purchasing, or deemed to be purchasing, as principal that are accredited investors, as defined in National Instrument 45-106 *Prospectus Exemptions* or subsection 73.3(1) of the *Securities Act* (Ontario), and are permitted clients, as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. Any resale of the notes must be made in accordance with an exemption from, or in a transaction not subject to, the prospectus requirements of applicable securities laws.

Securities legislation in certain provinces or territories of Canada may provide a purchaser with remedies for rescission or damages if this prospectus supplement or accompanying prospectus (including any amendment thereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province or territory. The purchaser

should refer to any applicable provisions of the securities legislation of the purchaser's province or territory for particulars of these rights or consult with a legal advisor.

Pursuant to section 3A.3 of National Instrument 33-105 *Underwriting Conflicts* ( NI 33-105 ), the underwriters are not required to comply with the disclosure requirements of NI 33-105 regarding underwriter conflicts of interest in connection with this offering.

S-45

**Table of Contents**

**LEGAL MATTERS**

Calfee, Halter & Griswold LLP, Cleveland, Ohio, will pass upon certain legal matters related to the offering of the notes for The J. M. Smucker Company. Davis Polk & Wardwell LLP, New York, New York, will pass upon certain legal matters related to the offering of the notes for the underwriters.

**EXPERTS**

The consolidated financial statements of The J. M. Smucker Company for the year ended April 30, 2017 included in The J. M. Smucker Company's 2017 Annual Report to Shareholders and incorporated by reference in The J. M. Smucker Company's Annual Report on Form 10-K for the year ended April 30, 2017, and the effectiveness of The J. M. Smucker Company's internal control over financial reporting as of April 30, 2017 have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their reports thereon, incorporated by reference and included therein, respectively, and incorporated herein by reference. Such consolidated financial statements are, and audited consolidated financial statements to be included in subsequently filed documents will be, incorporated herein in reliance upon such reports of Ernst & Young LLP pertaining to such financial statements and the effectiveness of internal control over financial reporting as of the respective dates (to the extent covered by consents filed with the Securities and Exchange Commission) given on the authority of such firm as experts in accounting and auditing.

S-46

**Table of Contents**

**PROSPECTUS**

**THE J. M. SMUCKER COMPANY**

**Debt Securities**

**Common Shares**

**Serial Preferred Shares**

**Warrants**

**Units**

We may offer and sell from time to time, in one or more offerings, debt securities, common shares, serial preferred shares and warrants, as well as units that include any of these securities. We may also offer common shares or serial preferred shares upon conversion of debt securities, common shares upon conversion of serial preferred shares, or common shares, preferred shares or debt securities upon the exercise of warrants.

We will provide the specific terms of the securities to be offered in one or more supplements to this prospectus. We may also authorize one or more free writing prospectuses to be provided to you in connection with these offerings. The prospectus supplement and any related free writing prospectus may also supplement, update or amend the information contained in this prospectus. You should read this prospectus, the applicable prospectus supplement and any related free writing prospectus, as well as the documents incorporated by reference, carefully before you invest. This prospectus may not be used to offer and sell our securities unless accompanied by a prospectus supplement describing the method and terms of the offering of those securities.

Our common shares are listed on the New York Stock Exchange under the symbol SJM. We have not yet determined whether any of the other securities that may be offered by this prospectus will be listed on any exchange, inter-dealer quotation system or over-the-counter market. If we decide to seek the listing of any such securities upon issuance, the prospectus supplement relating to those securities will disclose the exchange, quotation system or market on which the securities will be listed.

**Investing in our securities involves risk. See Risk Factors on page 5 of this prospectus.**

We may offer and sell these securities to or through one or more underwriters, dealers or agents, or directly to investors, on a continuous or delayed basis.

The applicable prospectus supplement will provide 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.

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

Edgar Filing: J M SMUCKER Co - Form 424B2

The date of this prospectus is September 28, 2017.



**Table of Contents**

**TABLE OF CONTENTS**

	<b>Page</b>
<u>About This Prospectus</u>	1
<u>Where You Can Find More Information</u>	2
<u>Forward-Looking Statements</u>	3
<u>The Company</u>	5
<u>Risk Factors</u>	5
<u>Use of Proceeds</u>	6
<u>Ratio of Earnings to Fixed Charges</u>	6
<u>Description of Capital Stock</u>	7
<u>Description of Debt Securities</u>	17
<u>Description of Warrants</u>	26
<u>Description of Units</u>	28
<u>Legal Ownership of Securities</u>	29
<u>Plan of Distribution</u>	32
<u>Legal Matters</u>	33
<u>Experts</u>	33

References in this prospectus to the Company, we, us and our are to The J. M. Smucker Company and its consolidated subsidiaries unless otherwise specified or the context requires otherwise.

**Table of Contents**

**ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement on Form S-3 that we filed with the SEC using a shelf registration procedure. Under this shelf procedure, we and/or our selling security holders, as applicable, may sell the securities described in this prospectus.

The securities described above may be offered and sold in combination and in one or more offerings. Each time we offer and sell securities under the registration statement of which this prospectus is a part, we will file with the SEC a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement and any related free writing prospectus that we may authorize may also add, update, or change information contained in this prospectus or in the documents that we have incorporated by reference into this prospectus. You should carefully read this prospectus, the applicable prospectus supplement and any free writing prospectuses we have authorized for use in connection with a specific offering, together with the information incorporated herein by reference as described under the heading **Where You Can Find More Information**, in their entirety. They contain information that you should consider when making your investment decision.

**This prospectus may not be used to consummate a sale of securities unless it is accompanied by a prospectus supplement.**

We have not authorized anyone to provide any information other than that contained or incorporated by reference in this prospectus or in any free writing prospectus prepared by or on behalf of us or to which we have referred you. We take no responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. This prospectus is an offer to sell only the securities offered hereby, but only under circumstances and in jurisdictions where it is lawful to do so.

The information appearing in this prospectus, any applicable prospectus supplement or any related free writing prospectus is accurate only as of the date on the front of that document, and any information we have incorporated by reference is accurate only as of the date of the document incorporated by reference, regardless of the time of delivery of this prospectus, any applicable prospectus supplement or any related free writing prospectus, or any sale of a security. Our business, financial condition, results of operations and prospects may have changed since those dates.

This prospectus contains summaries of certain provisions contained in some of the documents described herein, but reference is made to the actual documents for complete information. All of the summaries are qualified in their entirety by the actual documents. Copies of some of the documents referred to herein have been filed, will be filed or will be incorporated by reference as exhibits to the registration statement of which this prospectus is a part, and you may obtain copies of those documents as described below under the section entitled **Where You Can Find More Information**.

The registration statement that contains this prospectus contains additional information about our company and the securities offered under this prospectus. That registration statement can be read at the SEC website or at the SEC reference room mentioned under the heading **Where You Can Find More Information**.

**Table of Contents**

**WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly and current reports, proxy statements and other information with the Securities and Exchange Commission ( 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 at the SEC 's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the Public Reference Room.

The SEC allows us to incorporate by reference the information we file with them, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is an important part of this prospectus, and information that we file later with the SEC will automatically update and supersede this information. We incorporate by reference the documents listed below 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 ), other than any portion of such documents that by statute, designation in such documents or otherwise are deemed to be furnished, rather than filed, under the applicable SEC rules or are not required to be incorporated herein by reference. We incorporate by reference the following information or documents that we have filed with the SEC:

our Annual Report on Form 10-K for the fiscal year ended April 30, 2017;

our Quarterly Report on Form 10-Q for the quarter ended July 31, 2017;

our Current Reports on Form 8-K filed on June 15, 2017, August 18, 2017 and September 1, 2017;

the description of our common shares contained in our Registration Statement on Form 8-A filed with the SEC on May 23, 2002, and all amendments and reports filed for the purpose of updating that description; and

the description of our rights to purchase preferred shares contained in our Registration Statement on Form 8-A filed with the SEC on May 21, 2009, and all amendments and reports filed for the purpose of updating that description.

The information relating to us contained in this prospectus and any accompanying prospectus supplement should be read together with the information in the documents incorporated by reference.

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

The J. M. Smucker Company

Attention: Corporate Secretary

One Strawberry Lane

Edgar Filing: J M SMUCKER Co - Form 424B2

Orrville, Ohio 44667 (330) 682-3000

Table of Contents

**FORWARD-LOOKING STATEMENTS**

Certain statements contained in this prospectus constitute forward-looking statements within the meaning of federal securities laws. The forward-looking statements may include statements concerning our current expectations, estimates, assumptions, and beliefs concerning future events, conditions, plans, and strategies that are not historical fact. Any statement that is not historical in nature is a forward-looking statement and may be identified by the use of words and phrases such as expect, anticipate, believe, intend, will, plan, and similar phrases.

Federal securities laws provide a safe harbor for forward-looking statements to encourage companies to provide prospective information. We are providing this cautionary statement in connection with the safe harbor provisions. Readers are cautioned not to place undue reliance on any forward-looking statements, as such statements are by nature subject to risks, uncertainties, and other factors, many of which are outside of our control and could cause actual results to differ materially from such statements and from our historical results and experience. These risks and uncertainties include, but are not limited to, those set forth under the caption Risk Factors in this prospectus and in our periodic reports under the Exchange Act, as amended, filed with the SEC, as well as the following:

our ability to achieve cost savings and synergies related to our organization optimization and cost management programs and the Big Heart Pet Brands acquisition in the amounts and within the time frames currently anticipated and to effectively manage the related integration and restructuring costs;

our ability to satisfy the closing conditions for the *Wesson* transaction, including receipt of required regulatory approvals, without unexpected delays or conditions;

our ability to generate sufficient cash flow to meet our deleveraging objectives;

volatility of commodity, energy, and other input costs;

risks associated with derivative and purchasing strategies we employ to manage commodity pricing risks;

the availability of reliable transportation on acceptable terms;

our ability to implement and realize the full benefit of price changes, and the impact of the timing of the price changes to profits and cash flow in a particular period;

the success and cost of marketing and sales programs and strategies intended to promote growth in our businesses, including the introduction of new products;

general competitive activity in the market, including competitors pricing practices and promotional spending levels;

the impact of food security concerns involving either our products or our competitors products;

the impact of accidents, extreme weather, and natural disasters;

the concentration of certain of our businesses with key customers and suppliers, including single-source suppliers of certain key raw materials and finished goods, and our ability to manage and maintain key relationships;

the timing and amount of capital expenditures and share repurchases;

impairments in the carrying value of goodwill, other intangible assets, or other long-lived assets or changes in useful lives of other intangible assets;

the impact of new or changes to existing governmental laws and regulations and their application;

the outcome of tax examinations, changes in tax laws, and other tax matters;

**Table of Contents**

foreign currency and interest rate fluctuations; and

risks related to other factors described under **Risk Factors** in our Annual Report on Form 10-K for the fiscal year ended April 30, 2017.

Readers are cautioned not to unduly rely on such forward-looking statements, which speak only as of the date made, when evaluating the information contained in this prospectus. There may be other factors that may cause our actual results to differ materially from the forward-looking statements. We do not undertake any obligation to update or revise these forward-looking statements to reflect new events or circumstances.

You should read this prospectus, any accompanying prospectus supplement and the documents that are referenced and which have been incorporated by reference herein and therein, completely and with the understanding that our actual future results may be materially different from what we expect. All forward-looking statements are qualified by these cautionary statements.

**Table of Contents**

**THE COMPANY**

The J. M. Smucker Company, often referred to as Smucker's (a registered trademark), was established in 1897 and incorporated in Ohio in 1921. We operate principally in one industry, the manufacturing and marketing of branded food and beverage products on a worldwide basis, although the majority of our sales are in the U.S. Our operations outside the U.S. are principally in Canada, although products are exported to other countries as well. Net sales outside the U.S., subject to foreign currency translation, represented 6 percent of consolidated net sales for 2017. Our branded food and beverage products include a strong portfolio of trusted, iconic, market-leading brands that are sold to consumers through retail outlets in North America.

Our principal executive offices are located at One Strawberry Lane, Orrville, Ohio 44667, and our telephone number is (330) 682-3000.

**RISK FACTORS**

Investing in our securities may involve risks. You should carefully consider the specific factors discussed under the caption "Risk Factors" in the applicable prospectus supplement, together with all the other information contained in the prospectus supplement or appearing or incorporated by reference in this prospectus. You should also consider the risks, uncertainties and assumptions discussed under "Item 1A. Risk Factors" beginning on page 6 of our Annual Report on Form 10-K for the year ended April 30, 2017, which is incorporated by reference in this prospectus, and which may be amended, supplemented or superseded from time to time by other reports we file with the SEC in the future.



**Table of Contents****USE OF PROCEEDS**

Unless otherwise indicated in the applicable prospectus supplement relating to a specific issuance of securities or in any free writing prospectuses we have authorized for use in connection with a specific offering, we intend to use the net proceeds from the sale of the securities for general corporate purposes, which could include, but are not limited to, repayments of outstanding debt, capital expenditures or working capital or for the funding of possible acquisitions.

**RATIO OF EARNINGS TO FIXED CHARGES**

The following table sets forth the ratio of our earnings to our fixed charges for the periods indicated. The ratio has been computed by dividing earnings by fixed charges. For purposes of computing the ratio, Earnings is income before income taxes plus fixed charges, less capitalized interest. Fixed Charges is interest expense plus capitalized interest and the portion of rental expense which is representative of interest expense. For purposes of this calculation, management estimates approximately one-third of rent expense is representative of interest expense.

	<b>Fiscal Year Ended April 30,</b>				<b>Three Months Ended</b>
<b>2017</b>	<b>2016</b>	<b>2015</b>	<b>2014</b>	<b>2013</b>	<b>July 31, 2017</b>
5.4	5.8	5.8	9.1	7.8	4.7

**Table of Contents**

**DESCRIPTION OF CAPITAL STOCK**

This section summarizes the terms of our capital stock. The following description of our capital stock is only a summary and does not purport to be complete and is qualified in its entirety by reference to our amended articles of incorporation, which we refer to as our articles of incorporation, our amended regulations, which we refer to as our regulations, and the rights agreement with Computershare Trust Company, N.A., as amended, relating to our shareholder rights plan, each of which has been publicly filed with the SEC and is incorporated by reference. See *Where You Can Find More Information*.

**Authorized Capital Stock**

Our authorized capital stock consists of 306,000,000 shares, including:

300,000,000 common shares, without par value; and

6,000,000 serial preferred shares, without par value.

**Common Shares**

Our articles of incorporation permit the issuance of up to 300,000,000 common shares. This amount can be amended by our board of directors without shareholder approval, to the extent permitted by Chapter 1701 of the Ohio Revised Code.

***Voting Rights***

Our articles of incorporation provide that, except as set forth below, each outstanding common share entitles the holder to one vote on each matter properly submitted to the shareholders for their approval, including any vote or consent for the election or removal of our directors.

Notwithstanding the foregoing, holders of our outstanding common shares who have held their common shares for at least four years without a change in beneficial ownership are entitled to ten votes on each of the following matters properly submitted to the shareholders, to the extent those matters are required to be submitted to the shareholders under Ohio law, our articles of incorporation or our regulations, stock exchange rules, or are otherwise submitted or presented to our shareholders for their vote, consent, waiver or other action:

any matter that relates to or would result in our dissolution or liquidation, whether voluntary or involuntary, and whether pursuant to Section 1701.86 or 1701.91 of the Ohio Revised Code or otherwise;

the adoption of any amendment to our articles of incorporation or our regulations or the adoption of amended articles of incorporation, other than the adoption of any amendment or amended articles of incorporation that increases the number of votes to which holders of our common shares are entitled or expands the matters to which the time-phase voting provisions of our articles of incorporation apply;

any proposal or other action to be taken by our shareholders, whether or not proposed by our shareholders, and whether proposed by authority of our board of directors or otherwise, relating to our rights plan or any successor plan;

any matter relating to any stock option plan, stock purchase plan, executive compensation plan, executive benefit plan, or other similar plan, arrangement, or agreement;

adoption of any agreement or plan of or for the merger, consolidation or majority share acquisition of us or any of our subsidiaries with or into any other person, whether domestic or foreign, corporate or noncorporate or the authorization of the lease, sale, exchange, transfer or other disposition of all, or substantially all, of our assets;

## **Table of Contents**

any matter submitted to our shareholders pursuant to Article Fifth (interested shareholder provision) or Article Seventh (control share provision) of our articles of incorporation, as they may be further amended, or any issuance of our common shares for which shareholder approval is required by applicable stock exchange rules; and

any matter relating to the issuance of our common shares or the repurchase of our common shares that our board of directors determines is required or appropriate to be submitted to our shareholders under Ohio law or applicable stock exchange rules.

Upon any change of beneficial ownership of our common shares, the new holder will be entitled to only one vote on the matters listed above until that holder has held the shares for four years without a further change in beneficial ownership. Furthermore, no holder of our common shares will be entitled to exercise more than one vote on any matter listed above if the aggregate voting power that holder otherwise would be entitled to exercise (disregarding the voting power of any holder on August 20, 1985 or acquired by the holder in a transaction not involving a change in beneficial ownership as determined pursuant to our articles of incorporation) would constitute one-fifth or more of our voting power and our common shareholders have not authorized the ownership of common shares by that holder as and to the extent contemplated by Article Seventh (control share provision) of our articles of incorporation.

### ***Dividend Rights***

Subject to the rights of holders of serial preferred shares, if any, holders of our common shares are entitled to receive dividends as, when and if dividends are declared by our board of directors out of assets legally available for the payment of dividends.

### ***Liquidation Rights***

In the event of a liquidation, dissolution or winding up of us, whether voluntary or involuntary, after payment of liabilities and obligations to creditors and holders of serial preferred shares, if any, our remaining assets are to be distributed ratably among the holders of common shares.

### ***Preemptive Rights***

Our shareholders will not have any preemptive rights to purchase or subscribe for shares of any class or any other security of ours.

### ***Redemption Rights***

Our common shares are not subject to redemption by us or by the holder of the common shares.

### ***Conversion Rights***

Our common shares are not convertible into shares of any other class or any other security of ours.

### ***Repurchase***

Under our articles of incorporation, we, by action of our board of directors and without action by our shareholders, may purchase our common shares in accordance with Ohio law. The board of directors may authorize such purchases to be made in the open market or through a private or public sale and at such price as our board of directors

determines.

***Liability to Further Calls or Assessments***

Our outstanding common shares are, and any common shares issued will be, duly authorized, validly issued, fully paid and nonassessable.

**Table of Contents**

***Sinking Fund Provisions***

Our common shares have no sinking fund provisions.

**Serial Preferred Shares**

Our articles of incorporation authorize 6,000,000 serial preferred shares. No serial preferred shares are currently issued and outstanding. Our board of directors has, however, established a series designated as Series A Junior Participating Preferred Shares and authorized 1,500,000 of such shares.

Our board of directors may establish and issue one or more series of serial preferred shares from time to time with such powers, preferences, rights, qualifications, limitations and restrictions that are permitted by our articles of incorporation, and as the board fixes by resolution, including:

dividend rights;

redemption rights and price;

sinking fund requirements;

voting rights;

conversion rights;

liquidation rights, preferences and price; and

restrictions on the issuance of shares of any class or series.

The rights of holders of our serial preferred shares will be subordinate to the rights of our general creditors. Serial preferred shares that we issue will be duly authorized and validly issued, fully paid and nonassessable. Holders of our serial preferred shares will not be entitled to preemptive rights unless specified in the applicable prospectus supplement. Holders of our common shares will not have preemptive rights to participate in any issuance of serial preferred shares.

Our board of directors believes that the serial preferred shares will provide flexibility for future financings and acquisitions by us. Although there currently are no plans to issue serial preferred shares, it is contemplated that from time to time we may consider transactions involving the issuance of serial preferred shares. Because our articles of incorporation give our board of directors flexibility in determining the terms of the serial preferred shares, our board of directors is able to issue serial preferred shares with terms suitable to existing market conditions at the time of issuance or to meet the needs of a particular transaction.

The ability of our board of directors to issue serial preferred shares could enable it to render more difficult or discourage an attempt by another person or entity to obtain control of us. The serial preferred shares could be issued by our board of directors in a public or private sale, merger or similar transaction, increasing the number of outstanding shares and thereby diluting the equity interest and voting power, if the serial preferred shares were convertible into our common shares, of a party attempting to obtain control of us.

**Anti-Takeover Matters**

Certain provisions of our articles of incorporation, our regulations, Ohio law and our shareholder rights plan, which are summarized in the following paragraphs, may have an anti-takeover effect and may delay, defer or prevent a tender offer or takeover attempt that a shareholder might consider in its best interest, including those attempts that might result in a premium over the market price for the shares held by shareholders.

***Certain Provisions of Our Articles of Incorporation and Regulations***

*Advance Notice of Nominations and Shareholder Proposals.* Our regulations provide that only business properly brought before annual or special meetings will be considered at the meeting. For annual meetings, the

**Table of Contents**

shareholder must have been a shareholder of record at the time notice was given for the annual meeting, been entitled to vote at the annual meeting and have given timely notice in writing to our corporate secretary of the business or nominations for election of directors to be considered at the meeting.

Our regulations require shareholders to provide notice of nominations of persons for election to the board of directors or other business no earlier than 120 days, nor later than 90 days, prior to the anniversary date of the prior year's annual meeting (unless the annual meeting date is more than 30 days before or 60 days after the prior year's annual meeting date, in which case our regulations provide for alternative notice deadlines).

The shareholder's notice must set forth certain information about the shareholder, including:

Whether the shareholder is acting in his or her own capacity or on behalf of another person or entity;

Any interests that the shareholder has that are not shared generally by other shareholders and that could have influenced that shareholder's decision to bring the business before the meeting;

The number of shares beneficially owned by the shareholder;

Any options or derivative instruments owned by the shareholder that derive their value directly or indirectly by reference to our stock;

Any proxies or other arrangements pursuant to which the shareholder has a right to vote shares of our stock;

Any short interest held by the shareholder in our stock;

Any other interests held by the shareholder that are directly or indirectly tied to the value of our stock;

Any interests that the shareholder may have in any contract with us or with a principal competitor;

Any litigation between the shareholder and us or our affiliates; and

Any transactions during the past 12 months between the shareholder and us or a principal competitor. The notice must also include information concerning the business to be brought before the meeting, including a brief description of the shareholder's proposal, including the reasons for the proposal, any material interest that the shareholder has in the proposal, and any agreements or understandings between the shareholder and any other person concerning the proposal.



In the event that the shareholder is proposing a nominee for election as a director, the notice must include all information about that person that would be required to be included in a proxy statement under the Securities and Exchange Commission's proxy rules and a description of all material monetary arrangements and other material relationships between the shareholder and the nominee. The notice must be accompanied by the nominee's completed Director Questionnaire, and the nominee's representation that he or she will comply with our policies applicable to Directors and that he or she is not a party to any agreement as to how such person will vote on any matter presented to the board of directors that has not been disclosed to us or providing any compensation, expense reimbursement or indemnification arrangements that have not been disclosed to us.

Compliance with these provisions of the regulations will be the exclusive means for shareholders to make nominations or submit other business at the meeting (other than shareholder proposals submitted in conformity with Rule 14a-8 of the Exchange Act).

Our regulations also extend similar advance notice requirements to proposals made in connection with special meetings of shareholders.

*No Cumulative Voting.* Holders of our common shares do not have cumulative voting rights.

**Table of Contents**

*Election of Board of Directors.* Our articles of incorporation provide that in an uncontested election of directors, a candidate will be elected as a director only if the votes cast for the candidate exceed the votes cast against the candidate. Abstentions will not be counted as votes cast for or against a candidate. If, however, our board of directors determines that the number of candidates exceeds the number of directors to be elected in that year, a plurality voting standard will apply and the candidates receiving the greatest number of votes will be elected.

*Removal of Directors.* Our directors may be removed, only for cause, by the affirmative vote of the holders of a majority of our voting power with respect to the election of directors.

***Control Share Acquisitions***

Our articles of incorporation provide for the opting out of Ohio's control share acquisition law. We have, however, adopted similar provisions in our articles of incorporation requiring that notice and informational filings and special shareholder meetings and voting procedures must be followed prior to consummation of a proposed control share acquisition. In general a control share acquisition is the acquisition, directly or indirectly, by any person of our shares that when added to all other shares of us in respect of which that person, directly or indirectly, may exercise or direct the exercise of voting power as provided in our articles of incorporation, would entitle the person, immediately after the acquisition, directly or indirectly, to exercise or direct the exercise of the voting power in the election of directors of a number of our outstanding shares (as distinguished from the number of votes to which the holder of the shares is entitled) within any of the following ranges:

one-fifth or more but less than one-third of outstanding shares;

one-third or more but less than a majority of outstanding shares; and

a majority or more of outstanding shares.

Assuming compliance with the notice and information filings, the proposed control share acquisition may be made only if both of the following occur:

shareholders who hold shares entitling them to vote in the election of directors authorize the acquisition at a special meeting held for that purpose at which a quorum is present by an affirmative vote of a majority of our voting power in the election of directors represented at the meeting in person or by proxy and a majority of the portion of the voting power excluding the voting power of interested shares represented at the meeting in person or by proxy; and

the acquisition is consummated, in accordance with the terms authorized, not later than 360 days following shareholder authorization of the control share acquisition.

In general, interested shares means shares of which any of the following persons may exercise or direct the exercise of our voting power in the election of directors:

the acquiring person;

any officer elected by the board of directors, except shares beneficially owned by such officer for four years or more;

any employee who is also a director, except shares beneficially owned by such employee for four years or more;

any person that acquires shares during the period beginning with the first public disclosure of the proposed control share acquisition and ending with the record date established for the special meeting, if either of the following applies:

the aggregate consideration paid by such person, and any persons acting in concert therewith, exceeds \$250,000; or

**Table of Contents**

the number of shares acquired by such person, and any persons acting in concert therewith, exceeds one-half of one percent (1/2%) of our outstanding shares entitled to vote on the election of directors; and

any person who transfers shares after the record date for the special meeting, if accompanied by voting power in the form of a blank proxy, an agreement to vote as instructed by the transferee or otherwise.

***Transactions with Interested Shareholders***

We are subject to Chapter 1704 of the Ohio Revised Code, which generally prohibits certain business combinations and transactions with interested shareholders for a period of three years after (i) the interested shareholder acquired ten percent or more of the voting power of the corporation in the election of directors or (ii) at any time within the three years prior, such interested shareholder held ten percent or more of the voting power of the corporation in the election of directors, unless prior to the interested shareholder's acquisition of ten percent or more of the corporation's shares, the directors of the corporation approved the business combination or other transaction or the purchase of shares by the interested shareholder on the date the shareholder acquired ten percent or more of the corporation's shares.

In general, subsequent to the three-year period, a transaction subject to Chapter 1704 may take place provided that at least one of the following is satisfied:

prior to the date the interested shareholder acquired ten percent or more of the corporation's shares, the board of directors approved the purchase of shares by the interested shareholder;

the transaction is approved, at a meeting held for that purpose, by the affirmative vote of the holders of shares of the corporation entitling them to exercise at least two-thirds of the voting power of the corporation in the election of directors, or of such different proportion as the articles of incorporation may provide, provided that the transaction is also approved by the affirmative vote of the holders of at least a majority of the disinterested shares; or

the transaction results in shareholders, other than the interested shareholder, receiving a fair price (as described in Chapter 1704) plus interest for their shares.

In addition, our articles of incorporation provide that any business combination between us and any person that beneficially owns more than 30% of our shares entitled to vote in the election of directors (or at any time owned more than 30% of our shares entitled to vote in the election of directors) must be approved by the affirmative vote of 85% of all shares entitled to vote in the election of directors. The 85% voting requirement is not applicable if:

the cash, or fair market value of other consideration, to be received per share by our common shareholders in the business combination is at least an amount equal to the highest per share price paid by the other entity in acquiring any of its holdings of our common shares plus the aggregate amount, if any, by which 5% per annum of the per share price exceeds the aggregate amount of all dividends paid in cash, in each case since the date on which the other entity acquired the 30% interest;

after the other entity has acquired a 30% interest and prior to the consummation of the business combination, (1) the other entity has taken steps to ensure that our board of directors included at all times representation by continuing directors proportionate to the shareholdings of the public holders of our common shares not affiliated with the other entity (with a continuing director to occupy any resulting fractional board position), (2) the other entity has not acquired any newly issued shares, directly or indirectly, from us (except upon conversion of convertible securities acquired by it prior to obtaining a 30% interest or as a result of a pro rata share dividend or share split) and (3) the other entity has not acquired any additional outstanding common shares or securities convertible into our common shares except as part of the transaction that resulted in the other entity s acquiring its 30% interest;

## **Table of Contents**

the other entity has not (1) received the benefit, directly or indirectly (except proportionately as a shareholder), of any loans, advances, guarantees, pledges or other financial assistance or tax credits provided by us or (2) made any major change in our business or equity capital structure without in either case the approval of at least a majority of all the directors and at least two-thirds of the continuing directors, in either case prior to the consummation of the business combination; and

a proxy statement responsive to the requirements of the Exchange Act has been mailed to our public shareholders for the purpose of soliciting shareholder approval of the business combination and contained at the front, in a prominent place, any recommendations as to the advisability (or inadvisability) of the business combination that the continuing directors, or any of them, may choose to state and, if deemed advisable by a majority of the continuing directors, an opinion of a reputable investment banking firm as to the fairness (or not) of the terms of the business combination, from the point of view of our remaining public shareholders (the investment banking firm to be selected by a majority of the continuing directors and to be paid a reasonable fee for their services by us upon receipt of the opinion).

Continuing directors are directors elected by shareholders prior to the time when such entity acquired more than 5% of the shares entitled to vote in the election of directors, or a person recommended to succeed a continuing director or by a majority of continuing directors.

### ***Rights Plan***

Our shareholders are subject to our existing shareholders' rights plan pursuant to a rights agreement between us and Computershare Trust Company, N.A., as rights agent, dated as of May 20, 2009, as amended. A summary of the material provisions of the rights plan is set forth below and is qualified by reference to the complete text of the rights plan, which has been filed with the SEC. The summary does not describe all of the terms of the rights plan. For more information on how to obtain a copy of the rights plan, see [Where You Can Find More Information](#).

Our directors adopted the rights plan to protect our shareholders from coercive takeover practices or takeover bids that are inconsistent with their best interests. In general terms, the rights plan imposes a significant penalty upon any person or group that acquires beneficial ownership of 10% or more of our outstanding common shares without the prior approval of our directors. A person or group that acquires beneficial ownership of a percentage of our common shares in excess of that threshold is called an acquiring person. However, subject to certain exceptions, a person will not be deemed to beneficially own the first 10% of then-outstanding common shares that would otherwise be deemed to be beneficially owned by such person, together with all its affiliates and associates, if such person is entitled to file, and files, a statement on Schedule 13G pursuant to Rule 13d-1(b) or Rule 13d-1(c) under the Exchange Act. Any rights held by an acquiring person are void and may not be exercised. The term beneficial ownership is defined in the rights plan and includes, among other things, certain derivative or synthetic arrangements having characteristics of a long position in common shares.

*The Rights.* Our directors authorized the issuance of one right per each outstanding common share on June 2, 2009. If the rights become exercisable, each right would allow its holder to purchase from us one one-hundredth of a Series A Junior Participating Preferred Share for a purchase price of \$140.00. Each fractional preferred share would give the shareholder approximately the same dividend, voting and liquidation rights as does one of our common shares. Prior to exercise, however, a right does not give its holder any dividend, voting or liquidation rights.

*Exercisability.* The rights will not be exercisable until the earlier of:

ten days after a public announcement by us that a person or group has become an acquiring person; and

ten business days (or a later date determined by our directors) after a person or group begins a tender or exchange offer that, if completed, would result in that person or group becoming an acquiring person.

---

**Table of Contents**

We refer to the date that the rights become exercisable as the distribution date. Until the distribution date, our common share certificates will also evidence the rights and will contain a notation to that effect. Any transfer of common shares prior to the distribution date will constitute a transfer of the associated rights. After the distribution date, the rights will separate from the common shares and be evidenced by right certificates, which we will mail to all holders of rights that have not become void.

*Flip-In Event.* After the distribution date, if a person or group already is or becomes an acquiring person, all holders of rights, except the acquiring person, may exercise their rights upon payment of the purchase price to purchase our common shares (or other securities or assets as determined by our directors) with a market value of two times the purchase price.

*Flip-Over Event.* After the distribution date, if a flip-in event has already occurred and we are acquired in a merger or similar transaction, all holders of rights except the acquiring person may exercise their rights upon payment of the purchase price to purchase shares of the acquiring corporation with a market value of two times the purchase price of the rights.

Rights may be exercised to purchase our preferred shares only after the distribution date occurs and prior to the occurrence of a flip-in event as described above. A distribution date resulting from the commencement of a tender offer or exchange offer described in the second bullet point above could precede the occurrence of a flip-in event, in which case the rights could be exercised to purchase our preferred shares. A distribution date resulting from any occurrence described in the first bullet point above would necessarily follow the occurrence of a flip-in event, in which case the rights could be exercised to purchase common shares or other securities as described above.

*Expiration.* The rights will expire on the tenth anniversary of their distribution unless earlier redeemed or exchanged.

*Redemption.* Our board of directors may redeem all (but not less than all) of the rights for a redemption price of \$0.001 per right (subject to adjustment) at any time before the later of the distribution date and the date of the first public announcement by us that a person or group has become an acquiring person. Once the rights are redeemed, the right to exercise rights will terminate, and the only right of the holders of rights will be to receive the redemption price.

*Exchange.* After the later of the distribution date and the date of the first public announcement by us that a person or group has become an acquiring person, but before an acquiring person owns 50% or more of our outstanding common shares, our board of directors may exchange each right (other than rights that have become void) for one common share or an equivalent security.

*Anti-Dilution Provisions.* Our board of directors may adjust the purchase price of the preferred shares, the number of preferred shares issuable and the number of outstanding rights to prevent dilution that may occur as a result of certain events, including, among others, a stock dividend, a stock split or a reclassification of the preferred shares or our common shares. No adjustments to the purchase price of less than 1% will be made.

*Amendments.* Before the time rights cease to be redeemable, our board of directors may amend or supplement the rights plan without the consent of the holders of the rights, except that no amendment may decrease the redemption price below \$0.001 per right. At any time thereafter, our board of directors may amend or supplement the rights plan only to cure an ambiguity, to alter time period provisions, to correct inconsistent provisions or to make any additional changes to the rights plan, but only to the extent that those changes do not impair or adversely affect any rights holder and do not result in the rights again becoming redeemable. The limitations on our board of directors' ability to amend the rights plan does not affect our board of directors' power or ability to take any other action that is consistent with its



fiduciary duties, including without limitation accelerating or extending the expiration date of the rights, making any amendment to the rights plan that is permitted by the rights plan or adopting a new rights plan with such terms as our directors determine in their sole discretion to be appropriate.

## **Table of Contents**

### ***Mergers, Acquisitions, Share Purchases and Certain Other Transactions***

The Ohio Revised Code requires approval of mergers, dissolutions, dispositions of all or substantially all of a corporation's assets and majority share acquisitions and combinations involving issuance of shares representing one-sixth or more of the voting power of the corporation immediately after the consummation of the transaction (other than so-called parent-subsidary mergers), by two-thirds of the voting power of a corporation, unless the articles of incorporation specify a different proportion (but not less than a majority). Our articles of incorporation do not specify a voting power proportion different than that specified by Ohio law in connection with the approval of these transactions.

### ***Amendments to Constituent Documents***

Ohio law permits the adoption of amendments to articles of incorporation if those amendments are approved at a meeting held for that purpose by the holders of shares entitling them to exercise two-thirds of the voting power of the corporation, or a lesser, but not less than a majority, or greater vote as specified in the articles of incorporation. Our articles of incorporation specify that amendments relating to transactions with interested persons require the affirmative vote of the holders of 85% of the common shares entitled to vote in the election of directors, except that the 85% vote will not be required for any amendment to that provision recommended to our shareholders if the recommendation was approved by at least a majority of our directors and at least two-thirds of our continuing directors.

Ohio law permits adoption of amendments to regulations by an affirmative vote of the majority of shares entitled to vote or by written consent from holders of two-thirds of the shares entitled to vote or by written consent or vote of a greater or lesser proportion as provided in the articles of incorporation or regulations but not less than the majority of voting power. Our regulations may be amended by (1) our board of directors to the extent permitted by Ohio law or (2) our shareholders by the affirmative vote of a majority of our voting power at a meeting held for that purpose, or without a meeting by the affirmative written consent of two-thirds of our voting power.

### **Limitation of Liability of Directors and Officers**

Our regulations provide that a director will be liable for monetary damages for any action or omission as a director only if it is proven by clear and convincing evidence that the act or omission was undertaken either with deliberate intent to cause injury to the corporation or with reckless disregard for the best interests of the corporation. This provision, however, does not affect the liability of directors under Section 1701.95 of the Ohio Revised Code, which relates to:

the payment of dividends or distributions, the making of distributions of assets to shareholders or the purchase or redemption of the corporation's shares, contrary to the law or our articles of incorporation;

the distribution of assets to shareholders during the winding up of our affairs by dissolution or otherwise, if creditors are not adequately provided for; and

the making of certain loans to officers, directors or shareholders, other than in the usual course of business, without approval by a majority of the disinterested directors of the corporation.

Our regulations provide that a director will not be found to have violated his or her duties to the corporation as a director of the corporation in any action brought against the director unless it is proven by clear and convincing evidence that the director has not acted in good faith, in a manner he or she reasonably believes to be in, or not opposed to, the best interests of the corporation, or with the care that an ordinarily prudent person in a like position would use under similar circumstances. Our regulations specify various matters and constituencies that may be considered by a director in the discharge of his or her duties to the corporation as a director of the corporation.

## **Table of Contents**

Our regulations:

provide that we must indemnify any director or officer to the full extent permitted by Ohio law, as it exists or as it may in the future be amended to provide broader rights to indemnification;

permit us to indemnify employees or agents of ours to the extent authorized from time to time by our board of directors;

provide that the indemnification rights conferred in our regulations are contract rights and such rights will continue as to an indemnitee who has ceased to be a director, officer, employee or agent and inure to the benefit of the indemnitee's heirs, executors and administrators;

clarify the categories of expenses and liabilities as to which an indemnitee will be entitled to indemnification and provide that, except in the case of proceedings to enforce rights to indemnification, we will indemnify the indemnitee in connection with a proceeding initiated by the indemnitee only if authorized by our board of directors;

provide the indemnitee with a right to bring suit against us if a claim with respect to indemnification has not been paid within a specified period, and provide that if the indemnitee is successful in the lawsuit, the indemnitee will also be entitled to be paid the expense of prosecuting or defending the suit; and

establish certain procedures and presumptions with respect to the indemnitee's right to indemnification. Ohio law provides that a corporation must indemnify a person for expenses reasonably incurred successfully defending (on the merits or otherwise) an action, suit or proceeding (including certain derivative suits) brought against the person as a director, officer, employee or agent of the corporation. Further, a corporation may indemnify such persons for liability in such actions, suits or proceedings if the person acted in good faith in a matter believed to be in, or not opposed to, the best interest of the corporation, and, with respect to a criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful. Indemnification may be made only if ordered by a court or authorized in a specific case upon the determination that the appropriate standard has been met by the majority of disinterested directors, an independent legal advisor or shareholders. We have also entered into indemnity agreements under which we have agreed, among other things, to indemnify our directors and officers to the maximum extent then authorized or permitted by our amended articles of incorporation or Ohio law.

## **Transfer Agent and Registrar**

Computershare Investor Services, LLC serves as the transfer agent and registrar for our common shares.

## **Stock Exchange Listing**

Our common shares are listed on the New York Stock Exchange under the trading symbol SJM.



**Table of Contents**

**DESCRIPTION OF DEBT SECURITIES**

This prospectus describes certain general terms and provisions of the debt securities. The debt securities will be issued under an indenture between us and U.S. Bank National Association, as trustee. When we offer to sell a particular series of debt securities, we will describe the specific terms for the securities in a supplement to this prospectus. The prospectus supplement will also indicate if any of the general terms and provisions described in this prospectus does not apply to a particular series of debt securities.

We have summarized certain terms and provisions of the indenture. The summary is not complete. The indenture has been incorporated by reference as an exhibit to the registration statement for these securities that we have filed with the SEC. You should read the indenture for the provisions which may be important to you. The indenture is subject to and governed by the Trust Indenture Act of 1939, as amended.

The indenture does not limit the amount of debt securities which we may issue. We may issue debt securities up to an aggregate principal amount as we may authorize from time to time. Unless otherwise specified in the applicable prospectus supplement, we may, without the consent of the holders of a series of debt securities, issue additional debt securities of that series having the same terms (except for the price to public, issue date, initial interest payment date, initial interest accrual date and amount of the first interest payment) as such debt securities. Any such additional debt securities, together with the initial debt securities, will constitute a single series of debt securities under the indenture. The prospectus supplement relating to a series of debt securities being offered will describe the terms of such debt securities, including:

the title of the debt securities;

ranking of the specific series of debt securities relative to other outstanding indebtedness, including subsidiaries' debt;

if the debt securities are subordinated, the aggregate amount of outstanding indebtedness, as of a recent date, that is senior to the subordinated securities, and any limitation on the issuance of additional senior indebtedness;

the designation, aggregate principal amount (and any limits in the aggregate principal amount of debt securities of that series) and authorized denominations;

the maturity date;

the interest rate, if any, and the method for calculating the interest rate;

the interest payment dates and the record dates for the interest payments;

any mandatory or optional redemption terms or prepayment, conversion, sinking fund or exchangeability or convertibility provisions;

the place where we will pay principal and interest;

if other than denominations of \$1,000 or multiples of \$1,000, the denominations the debt securities will be issued in;

whether the debt securities will be issued in the form of global securities or certificates;

the inapplicability of and additional provisions, if any, relating to the defeasance of the debt securities;

the currency or currencies, if other than the currency of the United States, in which principal and interest will be paid;

any material U.S. federal income tax consequences;

the dates on which premium, if any, will be paid;

our right, if any, to defer payment of interest and the maximum length of this deferral period;

**Table of Contents**

any listing on a securities exchange;

the initial public offering price; and

other specific terms, including any additional events of default or covenants.

The debt securities will be our direct unsecured obligations and will rank equally and pari passu with all of our other unsecured and unsubordinated debt. The debt securities are our unsecured senior debt securities, but our assets include equity in our subsidiaries. As a result, our ability to make payments on the debt securities depends in part on our receipt of dividends, loan payments and other funds from our subsidiaries. Certain of our subsidiaries may guarantee one or more series of debt securities issued under the indenture. In addition, if any of our subsidiaries becomes insolvent, the direct creditors of that subsidiary will have a prior claim on its assets. Our rights and the rights of our creditors, including your rights as an owner of debt securities, will be subject to that prior claim, unless we or you, in the event that your debt securities are guaranteed by such subsidiary, are also a direct creditor of that subsidiary. This subordination of creditors of a parent company to prior claims of creditors of its subsidiaries is commonly referred to as structural subordination. In addition, the debt securities will effectively rank junior in right of payment to any of our secured indebtedness to the extent of the assets securing such indebtedness.

**Events of Default**

When we use the term **Event of Default** in the indenture with respect to the debt securities of any series, here are some examples of what we mean (unless otherwise specified in the applicable prospectus supplement with respect to such series):

- (1) default in paying interest on the debt securities of that series when it becomes due and the default continues for a period of 30 days or more;
- (2) default in paying principal, or premium, if any, on the debt securities of that series when due;
- (3) default is made in the payment of any sinking or purchase fund or analogous obligation when the same becomes due with respect to the debt securities of that series, and such default continues for a period of 30 days or more;
- (4) default in the performance, or breach, of any covenant of the Company or any guarantor in the indenture applicable to that series (other than defaults specified in clause (1), (2) or (3) above) and the default or breach continues for a period of 90 days or more after we receive written notice from the trustee or we and the trustee receive notice from the holders of at least 25% in aggregate principal amount of the outstanding debt securities of the series;
- (5) default under any agreement or instrument evidencing, or under which we or any restricted subsidiary has outstanding at the time, any indebtedness for money borrowed by us or a restricted subsidiary, which default or defaults, individually or in the aggregate, have resulted in the acceleration of any portion of such indebtedness having an aggregate principal amount equal to or in excess of \$150 million;
- (6) certain events of bankruptcy, insolvency, reorganization or similar proceedings with respect to the Company have occurred; or
- (7) any other Events of Default set forth in the prospectus supplement with respect to the debt securities of such series.



If an Event of Default (other than an Event of Default specified in clause (6) with respect to the Company) under the indenture occurs with respect to the debt securities of any series and is continuing, then the trustee or

## **Table of Contents**

the holders of at least 25% in aggregate principal amount of the outstanding debt securities of that series may by written notice require us to repay immediately the entire principal amount of the outstanding debt securities of that series (or such lesser amount as may be provided in the terms of the securities), together with all accrued and unpaid interest.

If an Event of Default under the indenture specified in clause (6) with respect to the Company occurs and is continuing, then the entire principal amount of the outstanding debt securities (or such lesser amount as may be provided in the terms of the securities), together with all accrued and unpaid interest, will automatically become due and payable immediately without any declaration or other act on the part of the trustee or any holder.

After a declaration of acceleration, the holders of a majority in aggregate principal amount of outstanding debt securities of any series may rescind this accelerated payment requirement if all existing Events of Default, except for nonpayment of the principal and interest on the debt securities of that series that has become due solely as a result of the accelerated payment requirement, have been cured or waived, if all sums paid or advanced by the trustee and the reasonable compensation, expenses, disbursements and advances of the trustee, its agents and counsel have been paid and if the rescission of acceleration would not conflict with any judgment or decree. The holders of a majority in aggregate principal amount of the outstanding debt securities of any series also have the right to waive past defaults, except a default theretofore not cured in paying principal or interest on any outstanding debt security, or in respect of a covenant or a provision that cannot be modified or amended without the consent of all holders of the debt securities of that series.

Holders of at least 25% in aggregate principal amount of the outstanding debt securities of a series may seek to institute a proceeding only after they have notified the trustee of a continuing Event of Default in writing and made a written request, and offered reasonable indemnity, to the trustee to institute a proceeding and the trustee has failed to do so within 60 days after it received this notice. In addition, within this 60-day period the trustee must not have received directions inconsistent with this written request by holders of a majority in aggregate principal amount of the outstanding debt securities of that series. These limitations do not apply, however, to a suit instituted by a holder of a debt security for the enforcement of the payment of principal, interest or any premium on or after the due dates for such payment.

During the existence of an Event of Default, the trustee is required to exercise the rights and powers vested in it under the indenture and use the same degree of care and skill in its exercise as a prudent person would under the circumstances in the conduct of that person's own affairs. If an Event of Default has occurred and is continuing, the trustee is not under any obligation to exercise any of its rights or powers at the request or direction of any of the holders unless the holders have offered to the trustee reasonable security or indemnity.

Subject to certain provisions, the holders of a majority in aggregate principal amount of the outstanding debt securities of any series have the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee, or exercising any trust, or power conferred on the trustee.

The trustee will, within 90 days after receiving notice of the occurrence of any default, give notice of the default to the holders of the debt securities of that series, unless the default was already cured or waived. Unless there is a default in paying principal, interest or any premium when due, the trustee can withhold giving notice to the holders if it determines in good faith that the withholding of notice is in the interest of the holders.

## **Modification and Waiver**

The indenture may be amended or modified without the consent of any holder of debt securities in order to:

evidence a succession to the trustee;

cure ambiguities, defects or inconsistencies;

**Table of Contents**

provide for the assumption of our obligations in the case of a merger or consolidation or transfer of all or substantially all of our assets permitted under the indenture;

make any change that would provide any additional rights or benefits to the holders of the debt securities of a series;

evidence the addition of any subsidiary as a guarantor or the release of any guarantor and its obligations;

secure the debt securities of a series;

establish the form or forms of debt securities of any series;

provide for the issuance of any series of debt securities and to set the terms thereof;

add to the rights of the holders of any series of debt securities;

add any additional events of default in respect of the debt securities of any or all series;

maintain the qualification of the indenture under the Trust Indenture Act of 1939, as amended; or

make any change that does not adversely affect in any material respect the interests of any holder.

Other amendments and modifications of the indenture or the debt securities issued may be made with the consent of the holders of not less than a majority in aggregate principal amount of the outstanding debt securities of each series affected by the amendment or modification. However, no modification or amendment may, without the consent of the holder of each outstanding debt security affected:

reduce the principal amount or any interest or premium payable thereon, or extend the fixed maturity or the stated payment date of any payment of premium or interest, of the debt securities (other than in connection with any amendments to redemption provisions);

alter or waive the redemption provisions of the debt securities (unless otherwise specified in the terms of such debt securities);

change the method of computing the amount of principal of any debt security or any interest payable thereon on any date;

change the place of payment or currency in which principal, any premium or interest is paid;

reduce the percentage in principal amount outstanding of debt securities of any series which must consent to an amendment, supplement or waiver or consent to take any action;

impair the right to institute suit for the enforcement of any payment on the debt securities;

waive a payment default with respect to the debt securities;

reduce the interest rate or extend the time for payment of interest on the debt securities;

limit a holder's right, if any, to repayment of debt securities at the holder's option; or

modify any of the foregoing requirements contained in the indenture or those related to waivers of default or compliance with covenants contained in the indenture except to increase the percentage required for any such waiver or to provide that other provisions of the indenture cannot be modified or waived without the consent of the holder of each debt security affected thereby.

Under the indenture, the holders of at least a majority of the aggregate principal amount of the outstanding debt securities of all series of debt securities affected by a particular covenant or condition, acting as one class, may, on behalf of all holders of such series of debt securities, waive compliance by us with any covenant or condition contained in the indenture unless we specify that such covenant or condition cannot be so waived at the time we establish the series.

**Table of Contents**

In addition, under the indenture, the holders of a majority in aggregate principal amount of the outstanding debt securities of any series of debt securities may, on behalf of all holders of that series, waive any past default under the indenture, except:

a default in the payment of the principal of any sinking or purchase fund or any analogous obligation or any premium or interest on any debt securities of that series; or

a default under any provision of the indenture which itself cannot be modified or amended without the consent of the holders of each outstanding debt security of that series.

**Covenants**

***Limitation of Liens Applicable to Debt Securities***

The indenture provides that with respect to debt securities, unless otherwise provided in a particular series of debt securities, we will not, and will not permit any of our restricted subsidiaries to, incur, assume or guarantee any debt secured by a lien on any principal property or on any shares of stock of (or other interests in) any of our restricted subsidiaries unless we or that first-mentioned restricted subsidiary secures or causes such restricted subsidiary to secure the debt securities (and any of its or such restricted subsidiary's other debt, at its option or such restricted subsidiary's option, as the case may be, not subordinate to the debt securities), equally and ratably with (or prior to) such secured debt, for as long as such secured debt will be so secured.

These restrictions will not, however, apply to debt secured by:

liens on property, shares of stock or indebtedness (herein referred to as "property") of any corporation or other entity existing at the time such corporation or other entity becomes a restricted subsidiary;

liens on property existing at the time of acquisition of such property by us or a restricted subsidiary or on property of a corporation or other entity existing at the time such corporation or other entity is merged into or consolidated with us or a restricted subsidiary, provided that such liens do not attach to or affect property theretofore owned by us or such restricted subsidiary;

liens to secure the payment of all or any part of the purchase price of the property subject to such liens, or liens consisting of the interests of lessors in property under capital leases of such property;

liens on property of a restricted subsidiary securing debt owed to us or to another restricted subsidiary;

with respect to each series of debt securities, liens existing on the first date on which the series of debt securities are authenticated by the trustee;

liens in favor of the United States, any State, any foreign country or any department, agency or instrumentality or political subdivision of any such jurisdiction, or in favor of holders of securities issued by any of the foregoing, to secure partial, progress, advance or other payments pursuant to any contract or statute (including specifically liens to secure industrial revenue bonds and similar debt);

liens on property (and improvements thereto) to secure any debt incurred for the purpose of financing all or part of the purchase price or cost of construction, development or substantial repair, alteration or improvement of such property if such debt is incurred prior to, at the time of or within one year after (or pursuant to a commitment obtained within one year after) the later of the completion of or the placing into operation (exclusive of test and start-up periods) of such constructed, developed, repaired, altered or improved property;

liens arising in connection with contracts with or made at the request of U.S. governmental entities;

mechanics , materialmens , carriers, growers , producers , farmers and similar liens arising in the ordinary course of business (including construction of facilities) in respect of obligations not due or being contested in good faith;

**Table of Contents**

liens arising from deposits with or the giving of any form of security to any governmental authority required by law or governmental regulation as a condition to the transaction of business or exercise of any privilege, franchise or license;

liens for taxes, assessment or governmental charges or levies which, if delinquent, are being contested in good faith;

liens (including judgment liens) arising from legal proceedings;

liens incurred or deposits made in the ordinary course of business in connection with or to secure the performance of bids, tenders, leases or trade contracts (other than for the payment of debt) or to secure surety, appeal, indemnity, performance or other similar bonds;

liens of any depository bank consisting of statutory, common law or contractual rights of setoff or recoupment with respect to any deposit account; or

any extension, renewal or replacement of these categories of liens, so long as such lien does not extend to any other property and the amount of debt secured is not increased (other than by the amount equal to any costs and expenses incurred in connection with any extension, renewal or replacement).

However, if the total amount of our debt and the debt of our restricted subsidiaries secured by liens that would otherwise be subject to the foregoing restriction and any attributable debt (as defined below and not including any debt permitted to be secured as per above) deemed to be debt subject to the provisions of this paragraph would not exceed 15% of our consolidated net tangible assets (as defined below) this requirement does not apply.

*Sale and Leaseback.* We will not enter, nor will we permit any restricted subsidiary to enter, into a sale and leaseback transaction of any principal property more than 120 days after our or such restricted subsidiary's acquisition or completion of construction and commencement of full operation of such principal property (except for temporary leases for a term of not more than three years and except for leases between us and a restricted subsidiary or between restricted subsidiaries) unless:

(a) we or such restricted subsidiary would be entitled to incur, assume or guarantee debt secured by such principal property at least equal in amount to the attributable debt in respect of such transaction without equally and ratably securing the debt securities (provided that such attributable debt will thereupon be deemed to be debt subject to the provisions of the preceding paragraph), or (b) an amount in cash equal to such attributable debt is applied, within 120 days of the effective date of such transaction, to the non-mandatory retirement of our long-term unsubordinated debt or long-term unsubordinated debt of a restricted subsidiary.

*Definitions.* The following are definitions of some terms used in the above description. We refer you to the indenture for a full description of all of these terms, as well as any other terms used herein for which no definition is provided.

The term *attributable debt* means the present value (discounted at the inherent interest rate as determined by us in good faith, compounded semi-annually) of the obligation of a lessee for rental payments during the remaining term of any lease (including any period for which such lease has been extended).



The term *consolidated net tangible assets* means the total assets appearing on our latest consolidated balance sheet contained in our most recent Annual Report on Form 10-K or Quarterly Report on Form 10-Q, as the case may be, filed with the SEC, excluding the sum of (1) all current liabilities and (2) all goodwill, patents, copyrights, trademarks and other like intangibles.

The term *debt* means any indebtedness for money borrowed.

**Table of Contents**

The term *subsidiary* means any corporation of which at least a majority of the outstanding stock having voting power under ordinary circumstances to elect a majority of the board of directors of that corporation is at the time owned by us or in conjunction with or by one or more of our subsidiaries, and any other entity of which at least a majority of the voting interest under ordinary circumstances is at the time owned or controlled solely by us or in conjunction with or by one or more subsidiaries.

The term *restricted subsidiary* means each guarantor (if applicable) and any other subsidiary:

substantially all of the property of which is located within the continental United States;

that owns a principal property; and

in which our investment exceeds 5% of our consolidated assets as shown on our latest quarterly financial statements.

However, the term *restricted subsidiary* does not include any subsidiary which is principally engaged in certain types of leasing and financing activities.

The term *principal property* means any manufacturing or processing plant or facility, warehouse, office facility or distribution center that is located within the continental United States, having a net book value which, on the date the determination as to whether a property is a principal property is being made, is in excess of 2% of our consolidated net tangible assets. Our board of directors (or any duly authorized committee of our board of directors) by resolution may create an exception by declaring that a plant or facility is not of material importance to the total business conducted by us and our subsidiaries as an entirety.

***Consolidation, Merger or Sale of Assets***

The indenture provides that we may consolidate or merge with or into, or convey or transfer all or substantially all of our properties and assets to, any entity (including, without limitation, a limited partnership or a limited liability company); provided that:

we will be the surviving person or, if not, that the successor will be a person that is organized and validly existing under the laws of any state of the United States or the District of Columbia and will expressly assume by a supplemental indenture our obligations under the indenture and the debt securities;

immediately after giving effect to such transaction, no event of default, and no default or other event which, after notice or lapse of time, or both, would become an event of default, will have happened and be continuing; and

we will have delivered to the trustee an opinion of counsel and an officers certificate, stating that such consolidation, merger, conveyance or transfer and any assumption complies with the indenture.

In the event of any such consolidation, merger, conveyance, transfer or lease, any such successor or acquiring entity will succeed to and be substituted for us as obligor on the debt securities with the same effect as if it had been named in the indenture as obligor. As a result, we will be released from all liabilities and obligations under the indenture or the debt securities.

Unless otherwise provided in a particular series of debt securities, there are no other restrictive covenants contained in the indenture. The indenture does not contain any provision that will restrict us from entering into one or more additional indentures providing for the issuance of debt securities or warrants, or from incurring, assuming, or becoming liable with respect to any indebtedness or other obligation, whether secured or unsecured, or from paying dividends or making other distributions on our capital stock, or from purchasing or redeeming our capital stock. The indenture does not contain any financial ratios or specified levels of net worth or liquidity to which we must adhere. In addition, the indenture does not contain any provision that would require us to repurchase, redeem, or otherwise modify the terms of any of the debt securities upon a change in control or other event involving us that may adversely affect our creditworthiness or the value of the debt securities.

**Table of Contents**

**Satisfaction, Discharge and Covenant Defeasance**

We may terminate our obligations under the indenture, when:

either:

all debt securities of any series issued that have been authenticated and delivered have been delivered to the trustee canceled or for cancellation; or

all the debt securities of any series issued that have not been delivered to the trustee canceled or for cancellation have become due and payable, will become due and payable within one year, or are to be called for redemption within one year and we have made arrangements satisfactory to the trustee for the giving of notice of redemption by such trustee in our name and at our expense, and in each case, we have irrevocably deposited or caused to be deposited with the trustee sufficient funds to pay and discharge the entire indebtedness on the series of debt securities to pay principal, interest and any premium; and

we have paid or caused to be paid all other sums then due and payable under the indenture; and

we have delivered to the trustee an officers certificate and an opinion of counsel, each stating that all conditions precedent under the indenture relating to the satisfaction and discharge of the indenture have been complied with.

We may elect to have our obligations under the indenture discharged with respect to the outstanding debt securities of any series ( legal defeasance ). Legal defeasance means that we will be deemed to have paid and discharged the entire indebtedness represented by the outstanding debt securities of such series under the indenture, except for:

the rights of holders of the debt securities to receive principal, interest and any premium when due and any remaining rights to receive mandatory sinking fund payments;

our obligations with respect to the debt securities concerning issuing temporary debt securities, registration of transfer of debt securities, mutilated, destroyed, lost or stolen debt securities and the maintenance of an office or agency for payment for security payments held in trust;

the rights, powers, trusts, duties and immunities of the trustee; and

the defeasance provisions of the indenture.

In addition, we may elect to have our obligations released with respect to certain covenants in the indenture ( covenant defeasance ). Any omission to comply with these obligations will not constitute a default or an event of default with respect to the debt securities of any series. In the event covenant defeasance occurs, certain events, not including non-payment, bankruptcy and insolvency events, described under Events of Default above will no longer constitute an event of default for that series. Additionally, with limited exceptions, we would not have to comply with covenants applicable to such debt series (including without limitation those covenants relating to consolidation, merger or sale, limitation on liens, and sale and leaseback transactions).

In order to exercise either legal defeasance or covenant defeasance with respect to outstanding debt securities of any series:

we must irrevocably have deposited or caused to be deposited with the trustee as trust funds for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to the benefits of the holders of the debt securities of a series:

money in an amount;

U.S. government obligations (or equivalent government obligations in the case of debt securities denominated in other than U.S. dollars or a specified currency) that will provide, not later than one day before the due date of any payment, money in an amount; or

**Table of Contents**

a combination of money and U.S. government obligations (or equivalent government obligations, as applicable),  
in each case sufficient, in the written opinion (with respect to U.S. or equivalent government obligations or a combination of money and U.S. or equivalent government obligations, as applicable) of a nationally recognized firm of independent registered public accountants to pay and discharge, and which will be applied by the trustee to pay and discharge, all of the principal (including mandatory sinking fund payments), interest and any premium at due date or maturity;

in the case of legal defeasance, we have delivered to the trustee an opinion of counsel stating that, under then applicable U.S. federal income tax law, the beneficial owners of the debt securities of that series will not recognize income, gain or loss for U.S. federal income tax purposes as a result of the deposit, defeasance and discharge to be effected and will be subject to the same U.S. federal income tax as would be the case if the deposit, defeasance and discharge did not occur;

in the case of covenant defeasance, we have delivered to the trustee an opinion of counsel to the effect that the beneficial owners of the debt securities of that series will not recognize income, gain or loss for U.S. federal income tax purposes as a result of the deposit and covenant defeasance to be effected and will be subject to the same U.S. federal income tax as would be the case if the deposit and covenant defeasance did not occur;

no Event of Default or default with respect to the outstanding debt securities of that series has occurred and is continuing at the time of such deposit after giving effect to the deposit or, in the case of legal defeasance, no default relating to bankruptcy or insolvency has occurred and is continuing at any time on or before the 91st day after the date of such deposit, it being understood that this condition is not deemed satisfied until after the 91st day;

the legal defeasance or covenant defeasance will not cause the trustee to have a conflicting interest within the meaning of the Trust Indenture Act, assuming all debt securities of a series were in default within the meaning of such Act;

the legal defeasance or covenant defeasance will not result in a breach or violation of, or constitute a default under, any other agreement or instrument to which we are a party;

if debt securities are to be redeemed before the stated maturity date (other than from mandatory sinking fund payments or analogous payments), we have delivered satisfactory notice of redemption to the trustee;

the legal defeasance or covenant defeasance will not result in the trust arising from such deposit constituting an investment company within the meaning of the Investment Company Act of 1940, as amended, unless the trust is registered under such Act or exempt from registration; and

we have delivered to the trustee an officers certificate and an opinion of counsel stating that all conditions precedent with respect to the legal defeasance or covenant defeasance have been complied with.

**Concerning our Relationship with the Trustee**

We and our subsidiaries maintain ordinary banking relationships and credit facilities with U.S. Bank National Association.

**Table of Contents**

**DESCRIPTION OF WARRANTS**

The following description, together with the additional information that we include in any applicable prospectus supplements and in any related free writing prospectus that we may authorize to be distributed to you, summarizes the material terms and provisions of the warrants that we may offer under this prospectus. While the terms we have summarized below will apply generally to any warrants that we may offer under this prospectus, we will describe the particular terms of any warrants in more detail in the applicable prospectus supplement. The terms of any warrants offered under a prospectus supplement may differ from the terms described below.

We will file as exhibits to the registration statement of which this prospectus is a part, or incorporate by reference from reports that we file with the SEC, the form of warrant agreement that describes the terms of the warrants we are offering, and any supplemental agreements, before the issuance of the related warrants. The following summaries of material terms and provisions of the warrants are subject to, and qualified in their entirety by reference to, all the provisions of the warrant agreement and any supplemental agreements applicable to a particular warrant. We urge you to read the applicable prospectus supplements related to the particular warrants that we may offer under this prospectus, as well as any related free writing prospectuses and the complete warrant agreement and any supplemental agreements that contain the terms of the warrants.

We may issue (either separately or together with other offered securities) warrants to purchase underlying debt securities, serial preferred shares, common shares or any combination thereof issued by us ( offered warrants ). Such warrants may be issued independently or together with any such securities and may be attached or separate from the securities. We may issue the warrants under separate warrant agreements (each a warrant agreement ) to be entered into between us and a bank or trust company, as warrant agent (the warrant agent ), identified in the prospectus supplement. The warrant agent will act solely as our agent and will not assume any obligation or relationship of agency for or with holders of beneficial owners of warrants.

**General**

You should read the prospectus supplement for the material terms of the offered warrants, including the following:

the title and aggregate number of the warrants;

the title, rank, aggregate principal amount and terms of the underlying debt securities, serial preferred shares or common shares purchasable upon exercise of the warrants;

the principal amount of underlying debt securities, serial preferred shares or common shares that may be purchased upon exercise of each warrant, and the price or the manner of determining the price at which this principal amount may be purchased upon exercise;

the currency or currencies, including composite currencies, in which the price of such warrants may be payable;



the price at which and the currencies, including composite currencies, in which the securities purchasable upon exercise of such warrants will commence and the date on which such right will expire;

if applicable, the minimum or maximum amount of such warrants which may be exercised at any one time;

if applicable, the title, rank, aggregate principal amount and terms of the securities with which such warrants are issued and the number of such warrants issued with each such security;

if applicable, the date on and after which such warrants and related securities will be separately transferable;

any optional redemption terms;

## **Table of Contents**

whether certificates evidencing the warrants will be issued in registered or bearer form and, if registered, where they may be transferred and exchanged; and

any other material terms of the warrants.

The prospectus supplement will also contain a discussion of the United States federal income tax considerations relevant to the offering.

Warrant certificates will be exchangeable for new warrant certificates of different denominations. No service charge will be imposed for any permitted transfer or exchange of warrant certificates, but we may require payment of any tax or other governmental charge payable in connection therewith. Warrants may be exercised and exchanged and warrants in registered form may be presented for registration or transfer at the corporate trust office of the warrant agent or any other office indicated in the prospectus supplement or term sheet.

## **Exercise of Warrants**

Each offered warrant will entitle the holder thereof to purchase the amount of underlying debt securities, serial preferred shares, common shares or any combination thereof at the exercise price set forth in, or calculable from, the prospectus supplement relating to the offered warrants. After the close of business on the expiration date, unexercised warrants will be void.

Warrants may be exercised by payment to the warrant agent of the applicable exercise price and by delivery to the warrant agent of the related warrant certificate, properly completed. Warrants will be deemed to have been exercised upon receipt of the exercise price and the warrant certificate or certificates. Upon receipt of this payment and the properly completed warrant certificates, we will, as soon as practicable, deliver the amount of underlying debt securities, serial preferred shares, common shares or any combination thereof purchased upon exercise.

If fewer than all of the warrants represented by any warrant certificate are exercised, a new warrant certificate will be issued for the unexercised warrants. The holder of a warrant will be required to pay any tax or other governmental charge that may be imposed in connection with any transfer involved in the issuance of underlying debt securities, serial preferred shares, common shares or other combination thereof purchased upon exercise.

## **Amendments and Supplements to Warrant Agreement**

We and the warrant agent may amend or supplement the warrant agreement for a series of warrants without the consent of the holders of the warrants issued thereunder to effect changes that are not inconsistent with the provisions of the warrants and that do not adversely affect the interests of the holders of the warrants.

## **No Rights as Holders of Underlying Debt Securities, Serial Preferred Shares or Common Shares**

Before the warrants are exercised, holders of the warrants are not entitled to payments of principal of, premium, if any, or interest on the related underlying debt securities and dividends on the serial preferred shares, common shares or any combination thereof, as applicable, or to exercise any rights whatsoever as holders of the underlying debt securities, serial preferred shares or common shares.

---

**Table of Contents**

**DESCRIPTION OF UNITS**

The following description, together with the additional information that we include in any applicable prospectus supplements and in any related free writing prospectus that we may authorize to be distributed to you, summarizes the material terms and provisions of the units that we may offer under this prospectus. While the terms we have summarized below will apply generally to any units that we may offer under this prospectus, we will describe the particular terms of any series of units in more detail in the applicable prospectus supplement. The terms of any units offered under a prospectus supplement may differ from the terms described below.

We will file as exhibits to the registration statement of which this prospectus is a part, or will incorporate by reference from reports that we file with the SEC, the form of unit agreement that describes the terms of the series of units we are offering, and any supplemental agreements, before the issuance of the related series of units. The following summaries of material terms and provisions of the units are subject to, and qualified in their entirety by reference to, all the provisions of the unit agreement and any supplemental agreements applicable to a particular series of units. We urge you to read the applicable prospectus supplements related to the particular series of units that we may offer under this prospectus, as well as any related free writing prospectuses and the complete unit agreement and any supplemental agreements that contain the terms of the units.

**General**

We may issue units comprised of one or more of the securities offered hereby in any combination. Each unit will be issued so that the holder of the unit is also the holder of each security included in the unit. Thus, the holder of a unit will have the rights and obligations of a holder of each included security. The unit agreement under which a unit is issued may provide that the securities included in the unit may not be held or transferred separately, at any time or at any time before a specified date.

We will describe in the applicable prospectus supplement the terms of the series of units being offered, including:

the designation and terms of the units and of the securities comprising the units, including whether and under what circumstances those securities may be held or transferred separately;

any provisions of the governing unit agreement that differ from those described below; and

any provisions for the issuance, payment, settlement, transfer or exchange of the units or of the securities comprising the units.

The provisions described in this section, as well as those described under [Description of Capital Stock](#), [Description of Debt Securities](#) and [Description of Warrants](#) will apply to each unit and to any common shares, serial preferred shares, debt securities or warrants included in each unit, respectively.

**Issuance in Series**

We may issue units in such amounts and in such numerous distinct series as we determine.

**Enforceability of Rights by Holders of Units**

Each unit agent will act solely as our agent under the applicable unit agreement and will not assume any obligation or relationship of agency or trust with any holder of any unit. A single bank or trust company may act as unit agent for more than one series of units. A unit agent will have no duty or responsibility in case of any default by us under the applicable unit agreement or unit, including any duty or responsibility to initiate any proceedings at law or otherwise, or to make any demand upon us. Any holder of a unit may, without the consent of the related unit agent or the holder of any other unit, enforce by appropriate legal action its rights as holder under any security included in the unit.

**Table of Contents**

**LEGAL OWNERSHIP OF SECURITIES**

We can issue securities in registered form or in the form of one or more global securities. We describe global securities in greater detail below. We refer to those persons who have securities registered in their own names on the books that we or any applicable trustee, registrar, transfer agent, depository or warrant agent maintain for this purpose as the holders of those securities. These persons are the legal holders of the securities. We refer to those persons who, indirectly through others, own beneficial interests in securities that are not registered in their own names, as indirect holders of those securities. As we discuss below, indirect holders are not legal holders, and investors in securities issued in book-entry form or in street name will be indirect holders.

**Book-Entry Holders**

We may issue securities in book-entry form only, as we will specify in the applicable prospectus supplement. This means securities may be represented by one or more global securities registered in the name of a financial institution that holds them as depository on behalf of other financial institutions that participate in the depository's book-entry system. These participating institutions, which are referred to as participants, in turn, hold beneficial interests in the securities on behalf of themselves or their customers.

Only the person in whose name a security is registered is recognized as the holder of that security. Securities issued in global form will be registered in the name of the depository or its participants. Consequently, for securities issued in global form, we will recognize only the depository as the holder of the securities, and we will make all payments on the securities to the depository. The depository passes along the payments it receives to its participants, which in turn pass the payments along to their customers who are the beneficial owners. The depository and its participants do so under agreements they have made with one another or with their customers; they are not obligated to do so under the terms of the securities.

As a result, investors in a book-entry security will not own securities directly. Instead, they will own beneficial interests in a global security through a bank, broker or other financial institution that participates in the depository's book-entry system or holds an interest through a participant. As long as the securities are issued in global form, investors will be indirect holders, and not holders, of the securities.

**Street Name Holders**

We may terminate a global security or issue securities in non-global form. In these cases, investors may choose to hold their securities in their own names or in street name. Securities held by an investor in street name would be registered in the name of a bank, broker or other financial institution that the investor chooses, and the investor would hold only a beneficial interest in those securities through an account he or she maintains at that institution.

For securities held in street name, we or any applicable trustee or depository will recognize only the intermediary banks, brokers and other financial institutions in whose names the securities are registered as the holders of those securities, and we or any applicable trustee or depository will make all payments on those securities to them. These institutions pass along the payments they receive to their customers who are the beneficial owners, but only because they agree to do so in their customer agreements or because they are legally required to do so. Investors who hold securities in street name will be indirect holders, not holders, of those securities.

**Legal Holders**

Our obligations, as well as the obligations of any applicable trustee and of any third parties employed by us or a trustee, run only to the legal holders of the securities. We do not have obligations to investors who hold beneficial interests in global securities, in street name or by any other indirect means. This will be the case

## **Table of Contents**

whether an investor chooses to be an indirect holder of a security or has no choice because we are issuing the securities only in global form.

For example, once we make a payment or give a notice to the holder, we have no further responsibility for the payment or notice even if that holder is required, under agreements with depository participants or customers or by law, to pass it along to the indirect holders but does not do so. Similarly, we may want to obtain the approval of the holders to amend an indenture, to relieve us of the consequences of a default or of our obligation to comply with a particular provision of the indenture or for other purposes. In such an event, we would seek approval only from the holders, and not the indirect holders, of the securities. Whether and how the holders contact the indirect holders is up to the holders.

## **Special Considerations For Indirect Holders**

If you hold securities through a bank, broker or other financial institution, either in book-entry form or in street name, you should check with your own institution to find out:

how it handles securities payments and notices;

whether it imposes fees or charges;

how it would handle a request for the holders' consent, if ever required;

whether and how you can instruct it to send you securities registered in your own name so you can be a holder, if that is permitted in the future;

how it would exercise rights under the securities if there were a default or other event triggering the need for holders to act to protect their interests; and

if the securities are in book-entry form, how the depository's rules and procedures will affect these matters.

## **Global Securities**

A global security is a security that represents one or any other number of individual securities held by a depository. Generally, all securities represented by the same global securities will have the same terms.

Each security issued in book-entry form will be represented by a global security that we issue to, deposit with and register in the name of a financial institution or its nominee that we select. The financial institution that we select for this purpose is called the depository. Unless we specify otherwise in the applicable prospectus supplement, the Depository Trust Company, known as DTC, will be the depository for all securities issued in book-entry form.

A global security may not be transferred to or registered in the name of anyone other than the depository, its nominee or a successor depository, unless special termination situations arise. We describe those situations below under the

section entitled "Special Situations When a Global Security Will Be Terminated" in this prospectus. As a result of these arrangements, the depositary, or its nominee, will be the sole registered owner and holder of all securities represented by a global security, and investors will be permitted to own only beneficial interests in a global security. Beneficial interests must be held by means of an account with a broker, bank or other financial institution that in turn has an account with the depositary or with another institution that does. Thus, an investor whose security is represented by a global security will not be a holder of the security, but only an indirect holder of a beneficial interest in the global security.

If the prospectus supplement for a particular security indicates that the security will be issued in global form only, then the security will be represented by a global security at all times unless and until the global security is terminated. If termination occurs, we may issue the securities through another book-entry clearing system or decide that the securities may no longer be held through any book-entry clearing system.



**Table of Contents**

**Special Considerations For Global Securities**

The rights of an indirect holder relating to a global security will be governed by the account rules of the investor's financial institution and of the depository, as well as general laws relating to securities transfers. We do not recognize an indirect holder as a holder of securities and instead deal only with the depository that holds the global security.

If securities are issued only in the form of a global security, an investor should be aware of the following:

an investor cannot cause the securities to be registered in his or her name, and cannot obtain non-global certificates for his or her interest in the securities, except in the special situations we describe below;

an investor will be an indirect holder and must look to his or her own bank or broker for payments on the securities and protection of his or her legal rights relating to the securities, as we describe above;

an investor may not be able to sell interests in the securities to some insurance companies and to other institutions that are required by law to own their securities in non-book-entry form;

an investor may not be able to pledge his or her interest in a global security in circumstances where certificates representing the securities must be delivered to the lender or other beneficiary of the pledge in order for the pledge to be effective;

the depository's policies, which may change from time to time, will govern payments, transfers, exchanges and other matters relating to an investor's interest in a global security;

we and any applicable trustee have no responsibility for any aspect of the depository's actions or for its records of ownership interests in a global security, nor do we or any applicable trustee supervise the depository in any way;

the depository may, and we understand that DTC will, require that those who purchase and sell interests in a global security within its book-entry system use immediately available funds, and your broker or bank may require you to do so as well; and

financial institutions that participate in the depository's book-entry system, and through which an investor holds its interest in a global security, may also have their own policies affecting payments, notices and other matters relating to the securities.

There may be more than one financial intermediary in the chain of ownership for an investor. We do not monitor and are not responsible for the actions of any of those intermediaries.

**Special Situations When a Global Security Will Be Terminated**

In a few special situations described below, the global security will terminate and interests in it will be exchanged for physical certificates representing those interests. After that exchange, the choice of whether to hold securities directly or in street name will be up to the investor. Investors must consult their own banks, brokers or other financial institutions to find out how to have their interests in securities transferred to their own name, so that they will be direct holders. We have described the rights of holders and street name investors above.

Unless we provide otherwise in the applicable prospectus supplement, the global security will terminate when the following special situations occur:

if the depository notifies us that it is unwilling, unable or no longer qualified to continue as depository for that global security and we do not appoint another institution to act as depository within 90 days;

if we notify any applicable trustee that we wish to terminate that global security; or

if an event of default has occurred with regard to securities represented by that global security and has not been cured or waived, and DTC requests physical certificates.

**Table of Contents**

The applicable prospectus supplement may also list additional situations for terminating a global security that would apply only to the particular series of securities covered by the applicable prospectus supplement. When a global security terminates, the depositary, and not us or any applicable trustee, is responsible for deciding the names of the institutions that will be the initial direct holders.

**PLAN OF DISTRIBUTION**

We and/or selling security holders, if applicable, may sell the securities, separately or together in units, in several ways, including:

through underwriters or dealers;

through agents; or

directly to a limited number of purchasers or to a single purchaser.

The prospectus supplement with respect to a particular offering of securities will set forth the terms of the offering of such securities, including the name or names of any underwriters or agents, the purchase price of such securities, the proceeds to us from such sale, any underwriting discounts and other items constituting underwriters' compensation, any initial public offering price, any discounts or concessions allowed or reallocated or paid to dealers and any securities exchanges on which such securities may be listed.

If we and/or selling security holders, if applicable, use underwriters in the sale, the securities will be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. The securities may be either offered to the public through underwriting syndicates represented by managing underwriters or by underwriters without a syndicate. Any initial public offering price and any discounts or concessions allowed or reallocated or paid to dealers may be changed from time to time.

Only underwriters named in a prospectus supplement will be deemed to be underwriters in connection with the securities described in such prospectus supplement. Firms not so named will have no direct or indirect participation in the underwriting of such securities, although such a firm may participate in the distribution of such securities under circumstances entitling it to a dealer's commission. We anticipate that any underwriting agreement pertaining to any such securities will:

entitle the underwriters to indemnification by us against certain civil liabilities under the Securities Act of 1933, as amended (the "Act"), or to contribution with respect to payments which the underwriters may be required to make in respect of such liabilities;

provide that the obligations of the underwriters will be subject to certain conditions precedent; and

provide that the underwriters generally will be obligated to purchase all such securities if any are purchased. Securities also may be offered directly by us and/or selling security holders or through agents designated by us from time to time. Any such agent will be named, and the terms of any such agency (including any commissions payable by us to any such agent) will be set forth, in the prospectus supplement relating to such securities. Unless otherwise indicated in such prospectus supplement, any such agent will act on a best efforts basis for the period of its appointment. Agents named in a prospectus supplement may be deemed to be underwriters (within the meaning of the Act) of the securities described in such prospectus supplement and, under agreements which may be entered into with us, may be entitled to indemnification by us against certain civil liabilities under the Act or to contribution with respect to payments which the agents may be required to make in respect of such liabilities.

## **Table of Contents**

We may enter into derivative or other hedging transactions with financial institutions. These financial institutions may in turn engage in sales of common shares to hedge their position, deliver this prospectus in connection with some or all of those sales and use the shares covered by this prospectus to close out any short position created in connection with those sales. We may also sell common shares short using this prospectus and deliver common shares covered by this prospectus to close out such short positions, or loan or pledge common shares to financial institutions that in turn may sell the common shares using this prospectus. We may pledge or grant a security interest in some or all of the common shares covered by this prospectus to support a derivative or hedging position or other obligations and, if we default in the performance of our obligations, the pledgees or secured parties may offer and sell the common shares from time to time pursuant to this prospectus.

Underwriters and agents may be customers of, engage in transactions with, or perform services for, us and our subsidiaries in the ordinary course of business.

If so indicated in a prospectus supplement, we will authorize underwriters, dealers or other agents of ours to solicit offers by certain specified entities to purchase securities from us pursuant to contracts providing for payment and delivery at a future date. The obligations of any purchaser under any such contract will not be subject to any conditions except those described in such prospectus supplement. Such prospectus supplement will set forth the commissions payable for solicitations of such contracts.

Underwriters and agents may from time to time purchase and sell securities in the secondary market, but are not obligated to do so, and there can be no assurance that there will be a secondary market for the securities or liquidity in the secondary market if one develops. From time to time, underwriters and agents may make a market in the securities but are not obligated to do so and may cease to do so at any time.

One or more firms, referred to as remarketing firms, may also offer or sell the securities, if the prospectus supplement so indicates, in connection with a remarketing arrangement upon their purchase. Remarketing firms will act as principals for their own accounts or as agents for us. These remarketing firms will offer or sell the securities in accordance with a redemption or repayment pursuant to the terms of the securities. The prospectus supplement will identify any remarketing firm and the terms of its agreement, if any, with us and will describe the remarketing firm's compensation. Remarketing firms may be deemed to be underwriters in connection with the securities they remarket. Remarketing firms may be entitled under agreements that may be entered into with us to indemnification by us against certain civil liabilities, including liabilities under the Act, as amended, and may be customers of, engage in transactions with or perform services for us in the ordinary course of business.

## **LEGAL MATTERS**

Certain legal matters in connection with the securities to be offered by this prospectus will be passed upon for us by Calfee, Halter & Griswold LLP, Cleveland, Ohio. Any underwriters, dealers or agents will be advised by their own legal counsel concerning issues relating to any offering.

## **EXPERTS**

The consolidated financial statements of The J. M. Smucker Company for the year ended April 30, 2017 included in The J. M. Smucker Company's 2017 Annual Report to Shareholders and incorporated by reference in The J. M. Smucker Company's Annual Report on Form 10-K for the year ended April 30, 2017, and the effectiveness of The J. M. Smucker Company's internal control over financial reporting as of April 30, 2017 have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their reports thereon, incorporated by reference and included therein, respectively, and incorporated herein by reference. Such consolidated financial

statements are, and audited consolidated financial statements to be included in subsequently filed documents will be, incorporated herein in reliance upon such reports of Ernst & Young LLP pertaining to such financial statements and the effectiveness of internal control over financial reporting as of the respective dates (to the extent covered by consents filed with the Securities and Exchange Commission) given on the authority of such firm as experts in accounting and auditing.

**Table of Contents**

**\$800,000,000**

**The J. M. Smucker Company**

**\$300,000,000 2.200% Notes due 2019**

**\$500,000,000 3.375% Notes due 2027**

**PROSPECTUS SUPPLEMENT**

**December 4, 2017**

***Joint Book-Running Managers***

**BofA Merrill Lynch**

**J.P. Morgan**

**BMO Capital Markets**

**PNC Capital Markets LLC**

***Co-Managers***

**Fifth Third Securities**

**Wells Fargo Securities**

**Huntington Capital Markets**

**US Bancorp**

**Loop Capital Markets**

